The

Negotiable Instruments Act

[XXVI of 1881]

[9th December, 1881]

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

Preamble—Whereas it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows :

Chapter I
Preliminary

1. Short Title—This Act may be called the Negotiable Instruments Act, 1881.

PO 127 of 1972. Local extent. Saving of usages relating to hundis, etc. Commencement—[2][It extends to the whole of [3][Bangladesh]; but nothing herein contained affects [4][the provisions of] [5][Articles 23 and 24 of the Bangladesh Bank Order, 1972]; and it shall come into force on the first day of March, 1882.

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1. For Statement of Objects and Reasons, See the Gazette of India, 1876, p.1836; for the Reports of the Select Committee, See ibid, 1877, pt.V, p.321, 1878, pt.V, p.145; 1879, pt.V, p.75; 1881, pt.V, p.85; for discussion in Council, See ibid, 1876, Supplement, p.1081; and ibid, 1881, supplement, p.1409.

For summary procedure on negotiable instruments See, the Code of Civil Procedure, 1908 (Act V of 1908), Schedule Order XXXVII.

2. Subs. by the Negotiable Instruments (Amendment) Act, 1957 (Act V of 1958), section 2 (with effect from the 14th October, 1955), for "it extends to all".

3. The word "Bangladesh" was substituted for the word "Pakistan by Act VIII of 1973 (w.e.f. 26th March, 1971).

4. Subs. by the Negotiable Instruments (Amendment) Ordinance, 1962 (XLIX of 1962), section 2, for certain original words.

5. The words within square brackets were substituted for the words "sections 24 and 35 of the State Bank of Pakistan Act, 1956" by Act VIII of 1973 (w.e.f. 26th March, 1971).

[1][**1A. Application of the Act**—Every negotiable instrument shall be governed by the provisions of this Act, and no usage or custom at variance with any such provision shall apply to any such instrument.]

Case-Law

Section 1—Scope—The Act legalises the system under which claims upon certain mercantile instruments can be treeted like ardinary goods passing from one hand to another. *AIR-1914 Cal 566 (DB).*

Section 1—Contract Act and Negotiable Instruments Act—The Contract Act is a general statute dealing with contracts. Negotiable Instruments Act is a statute dealing with a particular form of contracts, and the law laid down for special cases must always overrule provisions of general character. *AIR 1933 Rang.131.*

Section 1—Negotiable instruments—Negotiability can be attached to documents by mercantile usage. A document is negotiable if by customs of the money market it is transferable as it were cash and its bona fide transferee obtains a good title even though his transferor had none. *AIR 1918 Low Bur 122 = 9 Low Bur Rul 143 (DB).*

Section 1—Construction of negotiable instrument—There must be no reasonable possibility of ambiguity in the construction of a negotiable security which is meant to pass from hand to hand; its meaning should be instantly recognisable and not after an elaborate analysis in Courts. *AIR 1936 Nag. 252.*

2.. [Repeal of enactments.]—Rep. by the Amending Act, 1891 (XII of 1891).

[2][**3. Interpretations clause**—In this Act, unless there is anything repugnant in the subject or context,—

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1. Section 1A was inserted by the Negotiable Instruments (Amendment) Ordinance, 1962 (Ordinance No.XLIX of 1962), section 3.

2. Substituted by the Negotiable Instruments (Amendment) Ordinance, 1962 (XLIX of 1962), section 4, for the original section as amended by the Centralisation Act, 1914 (Act IV of 1914), section 2 and Schedule, pt. IAO 1937 and the Negotiable Instruments (Amendment) Act, 1957 (Act V of 1958), section 3.

(a) "accommodation party" means a person who has signed a negotiable instrument as a marker, drawer, acceptor or indorser without receiving the value thereof and for the purpose of lending his name to some other person;

(b) "banker" means a person transacting the business of accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, and includes any Post Office Savings Bank;

(c) "bearer" means a person who by negotiation comes into possession of a negotiable instrument, which is payable to bearer;

(d) "delivery" means transfer of possession, actual or constructive, from one person to another;

(e) "issue" means the first delivery of a promissory note, bill of exchange or cheque complete in form to a person who takes it as a holder;

(f) "material alteration" in relation to promissory note, bill of exchange or cheque includes any alteration of the date, the sum payable, the time of payment, the place of payment, and, where any such instrument has been accepted generally, the addition of a place of payment without the acceptor's assent; and

(g) XIX of 1961—"notary public" includes any person appointed by the [1][Government] to perform the functions of notary public under this Act and a notary appointed under the Notaries Ordinance, 1961.]

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1. The word "Government" was substituted for the words "Central Government" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), Second Schedule (w.e.f. 26th March, 1971).

Chapter II

Of Notes, Bills and Cheques

4. "Promissory note"—A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay [1][on demand or at a fixed or determinable future time] a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations

A signs instruments in the following terms:

(a) "I promise to pay B on order [2]Taka 500."

(b) "I acknowledge myself to be indebted to B in [2]Taka 1,000 to be paid on demand, for value received."

(c) "Mr. B, I O U [2]Taka 1,000."

(d) "I promise to pay B [2]Taka 500 and all other sums which shall be due to him."

(e) "I promise to pay B [2]Taka 500, first deducting thereout any money which he may owe me."

(f) "I promise to pay B [2]Taka 500 seven days after my marriage with C."

(g) "I promise to pay B [2]Taka 500 on D's death, provided D leaves me enough to pay that sum."

(h) "I promise to pay B [2]Taka 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

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1. The words within square brackets were inserted by Ordinance XLIX of 1962, section 5.

2. The word "Taka" was substituted for the word "Rs." by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), Second Schedule (wef 26h March, 1971).

Case-Law

Section 4—Scope—Promissory note is independent of other dealings between parties. Prima facie the object of a promissory note is to show that the particular transaction represented by the note is a separate transaction, and it is intended that the remedies in respect of that transaction should be separately pursued, even though the parties had several dealings with each other and there is a running account between them. *(1903) 430 C 627.*

Section 4—Scope—The definition of 'promissory note' in section 2(22), Stamp Act is more comprehensive and in addition to the promissory note as defined in the Negotiable Instruments Act. It includes a note promising the payment of any sum of money out of any particular fund which may or may not be available or upon any condition or contingency which may or may not be performed or happened. *AIR 1947 Nag. 145 = ILR 1946 Nag. 796 (DB).*

Section 4—Promissory note—A promissory note payable on demand does not imply that a demand must be made and the words "on demand" only mean that a note is payable immediately or at sight. *Rabia Khatun vs Ram Kali Mahajan, 2 DLR 385.*

Section 4—Promissory note—explained—A promissory note is defined in section 4 of the Negotiable Instruments Act as an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay on demand or at a fixed determinable future time, a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument. It should be noticed that there is no mention of consideration in the definition and in that it differs from consideration in the definition and in that it differs from the definition of an agreement under the Contract Act. The maker or a holder of negotiable instrument, e.g. a promissory note, may endorse it by signing the same otherwise than as much maker, for the purpose of negotiation. He is thereupon called the 'endorser'. *Ismail vs Fida Ally 17 DLR (SC) 531.*

Section 4—Distinction between promissory note and other instruments in which there is a promise to pay money—To determine the nature of an instrument where there is a promise to pay, the best is to see what is the intention of the parties and what is the instrument in the common acceptance of men of business or persons among whom it is commonly used. *PLD 1956 Dacca 14 = 6 DLR 50.*

Section 4—Request of loan—A letter written by A to B requesting B for a loan and promising to repay the money, if advanced within a certain time is not a promissory note. *13 Bom 669 +1883 Pun. Re. No.195 P 586 + 27 Mad.*

Section 4—Essentials of promissory note—In order that a document should be a promissory note it is necessary that there should be—(i) an unconditional undertaking to pay, (ii) the sum should be a sum of money and should be certain, (iii) the payment should be to or to the order of a person who is certain, or to the bearer, of the instrument, (iv) and the maker should sign it. If these four conditions are present a document becomes a promissory note. *AIR 1955 Raj 85 (DB)+AIR 1959 Raj. 156 + AIR 1957 Raj. 360.*

Section 4—Essentials of promissory note—The question whether an instrument is a promissory note or not should be judged by the words used. A document promising to pay on demand a sum for the price of cloth, is a promissory note. *36 Mad. 370=12 Ind Cas. 542.*

Section 4—Bond—Where the language of a document showed that it was written for evidencing the debt obtained by the debtor and an express promise to pay the debt within a specified time was given therein, and the instrument was attested by a witness and it was not payable to order or bearer; the document was a bond and not a promissory note. *AIR 1957 Raj 387.*

Section 4—Non-negotiable promissory notes—Where promissory notes are executed as a further security for repayment of advance received under a contract they are not negotiable and the cancellation of that contract by an act of the Government will not make them negotiable. *AIR 1928 Pat. 568 = 133 Ind. Cas. 698*

Section 4—Intention of maker—In order to find out whether the document in question is a promissory note or not, the intention of the parties at the time of the execution of the document is to be looked into. The promise to pay must be the substance of the instrument and there must be nothing inconsistent with the character of the instrument as substantially a promise to pay. *PLD 1956 Dacca 14 = 6 DLR 50+AIR 1959 Raj. 156*

Section 4—Maker must sign it—Under section 4 of the Negotiable Instruments Act, a promissory note must be signed by the maker or some one on his behalf. Where the document reads that B is charged under it to

pay the amount mentioned therein on demand, and it is signed by N and he does not purport to sign on behalf of B, it cannot be said that the document is signed by the maker. *ILR (1959) 9 Raj. 187*

Section 4—'Hundi'—A hundi may or may not be a promissory note. Therefore mere inscription of the words "Hundi" and "accepted" on the upper part of the stamp does not make the document a bill of exchange, when the document is a promissory note. The real character of a document has to be determined by looking to the provisions of the document itself and not by the name used for it. *AIR 1941 Cal 498=ILR (1941) 2 Cal. 107.*

Section 4—'Hundi'—When a hundi is either a promissory note or a bill of exchange, it is governed by the Contract Act and not by Negotiable Instruments Act. *AIR 1919 Nag. 39.*

Section 4—Place of payment—A promissory note does not lose its character as such merely because it contains a promise to pay at a certain place. *AIR 1944 Bom. 235.*

Section 4—Certainty is necessary—One of the most essential characteristics of a promissory note is certainty—certainty both as regards person by whom and to whom payment is to be made. *AIR 1931 Cal. 387=58 Cal.752+AIR 1920 Nag. 274.*

Section 4—Only money can be made payable—A promissory note can relate only to a certain sum of money. An undertaking to deliver grain, *6 Bom. HCR (AC) 107+AIR 1924.*

Section 4—Only money can be made payable—A promise to pay a certain sum of money and deliver a certain quantity of grain is not a promissory note. *4 Mad. 296 (FB)*

Section 4—Only money can be made payable—A promise to pay money and also to give the promisee a life policy and the lease of a house is not a promissory note as it contains a promise to pay money and also to do some other act. *(1849) 4 Ex. 410 = 19 LJ Ex. 6.*

5. "Bill of exchange."—A "bill of exchange" is an instrument in writing containing an unconditional order,

signed by the marker, directing a certain person to pay [1][on demand or at a fixed or determinable future time] a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional", within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is [2][payable at the current rate of exchange, and although it is to be paid in stated instalments and contains a provision that on default of payment of one or more instalments or interest, the whole or the unpaid balance shall become due.]

[3][Where the person intended can reasonably be ascertained from the promissory note or the bill of exchange, he is a "certain person" within the meaning of this section and section 4, although he is misnamed or designated by description only.

An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with—

(a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited to the amount, or

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1. [Inserted by the Negotiable Instruments (Amendment) Ordinance, 1962 (XLIX of 1962), section 6.

2. Subs. by Ord. XLIX of 1962, section 6 for "according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due."

3. Substituted, ibid, for the original paragraph.

(b) a statement of the transaction which gives rise to the note or bill, is unconditional.

Where the payee is a fictitious or non-existing person the bill of exchange may be treated as payable to bearer.].

Case-Law

Section 5—Bill of exchange—An essential character of a bill of exchange is that it shall contain an order to accept or to pay and that acceptor should accept it. And in the absence of such a direction to pay, the document will not be a bill of exchange or a hundi. *AIR 1955 Cal. 562=ILR (1956) 2 Cal. 318.*

Section 5—Sections 5 and 85A of the Negotiable Instruments Act make it clear that *prima facie* the relationship between the holder of the draft and any prior party is that of a creditor and debtor as prescribed by section 36 of the Negotiable Instruments Act. *1 PLR (Dac.) 20.*

Section 5—Bill of exchange payable on demand—A bill of exchange (not being a bond, bank note or currency note) payable otherwise than on demand and drawn singly does not come under clause (a) of this section and cannot be stamped with an adhesive stamp. *2 Mad. 173 (DB)* (Bill of exchange payable otherwise than on demand and drawn or made in British India cannot be stamped with adhesive stamp) + *8 Cal. 721 (DB).*

Section 5—Same drawer and drawee of bill—There is nothing in section 5 to show that if the drawer and drawee be the same person, the instrument cannot be described as a bill of exchange. No doubt where drawer and drawee is the same person that person is not entitled to treat the instrument as bill of exchange but the holder of the bill may treat it as a bill of exchange. *AIR 1930 Pat 239 (DB) = AIR 1928 Cal. 566 (SB) = AIR 1932 Mad. 765.*

Sections 5 & 9—A holder of a bill of exchange in due course is entitled to encash the same on maturity and payment to him cannot be restrained even if the drawer of the bill defrauded the drawee after acceptance of the bill by the drawee. (Exporters India vs Rupashi Garments and others.) *11 BLD (HCD) 65.*

6. "Cheque"—A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

Case-Law

Section 6—Cheque, whet is—A cheque is not intended for circulation, it is given for immediate payment; it is not entitled to days of grace; and though it is, strictly speaking an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet, in the ordinary understanding of persons, it is not so considered. *(1854) 14 ER 215+(1841) 174 ER 331=2 M & Rob. 401.*

Section 6—Cheque—Post-dated cheques are cheques and after the due dates may be sued upon as cheques *52 C 677. 90 IC 59.*

Section 6—Forged Cheque—A cheque is in the nature of an order from the account-holder to the Bank directing it to pay the specified amount out of his account. Where signature of the account-holder on a cheque is forged then it is not his order to pay. Payment on the basis of a forged cheque was thus payment without authority and would not bind the customer. *1990 CLC 686.*

Section 6—Negotiability of cheque—A cheque is under the law a negotiable instrument. Its negotiability can be destroyed only if it is marked as "not negotiable" on its face; it is not destroyed by its simply being crossed whether generally or specially. *AIR 1952 All 590=ILR (1951) 2 All 674 (DB).*

Section 6—Date of payment—A payment under a cheque relates back to the date of the cheque. So it is immaterial when a cheque is cashed. What is material is when the cheque was given and the payment is made and not when the cheque was cashed at the instance of the creditor. *AIR 1952 Bom. 306=ILR 1953 Bom. 81 (DB).*

Section 6—Denial of execution—Where the drawer of the cheque denies its execution, he may take a plea in the alternative that if his signature on the cheque is found to be genuine it may be taken that a signed cheque had been stolen from him and as such he is not liable on it. In such a case it is for the plaintiff to prove that the cheque was actually drawn by the defendant and therefore he was liable on it. *NLR 1980 CrC 353 (BJ).*

7. "Drawer." "Drawee."—The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee".

"Drawee in case of need,"—When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

"Acceptor."—After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

"Acceptor for honour." [1][When a bill of exchange has been noted or protested for non-acceptance or for better security,] and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

"Payee"—The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

Case-Law

Section 7—"Drawer" "Drawee"—The definition of "drawer" is not exhaustive, the maker of a promissory note can also be called a "drawer", *1935 Lah. 153.*

Section 7—Marking or certification of cheque by bank is not acceptance *1944 PC 58 = 48 CWN 810= 47 Bom. LR 578.*

Section 7—There cannot be an oral acceptance of hundi apart from mercantile usage. *1954 SC 554; 1954 SCJ 626.*

Section 7—Drawee—Where no party is named in the instrument and it is "accepted" by a party the acceptor might be deemed to have admitted himself to be the party addressed and the instrument may be held to be a bill of exchange. *2 AIR 1930 Cal. 697=57 Cal. 695 (DB).*

Section 7—Acceptance in writing—Mere writing of figures on a hundi cannot amount to signing of assent by the drawee unless it can be

1. Subs. by the Negotiable Instruments Act, 1885 (II of 1885), section 2, for "When acceptance is refused and the bill is protested for non-acceptance."

proved that it amounted to acceptance according to mercantile usage of the locality. *AIR 1930* lah. *471 (DB)+AIR 1932 Lah. 274=13 Lah. 31 (DB).*

Section 7—Hundi acceptance of—Acceptance must be in writing unless in the case of a hundi a local usage is proved which makes an acceptance by word of mouth as effectual as an acceptance in writing. *AIR 1919 Lah. 85=15 Ind Cas. 250 (DB)*

Section 7—Acceptance when acceptor owes nothing to drawer—A drawer who discounts an acceptance when the acceptor owes nothing to him does avail himself of the acceptor's credit. *AIR 1914 PC 132=26 Ind. Cas. 915.*

Section 7—Joint payees—In the case of a promissory note made payable to two or more persons, the word "holder" must be taken to apply to all the payees and not confined to the one who may happen to be in physical possession of it. *AIR 1937 Rang. 227=170 Ind. Cas. 95 (FB).*

Section 7 & 21—If a bill of exchange is at sight or on demand which the disputed bills were, no presentation for acceptance or acceptance by drawee is necessary for the maturity of the bills and for fixing the drawee for their matuity. In appeal by special leave, one of the questions which arose for decision has been set above. *Jamila Rashid & others vs The Central Bank of India Ltd & others Bangladesh Court Digest 235.*

[1][**8. "Holder."**—The "holder" of a promissory note, bill of exchange or cheque means the payee or indorsee who is in possession of it or the bearer thereof but does not include a beneficial owner claiming through a *benamidar.*

Explanation—Where the note, bill or cheque is lost and not found again, or is destroyed, the person in possession of it or the bearer thereof at the time of such loss or destruction shall be deemed to continue to be its holder]

Case-Law

Section 8—"Holder of promissory note, bill of exchange or cheque" means any possession thereof and to receive or recoverd the amount due thereon from the parties thereto. *3 PLR (DAC) 463.*

1. Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 7, for the original section.

Section 8—The negotiable instruments have a dual aspect which should be constantly kept in mind if confusion is to be avoided. In their negotiable aspect they are similar to paper currency or chattel and in the other aspect they are debts or chooses in action. The provisions of the Negotiable Instruments Act are such that the owner of the instrument in its negotiable quality" and the owner of the choose in action need not be and in many cases will not be the same. Under section 8, it is only the holder who is entitled to the money due on and the possession of the instrument, according to section 78 it is the holder who can give a discharge for the amount and it is he alone who according to section 48 can negotiate it. The property in the instrument vests in him in spite of the fact the owner of the debt be another. Negotiation is not necessarily accompanied by the transfer of the chose in action. Hence if a suit be brought on the instrument it is only the holder who can sue.

The owner of the debt has no title to the instrument as such. *1953 PLR (Lah) 123.*

Section 8—"Holder"—In view of the definition of "holder", in section 8 of the Negotiable Instruments Act the holder of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover amount due thereon from the parties thereto. *The India Bank Ltd. vs Durvesh Brothers 13 DLR 419.*

Section 8—Holder—The endorsee of a promissory note to whom the endorsement has been legally made followed by delivery to him of the note is the holder of the note. 2 CWN 286, significance of the words "entitled in his own name". *30 M 88, 44, A 290, 30 M 44.*

Section 8—A purchaser of promissory note is a holder. *1934 Cal. 549; 38 CWN 465.*

Section 8—A receiver is a "holder" of a promissory note within the meaning of this section and can sue. *41 CWN 697= 35, 8 CWN 53.* **Section 8**—Where the holder has paid consideration for the note he can recover the amount due on it even if it is originally made without consideration. *AIR 1935 Oudh 264 (See also Section 43)+AIR 1939 Oudh 107 (DB).*

Section 8—Several holders—In case of a promissory note made payable to two or more persons, the word "holder" means all payees and not one who may be in possession of it. *AIR 1937 Rang. 227=1937 Rang. LR 1 (FB).*

Section 8—Bill not payable to bearer—In relation to a pronote not payable to bearer, "person entitled in his own name" can only mean the person named in the note, that is the payee or the endorsee. *AIR 1928 Nag. 54+AIR 1930 Mad 197.*

Section 8—Endorsee of Bill—The holder means and includes an endorsee, and also includes holder in due course. *PLD 1957 Dacca 558 = 8 DLR 245.*

Section 8—The endorsee of a promissory note is the holder of the document under section 8 and he can maintain an action in his own name for the purpose of recovering the amount due thereon. *PLD 1962 Dacca 582=13 DLR 419 (DB) + AIR 1963 AP 343.*

Section 8—Father and son—A father or his son cannot be holders of a pronote which is in favour of the other. Thus a son cannot sue on a pronote in favour of his father who has renounced the world. *AIR 1934 Bom. 385=58 Bom. 536 (DB).*

Section 8—Defence in suit that holder is 'benamidar'—Benami transactions are not recognised in connection with negotiable instruments. Parties to a negotiable instrument cannot show that they acted benami through others. *AIR 1949 Nag. 21=ILR 1948 Nag. 299 (DB).*

Section 8—Benamidar—A person, who is not the holder of the promissory note cannot maintain a suit for the recovery of the amount due thereon even though the holder is admittedly a benamidar and is impleaded in the suit. *AIR 1950 Pat 493 (DB) + AIR 1931 Cal. 387.*

Section 8—Holder for collection—A person holding a bill of exchange sent to him for collection with a lien on the bill is a holder for value or for consideration. *AIR 1925 Bom. 369=87 Ind. Cas. 982=49 Bom. 270.*

[1][**9. "Holder in due course."**— "Holder in due course" means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable

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1. Subs. ibid., section 8, for the original section, as amended by the Negotiable Instruments (Amdt.) Act, 1919 (VIII of 1919), section 2.

to order, before it became overdue, without notice that the title of the person from whom he derived his own title was defective.

Explanation—For the purposes of this section the title of a person to a promissory note, bill of exchange or cheque is defective when he is not entitled to receive the amount due thereon by reason of the provisions on section 58.]

Case-Law

Section 9—Holder in due course—By taking a defective cheque a transferee does not become a holder for value. *1928 All. 68.*

Section 9—The presumption that possessor of negotiable instrument is holder in due course is rebutted if maker proves that it has been obtained by fraud or offence or for unlawful consideration, *1933 ALJ 1241.*

Section 9—Holder in due course—To constitute a person a holder in due course it is necessary that (1) he must be a holder for consideration (2) the instrument must have been transferred to him before it became payable, and (3) he must be a transferee in good faith. *AIR 1923 Lah. 638 (DB).*

Section 9—Transfer necessary—Only a person who comes into possession of a negotiable instrument having paid consideration for it and being a bona fide transferee can be a holder in due course withing the meaning of S.9. *10 AIR 1923 Lah. 638 (DB).*

Section 9—When a Negotiable instrument is handed out by a debtor to his creditor is discharge of a preexisting debt the creditor be comes a holder the course. *15 Bom LR 333.*

Section 9—Pronote—Under section 9, in order to be a holder in due course three conditions are necessary, viz. (1) that the endorsee becomes the holder in due course when it is for consideration, (2) he can be an indorsee before the amount mentioned in the promissory note became payable, and (3) without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. *AIR 1957 Orissa 153=ILR 1957 Cut. 101*

Section 9—Where a suit is brought on a pronote and the defendant admits that some amount is due to the plaintiff, whether the plaintiff sues

as holder or as holder in due course he is entitled to recover the same. *AIR 1940 Rang. 170.*

Section 9—Assignment in suspicious circumstances—An endorsement of a promissory note by the guardian of a minor without an indication that the guardian has endorsed it in his capacity as a guardian does not pass title to the endorsee who, therefore, is not a holder, and has no *locus standi* to sue on the pronote. *AIR 1924 Mad. 617.*

Section 9—Fraud—Where fraud has, in fact been alleged in a case it cannot be said that the defendants have no defence whatsoever and that they should not be given an opportunity of establishing the allegation of fraud. *AIR 1952 Punj. 296 (DB).*

Section 9—Effect of fraud—Where one of the partners who had authority to endorse partnership cheques, indorses them but pays it in non-partnership account and is thus guilty of conversion and the bank collects the money in spite of its doubt and superficial inquiry the bank is not a holder in due course and the burden of proving that the value is given is on the bank. *1955-2 All ER 571.*

Section 9—Forged endorsement—A forged endorsement is a nullity and consequently there is no question of a subsequent holder being a holder in due course. *AIR 1921 Sind 172=AIR 1928 Bom. 436 (DB)*

Section 9—A Bank takes a risk in accepting as security for an advance a negotiable security payable to order because it may always be met with a claim by the true owner that the endorsement is forged. *AIR 1921 Sind 172=82 Ind. Cas. 730.*

Section 9—Where once the plaintiffs establish that possession of the notes was obtained from the lawful owners by means of an offence or fraud, the onus of proving that the defendant became holder in due course lies on the defendant. *(1909) 36 C 239=1 Ind. Cas. 929.*

Section 9—Endorsee of a promissory note payable on demand is a "holder in due course," *1951 Cal. 55; 6 DLR Cal. 125.* and must be presumed to have had no knowledge of the discharge of demand. *1936 Mad. 879.*

10. "Payment in due course,"—"payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any

person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Case-Law

Section 10—Payment not made in good faith—When payment is made on a forged cheque, it cannot be regarded as payment in due course. It may be that the Bank is an innocent victim of the fraud but so is the customer. If there are two innocent parties, the one whose negligence led to the ultimate loss is primarily responsible. *1990 CLC 686=PLD 1975 Kar=AIR 1961 Punjab 571.*

Section 10—Payment made to person who is not holder of instrument—A payment made to a person who is not holder of a negotiable instrument cannot be said to be a payment in good faith. *AIR 1961 A.P. 301 (DB).*

11. Inland instrument—A promissory note, bill of exchange or cheque drawn or made in [1][Bangladesh], and made payable in, or drawn upon any person resident in, [1][Bangladesh] shall be deemed to be an inland instrument.

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

13. "Negotiable instrument."—[2][(1) A "negotiable instrument" means a promissory note, bill or exchange or cheque payable either to or to bearer.

Explanation (i)—A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular

1. The word "Bangladesh" was substituted for the word "Pakistan" by the Bangladesh Laws (Revision and Declaration) Act, 1973, (Act VIII of 1973), Second Schedule (W.e.f. 26th March, 1971).

2. Substituted by the Negotiable Instruments (Amendment) Act, 1919 (VIII of 1919), section 3.

person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii)—A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

Explanation (iii)—Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.]

[1][(2) A negotiable instrument may be made payable to two or more payees jointly or it may be made payable in the alternative to one of two, or one or some of several payees.]

Case-Law

Section 13—Language of instrument should be clear—There must be no reasonable possibility of ambiguity in construction of a negotiable instrument and its meaning should be instantly recognisable. *AIR 1936 Nag. 252.*

Section 13—Chithi—Where a chithi or demand note does not mention the payee, it is not a negotiable instrument. *AIR 1929 Sind 164.*

Section 13—Debentures—Debentures transferable by endorsement are negotiable instruments. *AIR 1982 PC 22=58 Ind. App. 433 (AIR 1928 Bom. 407, Affirmed).*

Section 13—Share certificates—Share certificates with blank transfer deeds enclosed by last registered owner are not negotiable instruments. *AIR 1919 Cal. 546=46 Cal. 331.*

Section 13—Draft—A draft is a bill of exchange and so becomes a negotiable instrument under section 13. But a draft which is drawn by one branch of a bank on another branch thereof, is not a negotiable instrument. *AIR 1959 Bom. 267=ILR 1958 Bom. 1386.*

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1. Ins. by the Negotiable Instruments (Amendment) Act, 1914 (Act V of 1914), section 2.

Section 13—Receipt—A "mate's receipt" *41 Cal. 670 (PC)* or a Railway receipt are not negotiable instruments. They stand on the same footing as bills of lading. *AIR 1935 Mad. 936 (DB).*

Section 13—Pronote payable to more than one person jointly—In case of a pronote made payable to two or more persons jointly, one of them cannot discharge the maker from liability so as to bar as claim against the maker by others. *AIR 1937 Rang. 227=1937 Rang. LR 1 (FB).*

14. Negotiation—When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Case-Law

Section 14—Endorsement and assignment—Rights and liabilities under a promissory note cannot be transferred by mere book entries. Transfer of rights and liabilities under a pronote must be made by assignment or endorsement according to law. *AIR 1943 Sind 67=ILR 1942 Kar. 516 (DB)* In the negotiation of a bill of exchange the right created is in personam but it reserves the right of stoppage of payment. The negotiability by assignment as such is different, but it is a kind of negotiability nevertheless. *AIR 1957 Nag. 31.*

Section 14—Time for negotiation—It is doubtful whether negotiation after banking hours on the last day would be negotiation within the period. *AIR 1962 Cal. 325 (DB).*

15. Indorsement—When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Case-Law

Section 15—Acknowledgment of receipt of money—A mere written acknowledgment of receipt of money does not amount to indorsement within section 15, not to transfer of actionable claim under section 130 of the TP Act. *AIR 1921 Mad. 122 (DB).*

Section 15—Signature for indorsement—Only a maker or holder can make an indorsement on an instrument by signing it. Persons other than those cannot indorse an instrument by signing at this back. *AIR 1925 Sind 9.*

Section 15—Signing for endorser—Where the endorser gets another person to write his name for him, it is validly "signed" within section 15. *AIR 1936 Rang. 27 (DB).*

16. "Indorsement in blank" and "in full", "Indorsee."—[1](1) If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full," and the person so specified is called the "indorsee" of the instrument.

[1][(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.]

Case-Law

Section 16—Acknowledgment for payment of money—An acknowledgment of payment signed by one of the alternative payees is neither an endorsement in full, nor an endorsement in blank, and it cannot be treated as effecting assignment of actionable claims under section 130. Transfer of Property Act, because there are absolutely no words of transfer. *AIR 1921 Mad. 122 (DB).*

Section 16—Indorsement in full—In order to constitute an indorsement "in full" within the meaning of section 16 there must be a direction to pay the amount of the instrument to a specified person. The form of the assignment is immaterial, provided the intention to transfer is clear.

1. Ins. by the Negotiable Instruments (Amdt.) Act, 1914 (V of 1914), section 3.

But that intention must be gathered from the words used in the instrument assigned and no from evidence aliunde. ? The endorsement need not contain actual words of direction. It is sufficient if it contains what is equivalent to a direction. An endorsement that the note had been made over to so and so on a particular date over the signature of the payee with the delivery of the note to the indorsee is an endorsement in full. *19 Ind. Cas. 410 (Mad).*

17. Ambiguous instruments—Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his discretion treat it as either, and the instrument shall be thenceforward treated accordingly.

18. Where amount is stated differently in figures and words—If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid [1][:]

[2][Provided that if the words, are ambiguous or uncertain, the amount may be ascertained by referring to the figures.]

[3][**19. Instruments payable on demand**—A promissory note or bill of exchange is payable on demand—

(a) where it is expressed to be so, or to be payable at sight or on presentment; or

(b) where no time for payment is specified in it; or

(c) where the note or bill accepted or indorsed after it is overdue, as regards the person accepting or indorsing it.]

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1. Subs by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 9, for the full-stop.

2. Proviso added, ibid.

3. Subs. *ibid.*, section 10. for the original section.

Case-Law

Section 19—The words "on demand" are technical words of English law which, paradoxical though it may seem, only mean without demand, The object of saying that a promissory note is payable on demand is only that payment is not to be withheld till a particular date as is the case with promissory notes payable on a specified date. "On demand" means immediately or forthwith. *1956 PLR (Lah.) 292.*

Section 19—Payable on demand—A promissory note payable on "demand" does not imply that a demand must be made and the words 'on demand' only mean that a note is payable immediately of at sight. *PLD 1982 Kar. 135=2 DLR 385.*

Section 19—Instruments payable on demand—A bill of exchange is payable on demand. *451. C. 22.*

Section 19—A promissory note payable on demand does not become payable until demand is made, so a transfer before demand is valid. *1923 lah. 638, 47 C 861 Ref.*

Section 19—No date for payment fixed—A bill of exchange is payable on demand though the demand cannot be made on the day when the bill is drawn. A note which does not fix any date for payment is payable on demand. *AIR 1918 Mad. 317 (DB).*

[1][**20. Inchoate stamped instruments**—(1) Where one person signs and delivers to another a paper stamped in accordance with the law relating to stamp duty chargeable on negotiable instruments, either wholly blank or having written thereon an incomplete negotiable instrument, in order that it may be made, or completed into a negotiable instrument he thereby gives *prima facie* authority to the person who receives that paper to make or complete it, as the case may be, into a negotiable instrument for the amount, if any specified therein, or, where no amount is specified, for any amount, not exceeding, in either case, the amount covered by the stamp.

1. Subs. ibid., section 11, for the original section, as amended by A.O., 1949, Arts. 3(2) and 4 and the Negotiable Instruments (Amdt.) Act, 1957 (V of 1958), section 4 (with effect from the 14th October, 1955).

(2) The person so signing shall, subject to the provisions of sub-section (3), be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course, for the amount specified in the instrument or filled up therein:

Provided that no person other than a holder in due course shall receive from the person so signing the paper anything in excess of the amount intended by him to be paid thereunder.

(3) In order that any such instrument may on completion be enforceable against any person who became a party thereto before such completion, it must be filled up within a reasonable time and strictly in accordance with the authority given:

Provided that if any such instrument after completion is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.]

Case-Law

Section 20—Completion of bank instrument—A promissory note dated 16-12-1979 could be completed by Bank upto 22-12-1982 or even thereafter upto 5-7-1984 as there had been acknowledgment of liability by the debtors by making deposits in the account, when deposits prior to 24-3-1984 were made by the debtors and the last such deposit entry being on 6-7-1981. *PLD 1990 Lah. 99.*

Section 20—Amount of instrument—A pronote is valid though the amount is not mentioned in the body of the document. If the amount can be ascertained from the face of the paper, the form of expression is immaterial. *AIR 1923 Rang. 97=11 Low. Bur. Rul. 439.*

Section 20—Name of payee—Where a promissory note promises to pay a sum unconditionally to a certain person, there is nothing in section 4 which curtails general authority conferred by section 20 on the person to whom the stamped and signed paper is delivered to convert it into a negotiable instrument payable to a specified person. *AIR 1940 Pat. 377=19 Pat. 404 (DB).*

Section 20—Bona fide holder for value, right of—The executant of an inchoate negotiable instrument is liable to the bona fide holder for value. He cannot plead that the holder or payee is a benamidar. *AIR 1939 Pat. 347.*

Section 20—Cancellation of stamp—A stamp affixed under this section must be cancelled according to the provisions of the Stamp Act. If the stamp is not cancelled at the proper time it cannot be cancelled afterwards. *27 Bom LR 1122.*

Section 20—Handnote—Where a handnote is neither in favour of any particular person nor in favour of the bearer, it is still admissible as a handnote and it can be used as evidence of the loan irrespective of its being or not being a promissory note as defined in the Negotiable Instruments Act. *AIR 1933 Pat. 159.*

Section 20—Defective handnote—Plaintiff is not entitled to any decree in a suit on a handnote which is not basis of the cause of action not existing independently of it and which is found to be tampered with. he is not entitled to the amount admitted to be borrowed by the defendant. *AIR 1937 Pat. 572=171 Ind. Cas. 881.*

Section 20—Partners, power of—Where one of the partners of a firm concurs with the insertion of a date in a promissory note, it will bind the partnership, as being a partner his act will bind all the partners of the firm. *PLD 1980 Kar 308.*

21. "At sight." "On presentment". "After sight."—[1]* * * The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

Case-Law

Section 21—Scope—Bill "at sight" or bill payable "at sight" or "on presentment" means bill payable on demand. In case of a bill of exchange payable at sight no presentment for acceptance is necessary. it becomes payable on the date of presentment or sighting. *PLD 1960 Dacca 225 = 12 DLR 10.*

1. The words "In a promissory note or bill of exchange the expression 'at sight' and 'on presentment' mean on demand", omitted by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 12.

[1][**21A. When note or bill payable on demand is overdue**—A promissory note or bill of exchange payable on demand shall be deemed to be overdue when it appears on the face of it to have been in circulation for an unreasonable length to time.

21B. A note or bill payable at a determinable future time—A promissory note or bill or exchange is payable at a determinable future time within the meaning of this Act if it is expressed to be payable—

(a) at a fixed time after date or sight; or

(b) on or at a fixed time after the occurrence of a specified event which is certain to happen, though the time of its happening may be uncertain.

21C. Anti-dating and post-dating—A promissory note, bill of exchange or cheque is not invalid by reason only that it is ante-dated or post-dated :

Provided that the ante-dating or post-dating does not involve any illegal or fraudulent purpose or transaction.]

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

Days of grace—Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Case-Law

Section 22—Limitation when begins—A promissory note payable on demand is a present debt and is payable without demand and limitation

1. sections 21A, 21B and 21C,by the negotiable Instruments (Amendment) Ordinance, 1962 (XLIX of 1962) section 13.

begins to run from the date of it. A stipulation for compensation in the shape of interest makes no difference. *AIR 1940 Cal. 401=191 Ind. Cas. 608=ILR (1940) 2 Cal. 362.*

23. Calculating maturity of bill or note payable so many months after date or sight—In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations

(a) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(b) A negotiable instrument, dated 30th August 1878, is made payable three months after dated. The instrument is at maturity on the 3rd December, 1878.

(c) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. Calculating maturity of bill or note payable so many days after date or sight—In calculating the date at which a

promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

25. When day of maturity is a holiday—When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

[1][*Explanation*—The expression "public holiday" includes Sundays and the days declared by the [2][Government], by notification in the official Gazette, to be public holidays.]

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1. Substituted by the Negotiable Instruments (Amendment) Ordinance, 1959 (Ordinance XXIX of 1959), section 2, for the existing Explanation which was amended by the Negotiable Instruments (Amendment) Act, 1950 (LII of 1950), section 2 and the Negotiable Instruments (Amendment) Act, 1957 (V of 1958), Section 5.

2 The word "Government" was substituted for the words "Central Government" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), Second Schedule (wef 26th March, 1971).

Chapter III

Parties to Notes, Bills and Cheques

26. Capacity to make, etc., promissory notes, etc—Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor—[1][Where such an instrument is made, drawn or negotiated by a minor, the making, drawing or negotiation entitles the holder to receive payment of such instrument and to enforce it against any party thereto other than the minor.]

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Case-Law

Section 26—Name of person to be bound must appear on instrument—Where a person is to be bound his name must appear upon the instrument as a person to be bound thereby. *AIR 1925 Cal. 1153=88 Ind. Cas. 1025.*

Section 26—Evidence will not be permitted to be given by a person who had signed a negotiable instrument apparently as the person liable thereon to prove that in fact he signed the note as an agent for an undisclosed principal. *AIR 1928 Bom. 116=52 Bom. 640 (DB).*

Section 26—Hindu joint family—The principle that the name of a person or firm to be charged on a negotiable instrument should be clearly

1. Substituted by the Negotiable Instruments (Amendment) Ordinance, 1962 (XLIX of 1962), section 14, for the original paragraph.

stated on the face or back of the instrument has no application to the case of a joint family which it is sought to make liable, through the signature of the managing member thereof. *AIR 1922 All. 116=44 All 393 (DB) (23 Mad, 597; 20 Bom. 488 and 11 Cal WN 139,*

Section 26—Minor—The question whether the minor is intended to be the real payee has to be decided upon a proper construction of the document. *AIR 1929 Mad 284 (DB).*

Section 26—Corporation—A person whose name does not appear in the promissory note cannot sue on it alleging that the payee under the promissory note was a benamidar for himself. *AIR 1926 All. 70=100 Ind. Cas. 10=AIR 1927 Mad. 219.*

Section 26—Where a person or officer of a company has no authority to execute negotiable instruments on its behalf, a negotiable instrument executed by him would not bind the company. where among other things the execution of pronotes is mentioned in the object clause of the Memorandum of association, and the Articles of association gave to the Managing Agents power to make contracts and sign receipts and not to execute promissory notes; it was held that the managing agent was not the authorised agent for the purpose of making promissory notes on behalf of the company. *AIR 1930 All 778=52 All 883 (DB).*

Section 26—Bankrupts—A suit by a bankrupt who has not obtained a final discharge with reference to a bill of exchange which had been endorsed to him is sustainable if the official assignee has not intervened. *30 Mad 145 (DB).*

Section 26—Bankrupts—Until the official assignee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with him bona fide and for value in respect of his after-acquired property, whether with or without knowledge of the bankruptcy, are valid against the assignee. *AIR 1919 Bom. 115=43 Bom. 890 (DB).*

Section 26—Bankrupts—The right of an undischarged insolvent to sue in respect of property acquired after adjudication and before the intervention of the official receiver appears to be for the protection of third parties dealing with him bonafide and for value. *AIR 1918 Mad 294 (DB).*

27. Agency—Every person capable or binding himself or of being bound, [1][by the making, drawing, acceptance or. negotiation of a negotiable instrument], may so bind himself or be bound by a duly authorised agent acting in his name. a general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or endorsing bills or exchange so as to bind his principal.

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

Case-Law

Section 27—Agent signing principal's name—A promissory note with words "Nishi, mark of C" but containing no separate mark, is valid where it is proved that the words written were with C's authority. *AIR 1918 Mad. 24 (DB)+AIR 1931 Rang. 131.* (A man may sign a promissory note by getting some one to write his name for him).

Section 27—Negotiable instrument by agent—"Agent" in Sections 26 and 28 means agent of a person capable of contracting within the meaning of section 26; and in such case when agent is not liable his principal is. *AIR 1919 Mad. 616=41 Mad. 815 (DB).*

Section 27—Name of principal must be clearly stated on instrument—Where a person is to be bound by a negotiable instrument made on his behalf by his agent, his name must appear upon it as the person to be bound thereby. *AIR 1925 Cal. 1153.*

Section 27—Hundi—An agent, who is authorised to draw a hundi in the name of his principal and to sign his name, is not required to indicate on the face of the *hundi* that he is drawing it was an agent or with the authority of the principal. In not doing so, therefore, the agent is not guilty of any malafides. *AIR 1946 Lah. 387=48 Pun. LR 195=224 Ind. Cas. 117 (DB).*

Section 27—Name of principal disclosed in instrument—Where a person executing an instrument in an oriental language after giving his

1. Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 15, for "as mentioned in section 26".

own description, adds that he is the agent of another, it means that he is acting as the other's agent in the mater of execution of the document, and it is sufficient to exclude his personal responsibility. *AIR 1941 Mad 417 (FB).*

Section 27—Agent exceeding authority—Where is a suit based on a promissory note, the authority of borrower to execute the document is questioned, that authority must be established before the instrument executed by him is looked at. *AIR 1959 Bom. 90=ILR 1959 Bom. 458.*

Section 27—Where the principal is not carrying on any business which may involved executing, accepting or endorsing of bill of exchange, an agent has no authority to execute promissory notes on behalf of his principal either expressly or impliedly. *AIR 1938 Lah. 41 (DB).*

Section 27—Joint Hindu family—Where the action is based on a handnote, members of the family other than the member who executed the handnote are not liable in such an action. But if there is an alternative case based on the original loan, then the Court should give judgment against all such members. *AIR 1934 Pat. 629=154 Ind. Cas. 95.*

Section 27—Where a promissory note is executed by a member in his own name without disclosing that he executed it as manager; the promisee or holder can sue on the debt as opposed to the promissory-note. *AIR 1933 Nag. 160=29 Nag. LR 312+AIR 1934 Pat. 629.*

Section 27—Where a younger brother in a joint Hindu family borrowed money for the benefit of the family on a promissory note and his elder brother who was a Karta, accepted liability and executed another promissory note. The promissory note by the elder brother was binding on the younger brother. *AIR 1942 Oudh 161=17 Luck 226.*

Section 27—Instrument executed in individual capacity—Where a promissory note was signed by a person who alleged himself to be the agent of a firm but he signed it in his own name and there was no promise in it of the firm to repay the loan. It was held, that the firm was not liable on the promissory note. *AIR 1932 Rang. 97=10 Rang. 257=139 Ind. Cas. 460 (DB).*

Section 27—Personal liability of Director—Where a Director duly authorized executes a negotiable instrument on behalf of a company, the company alone is liable; but if the Director expressly makes himself liable his liability is not extinguished by his executing the document on behalf of the Company. Where a Director of the Company executing a promissory note thereby promised to pay a certain amount both in

personal capacity as well as on behalf of the company and on top of his signature were the words on behalf of Company" impressed by rubber-stamp. It was held, that this endorsement at the top did not alter his personal liability. *AIR 1940 Cal. 177 (DB).*

Section 27—Loan to firm but instrument executed by partner as security—Where there is a loan to the firm, and an independent security for that loan is taken from one of the partners, the enforceability or otherwise of the security cannot affect the lender's right to maintain a suit on the cates of action which he was against the firm on the loan. Section 27 does not apply to the case. *AIR 1958 Ker. 257 = ILR 1957 Ker. 969 (DB).*

Section 27—Negotiable instrument by executor—Where an executor has executed a promissory note to obtain a loan to carry out directions under the will but there is no indication in the note that the estate of the testator was intended to be charged by the instrument, the executor would be personally liable under the instrument and the estate of the testator cannot be proceeded against. *AIR 1918 Mad. 300 (DB)=AIR 1937 Mad. 153 (DB).*

Section 27—Negotiable instrument by trustees—Where a promissory note is executed by trustee of a religious endowment and there is no express or implied stipulation that creditor should be repaid from temple properties; the creditor is not entitled to a decree changing the amount due under the promissory note on the trust property. *AIR 1942 Mad. 198+AIR 1942 Mad. 468.*

[1][**27A. Authority of partners**—A partner acting in the firm name may bind the firm by the making, drawing, acceptance or negotiation of a negotiable instrument to the extent authorised by law relating to partnership for the time being in force.]

[2][**28. Liability of agent signing**—(1) Where a person signs a promissory note, bill of exchange or cheque without adding to his signature words indicating that he signs it as

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1. Section 27A ins. by the Negotiable Instrument (Amendment) Ordinance 1962 XLIX of 1962, section 16.

2. Subs. ibid., section 17, for the original section.

an agent for and on behalf of a principal or in a representative character, he is personally liable thereon but the mere addition to his signature of words describing him as an agent or as filling a representative character does not exempt him from personal liability.

(2) Notwithstanding anything contained in sub-section (1), any person signing a promissory note, bill of exchange or cheque for and on behalf of the principal is not liable to a person who induces him to sign upon the belief that the principal alone would be held liable.]

Case-Law

Section 28—Personal Liability of agent—Where an agent executed a pronote to which he put his signature, prefixing his principal's *"vilasam"* thereto, the amount was debited to the principal, in the body of the note. It was held that the principal alone was liable. *AIR 1919 Mad 183 (DB).*

Section 28—When a pronote describes an executant as agent in the body of the note and the agent signs as agent, he is not personally liable, and the inference in that he did not intend to make himself personally liable. *AIR 1915 Mad. 1151.*

Section 28—Agent not repudiating personal liability on face of instrument—Where a person purports to be an agent or to hold a power-of-attorney from some other person on whose behalf he signs, it is insufficient merely to add these words after his signature, but he should state that he signs the note for an on behalf of the person for whom he is acting. Where that has not been done the words are only descriptive of the executant and he will be personally liable. *AIR 1955 Cal. 660=146 Ind. Cas. 928.*

Section 28—Where the maker of a note described himself as agent in the pronote but his promise to pay was unqualified and the note was also signed without any addition to the signature by any reference to his alleged principal, he could not evade personal liability. The agent will be liable unless he clearly expresses in the instrument that he does not incur personal liability. *AIR 1916 Mad. 293=38 Mad. 482 (FB) + 23 Mad. I. Jour 417 (DB).*

Section 28—Where a promissory note is such that on the face of it there is nothing to indicate that the promissor signed his name to the

document as an agent or that he did not intend thereby to incur personal responsibility, nobody except the promissor can be sued on the note. *AIR 1920 Cal. 911 (DB) + AIR 1937 Pat. 428.*

Section 28—An agent who signs his name to a cheque without indicating on the cheque itself that he signed in the capacity of agent of another person or that he did not intend thereby to incur personal liability, is liable personally on the instrument excepting as against those who may have induced the agent to sign upon the belief that the principal, and not he would be held liable. *PLR 1962 (1) WP 249.*

Section 28—Agent signing for himself and his principal—A promissory note was executed by a person signing it for himself and on behalf of another as his agent. In the body of the note only the name of the person signing it was mentioned; the person on whose behalf the note was executed was also liable because there was nothing to preclude an agent from signing for himself and also on behalf of his principal. *AIR 1936 Mad. 417.*

Section 28—Acceptance by agent of drawee—Where it is found that the defendant signed a hundi as munim of a firm and that money was lent not to him in his personal capacity but to the firm. The firm was held liable on it. *AIR 1923 All 407 (DB).*

Section 28—Suit on original consideration—where an agent borrows and executes a promissory note in his personal capacity, under section 28, the agent along can be held liable but in a suit on an original consideration the principal may be held liable in a proper case. *AIR 1932 Nag. 27=27 Nag. 324.*

Section 28—Joint Hindu family—Although the liability of co-parceners can be enforced in a suit upon a note executed by the manager, such liability is external to the note and does not arise until the manager's liability has been established. *AIR 1934 Mad. 350.*

Section 28—Insolvency of one partner—Where a promissory note has been signed personally by all partners of a firm individually, adjudication of one of the partners in the firm's name, as insolvent and his composition with the creditors will not absolve the other partners who were not parties to the insolvency proceedings and the composition, from their personal liability under the promissory note. *AIR 1927 Rang. 99=100 Ind. Cas. 227 (DB).*

Section 28—When partner not liable—Where a partner executed a promissory note in which he described himself in the body of the note as a partner but it was signed by the executant without any further designation. It was held that as the executant had signed the note without indicating that he did not intend to make himself personally liable he was personally liable and the other partners were not liable on it. *AIR 1936 Mad 984.*

Section 28—When partner not liable—No person can be made liable on a negotiable instrument unless his name appears on the promissory note or if it is sought to make him liable as a partner unless the name of the firm in which he is a partner appears on it. *AIR 1925 Rang. 264=90 Ind. Cas. 639 (DB).*

Section 28—When partner not liable—Where the liability of the firm is not clearly inferable from the instrument, a partner signing the instrument would be personally liable. Where a person executing the promissory note alleges that he executed it on behalf of a firm of which he is a partner, unless the responsibility of the firm is made plain and can instantly be recognised or the instrument passes from hand to hand, ordinarily the person signing alone will be liable. Where a promissory note is signed by one person alone and there is nothing to show that he has signed the document on behalf of joint family firm, the signature standing by itself must be construed as a personal signature and the family is not bound on the face of the document. *AIR 1936 Nag. 252.*

Section 28—Minor is liable where execution is for benefit of minor—Mere description of an executant as guardian of minor is not sufficient to indicate that the executant did not intend to bind his own estate but that of the minor. *AIR 1927 Mad. 1018* (Cases on contracts have no application).

Section 28—Guardian—Where the guardian has been made a party to the suit and the equities between the guardian and the minor could be worked out by applying the principle of subrogation that a decree can be passed against the minor on a promissory note. *AIR 1958 Andh Pra. 317=ILR 1937 Andh Pra. 429 (DB).*

[1][**28A. Transferor by delivery and transferee**—(1) Where the holder of a negotiable instrument payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery".

1. Section 28A, ins. by the Negotiable Instruments (Amendment) Ordinance, 1962 (XLIX of 1962), section 18.

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a negotiable instrument thereby warrants to his immediate transferee, being a holder for consideration, that the instrument is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any defect which renders it valueless.]

29. Liability of legal representative signing—A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Case-Law

Section 29—Executor, liability of—An executor or guardian is personally liable on a pronote executed by him, though it is for the benefit of the estates concerned, unless such liability is excluded in the manner provided in section 29. *AIR 1925 Mad. 371.*

Section 29—applies where a persons signs a promissory note without adding anything to show that he is acting as executor or administrator, but not where the payee deals with the promisor as an executor. *AIR 1928 Bom. 539.*

[1][**29A. Signature essential to liability**—No person is liable as maker, drawer, indorser or acceptor of a promissory note, bill of exchange or cheque who has not signed it as such:

Provided that where a person signs any such instrument in a trade or assumed name he is liable thereon as if he had signed it in his own name.

1 Sections 29A, 29B and 29C, ins. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962) section 19.

29B. Forged or unauthorised signature—Subject to the provisions of this Act, where a signature on a promissory note, bill of exchange or cheque it forged or placed thereon without the authority of the person whose signature is purports to be, the forged or unauthorized signature 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 that signature, unless the party against whom it is sought to retain or enforce payment of the instrument is precluded from setting up the forgery or want of authority:

Provided that nothing in this section shall effect the ratification of an unauthorised signature not amounting to a forgery.

Case-Law

Section 29B—Payment made in good faith—Payments made in good faith and without negligence could be protected but to avail such plea it would be necessary to establish that banker had acted in good faith without negligence in the ordinary course of business. *PLD 1987 Kar. 599.*

Section 29B—Remedy of account-holder—Where forged cheques were encashed and debited from account of plaintiffs, such plaintiffs were entitled to the amount debited from their account along with interest. Suit of plaintiff was decreed with specified interest against Bank responsible for encashment of forged cheques from the account of plaintiffs. *PLD 1987 Kar. 599.*

29C. Stranger signing instrument presumed to be indorser—A person placing his signature upon a negotiable instrument otherwise than as maker, drawer or acceptor is presumed to be an indorser unless he clearly indicates by appropriate words his intention to be bound in some other capacity.]

[1][**30 Liability of drawer**—(1) (a) The drawer of a bill of exchange by drawing it engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured, he will compensate the holder or any endorser who is compelled to pay it; and

(b) the drawer of a cheque by drawing it, engages that in the case of dishonour by the drawee he will compensate the holder:

Provided that due notice of dishonour of the bill or cheque has been given to or received by the drawer as hereinafter provided.

(2) The drawee of a bill of exchange is not liable thereon until acceptance in the manner provided by this Act.]

Case-Law

Section 30—Drawer Liability of—Where a pay order is issued in favour of payee, drawer Bank is responsible to pay the amount of the pay order to the payee if the essential ingredients of delivery thereof to the payee are proved. *PLD 1988 Kar. 548.*

Section 30—Notice of dishonour—No suit lies on a note or original debt if there is no notice of dishonour, and it is necessary, the debtor is discharged not only from his liability on the bill or note, but also from the original debt. *(1901) 25 Mad. 580 (FB).*

Sections 30 and 93 should be read along with section 98—When no formal notice of dishonour is given and it is alleged that the party charged did not suffer any damage for want of such notice, burden of proof lies on the person who did not give notice to prove absence of damage. *1911 Pun. LR No. 173, p.637=1957-27 Com. Cas. 494 (Mad).*

Section 30—Notice of dishonour—Where the holder of a hundi payable at sight without presenting it for acceptance presents the same to the drawee for payment and the hundi is dishonoured, notice of dishonour to the drawer is necessary and where the same is not given within a reasonable time the drawer is absolved of his liability on the hundi. *AIR 1958 Punjab 22=ILR 1958 Punj. 1178 (DB).*

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1. Subs. by the Negotiable Instrument (Amendment) Ordinance, 1962 (XLIX of 1962), section 20, for the original section 30.

Section 30—Notice of dishonour—Where the acceptor of a hundi payable at sight at first accepted the hundi unconditionally, but subsequently said he would pay in three days' time and the holder of the hundi agreed to this arrangement of which however, he did not give any notice to the drawer and where the acceptor having failed to pay the amount of the hundi within three days the holder did not give notice of dishonour till after ten days. It was held, that the conduct of the holder discharged the drawer from his liability under the bond, according to the terms of sections 39 and 86. *(1908) 12 CWN 644=8 CLJ 163 (DB).*

Section 30—Cheque—A cheque ordinarily operates as a conditional payment which is rendered ineffective if it is not honoured. The same position arises in the matter of hundis. *AIR 1957 Punj. 257 (DB).*

Section 30—Dishonoured cheque, liability—If a cheque drawn by appellant in favour of respondent was dishonoured by former's banker. Liability to compensate respondent would rest with appellate. *1985 CLC 2741 = NLR 1985 AC 390.*

Section 30—Cheque—The presumption of law in cases of acceptance of cheque by which a preexisting debt is sought to be paid is that the cheque is taken only as a conditional payment, that is, subject to the condition subsequent, that if it is dishonoured the creditor could fall back on the original cause of action. *AIR 1965 Kerala 28.*

Section 30—Criminal liability—If a cheque is dishonoured, it does not necessarily mean that the drawer of the cheque had issued it with the knowledge that he had no funds in his account. But the facts of the case may prove the contrary so as to attract criminal liability, as where the amount of the dishonoured cheques was very great. *PLJ 1981 SC 227=1981 SCMR 573 (obitor).*

31. Liability of drawee of cheque—The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

[1][**32 Liability of maker of note and acceptor of bill**—(1) In the absence of a contract to the contrary, the maker of a promissory note, by making it, and the acceptor before maturity of a bill of exchange by accepting it, engages that he will pay it according to the tenor of the note or his acceptance respectively, and in default of such payment, such maker or acceptor is bound to compensate any party to the note or bill or any loss or damage sustained by him and caused by such default.

(2) The acceptor of a bill of exchange at or after maturity, by accepting it, engages to pay the amount thereof to the holder on demand.]

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

Case-Law

Section 33—Scope—A bill of exchange can be accepted only by its drawee, and he too cannot accept it in a capacity other than the one which is stated in the bill. Thus where a person against whom a bill of exchange is drawn by name, accepts the bill for or on behalf of a corporation of which he is a member there is no valid acceptance of the bill. *AIR 1925 Bom. 252 (DB).*

34. Acceptance by several drawees not partners—Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

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1 Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 21, for the original section 32.

35. Liability of indorser—[1][In the absence of a contract to the contrary, the indorser of a negotiable instrument, by indorsing it, engages that on due presentment it shall be accepted and paid according to its tenor that if it be dishonoured he will compensate the holder or subsequent indorser who is compelled to pay it for any loss or damage caused to him by such dishonour.]

Every indorser after dishonour is liable as upon an instrument payable on demand.

Case-Law

Section 35—Liability—due of—The liability of the endorser of a promissory note arises only on the date of endorsement. Hence, a suit within the period of limitation from the date of endorsement is not barred by limitation as against the endorser. *AIR 1940 Mad. 85=50 LW 649=(1939) 2 ML 760.*

Section 35—Contract to contrary—The liability of the endorser is subject to a contract to the contrary, which may be expressed or implied. Where a father indorsed a pronote in his sons' favour as a result of partition, an implied contract to the contrary can be inferred. *AIR 1933 Mad. 61.*

Section 35—Liability of indorsee—Where A gave money to B for investment on security of immovable property. B lent the money to C on the pronote executed in B's favour. B endorsed the note to A and informed him that he would come with C and clear the debt. B was held liable as the endorser as well as guarantor. *AIR 1939 Mad. 148=188 Ind. Cas. 183 (DB).*

36. Liability of prior parties to holder in due course—Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

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1 Subs. by the Negotiable Instruments (Amendment) Ordinance, 1962 (XLIX of 1962), section 22, for the original paragraph.

37. Maker, drawer and acceptor principals—The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Case-Law

Section 37—Pronote—The maker of a pronote, unless otherwise provided is liable to its holder as principal debtor and payee as surety and it makes no difference that the pronote is an accommodation note. Discharge of a payee does not discharge the maker. *AIR 1934 Mad. 75=57 Mad. 482 (DB).*

Section 37—Pronote—Where the holder has paid consideration, he can recover the amount due on the pronote even if it is originally made without consideration. *AIR 1935 Oudh 265+11 All. L. Jour 481 (DB)=AIR 1939 Oudh 107 (DB).*

Section 37—Pronote—The executants of a pronote should be regarded as principal debtors under section 37 in the absence of contract to the contrary. It is not open to one of the executants to prove by oral evidence that he was a surety. *AIR 1915 Low Bur. 103=AIR 1916 Bom. 294* (Drawer is entitled to set off from payee for amount due to acceptor from payee)=*AIR 1938 Nag. 262.* (Drawer of hundi is not surety for acceptance)=*AIR 1919 Nag. 140.* (Hundi drawn on himself made payable after specified date).

Section 37—Forged pronote—Where the intention of the parties is that two persons should execute a promissory note and only one of them does so, it cannot be enforced even against the person who has executed it in fact. If a material portion of the instrument is found to be a forgery, the instrument will not be enforceable. *(1933) 142 Ind. Cas. 210 (Travancore).*

Section 37—Acceptor, liability of—When the express contracts between the plaintiff and defendants were only bills of exchange; when the defendant acceptor did not make payment conditional on the delivery

of documents, he was liable to pay them in the event of their being dishonoured. *(1933) 34 PLR 645 (DB).*

Section 37—Set off by drawer—The executant of a pronote should be regarded a principal debtor under section 37 in the absence of a contract to the contrary. It is not open to one of the executants to prove by oral evidence that he was a surety. *AIR 1915 Low Bur. 103=29 Ind. Cas. 760.*

38. Prior party a principal in respect of each subsequent party—As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration

A draws a bill payable to his own order on B who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Case-Law

Section 38—Endorser—An endorser, unless otherwise provided, is liable as principal to his endorsee. Where a note payable on demand was executed by A in favour of B, B endorsed it is favour of a Bank in return for a fixed deposit receipt. A suit was instituted by the Bank on the note. It was held, that liability of B to Bank was not merely that of surety but of principal debtor and consequently, question of liability of the maker was immaterial. *AIR 1935 Lah. 825 (DB).*

Section 38—Holder of bearer cheque—Where a cheque is payable to the bearer, the person to whom payment is made is a holder and thus a surety under section 37 and 38. He can, therefore, be made a party with the principal person. *AIR 1934 Pesh. 10.*

Section 38—Drawer of 'hundi'—The drawer of a hundi is not surety for acceptance where the hundi is not accepted, liability of the drawer is as principal debtor under an implied contract of indemnity. *AIR 1938 Nag. 262=ILR 1940 Nag. 502.*

[1][**38A Liability of accommodation party and position of accommodation party**—(1) an accommodation, party is liable on a negotiable instrument to a holder in due course, notwithstanding that when such holder took the instrument he knew such party to be an accommodation party.

(2) An accommodation party to a negotiable instrument, if he has paid the amount thereof, is entitled to recover such amount from the party accommodated.]

39. Suretyship. IX of 1872—When the holder of an accepted bill or exchange enters into any contract with the acceptor which, under section 134 or 135 of the Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Case-Law

Section 39—Scope—Section 39 does not by necessary implication abrogate instruments other than bills of exchange dealt with by it. The main principle recognised as part of the Law of Contracts applies in the other negotiable instruments. Section 39 is a provision inserted ex *abundanti cautela. AIR 1934 Mad. 75=57 Mad. 482 (DB).*

Section 39—Accommodation note—Where the holder of an accommodation note has no notice of its true character at the time of his taking the note but after notice thereof gives time to or releases the payee, he does not thereby discharge the maker even assuming that in the case of an accommodation note the maker is liable as surety and payee as the principal debtor, if the holder while releasing the payee reserves his rights against the maker, the maker is not discharged. *AIR 1934 Mad. 75=57 Mad. 482 (DB).*

40. Discharge of indorser's liability—When the holder of a negotiable instrument, without the consent of the indorser,

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3 Section 38A, ins. by the Negotiable Instruments (Amendment) Ordinance, 1962 (XLIX of 1962), section 23.

destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration

A is the holder of a bill or exchange made payable to the order of B, which contains the following indorsements in blanks :

First indorsement, "B".

Second indorsement, "Peter Williams."

Third indorsement, "Wright & Co."

Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsement by Peter Williams, and Wright & Co. A is not entitled to recover anything from John Rozario.

Case-Law

Section 40—Applicability—Section 40, comes into operation only when the holder of a negotiable instrument destroys the endorser's remedy without the consent of the endorser. *AIR 1939 Lah 225 (DB).*

41. Acceptor bound although indorsement forged—An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

42. Acceptance of bill drawn in fictitious name—An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

43. Negotiable instrument made, etc., without consideration—A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Case-Law

Section 43—No consideration paid for instrument—When a promisor has not received any consideration for a promissory note, a negotiable instrument does not create any obligation between the promisee and the promissor. *AIR 1936 Cal. 315 (DB) = AIR 1923 Rang. 127.*

Section 43—No consideration paid for instrument—Where defendant executed a pronote as a security to cover an advance with the plaintiff was willing to pay on behalf of the defendant in connection with certain litigation, but in fact the plaintiff did not spend any money for such dispute. It was held that there was no consideration for the pronote. *AIR 1927 Mad. 1146=99 Ind. Cas. 753.*

Section 43—Holder for consideration—Where the holder has paid consideration for the note, he can recover the amount due on it even if it

was originally made without consideration. *AIR 1935 Oudh 264 (DB) + (10) 20 Mad. L Jour 114 (DB)+AIR 1939 Oudh 107 (DB).*

Section 43—Transferee—Where a pronote payable to order is transferred by a sale-deed without any endorsement in favour of the transferee, there is no negotiation, within the meaning of section 14 and the transferee is not a holder within the meaning of section 43, and he cannot claim the right of a holder for consideration under that section. *AIR 1939 All 279=ILR 1939 All 419 (DB)+AIR 1935 All 1041 (DB).*

Section 43—Instrument discounted for persons not customer—It is not necessary that where bills are discounted by a bank, the drawer should be a customer with a bar account nor is there any prohibition for the Bank discounting a hundi and payer the amount in cash to the drawer. *AIR 1963 Andhra Pradesh 348 (DB).*

Section 43—Effect of payment of consideration—If a bill of exchange has been dealt with only to secure contract price, then goods shipped for the purpose of completing the contract, vest in the purchaser on payment or tender by him of the contract price. *AIR 1916 Bom. 144=41 Bom. 566 (DB).*

Section 43—Illegal consideration—Illegal consideration is no consideration in the eye of law. But the allegation that the consideration was illegal must be proved by evidence. The mere possibility of a talk of criminal proceedings at some stage or another will not make the transaction illegal. The Court must be satisfied that the pronote was given in pursuance of an agreement to stifle prosecution. *AIR 1937 Mad 223=169 Ind. Cas. 435.*

Section 43—Failure of consideration—Where there is a total failure of consideration no suit can be maintained on a negotiable instrument. Thus where a motor car was given on a hire-purchase agreement. Part payment of the initial instalment was made by cheque but the purchaser discovered a defect in the car and stopped payment. the car was seized by the seller. A suit was brought on the basis of the cheque. It was held, that owing to the conduct of the seller in seizing the car there was a total failure of consideration and the suit was not competent. *PLD 1980 Kar 143=PLJ 1980 Kar. 121=NLR 1980 Civ. 277+AIR 1933 Lah. 470+AIR 1923 Rang. 127.*

Section 43—Partial failure of consideration—Where a promissor contended that he was induced to execute a pronote because he thought

that security given to the promisee by the real debtor was sufficient but he did not contend that there was any inducement by the promisee,the promissor is liable under the pronote. *AIR 1937 Pat. 428*

Section 43—Consideration not paid on date of note—It is not necessary that the consideration for a pronote or any other document should be paid on the same date on which the pronote or the document is executed. Even a consideration paid earlier in time is a good consideration.

Section 43—Cheque for larger amount than due—Where a cheque for a larger amount than was due was drawn the endorsee or the person in whose favour the cheque was drawn was entitled only to the actual amount due and nothing more. *AIR 1924 Pat 521=80 Ind. Cas. 572=2 Pat. LR Civ. 54.*

44. Partial absence or failure of money consideration—When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation—The drawer of a bill of exchange stands in immediate relation with the acceptor. the maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration

A draws a bill on B for [1]Taka 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to [1]Taka 400, and as an accommodation to the plaintiff as to the residue. A can only recover [1]Taka 400.

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1 The word "Taka" was substituted for the word "Rs." by Act VIII of 1973 (w.e.f. 26th March, 1971.)

Case-Law

Section 44—Scope—The section applies to negotiable instruments for which money is the only consideration. The section does not apply where a person has signed a promise to pay a large amount by reason of getting two benefits, one shall cash payment and the other the cancellation of an old note. *AIR 1940 Rang. 152 (DB).*

Section 44—Lesser amount paid than stated in instrument—In a suit on a promissory note, it is open to the defendant to plead that the note was not executed for cash or other consideration but was executed only as a security to cover the advances to be made by the payees and that they (the defendants) are liable only for such sums as may be found due on taking accounts between the parties.*AIR 1924 Mad. 850.*

Section 44—When the consideration for which a person signed a promissory Note, Bill of Exchange or Cheque consisted of money and, was originally absent or has subsequently failed in part, the sum which a holder, standing in immediate relationship with such signer is entitled to receive from him, is proportionately reduced. This provision can be called in aid only where there was any failure of consideration originally or subsequently in part only, in which case the amount recoverable under the instrument is liable to be reduced in proportion to such failure. *PLJ 1980 Kar. 121=PLD 1980 Kar 143=NLR 1980 Civ. 277.*

45. Partial failure of consideration not consisting of money—Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Case-Law

Section 45—Consideration not ascertainable without collateral inquiry—Where consideration is not ascertainable without collateral inquiry, this section does not apply. Where a promissory note was signed to get one small cash payment and cancellation of an old promissory note,

section 45 does not apply, because the consideration is not "ascertainable in money without collateral enquiry" *AIR 1940 Rang 152 (DB).*

Section 45—Where a hundi has been drawn for the price of a number of bales and only a part of the bales have been delivered, the consideration for the hundi has failed with reference to all the undelivered bales as against the payee. In a suit on the hundi, the case should be dealt with as if it were for damages for breach of contract and the question as to who broke the contract is required to be gone into. *AIR 1925 Mad. 1168 (DB).*

Section 45—Failure of consideration not ascertainable in money— A suit under Order 37 cannot be maintained where the loss caused to the defendant by failure of partial consideration cannot be ascertained in money, or where breach of contract by plaintiff causes damage to the defendant exceeding the amount of hundi. A suit for damages is the proper remedy. *(1910) 4 SLR 147=8 Cas. 924*

[1][**45A. Holder's right to duplicate of lost bill**—Where a bill of exchange has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.]

Case-Law

Section 45A— Hundi payable at sight—Where a hundi payable at sight, is lost, the holder is not as of right entitled to demand a duplicate under section 45-A. But a duplicate, may be demanded where a bill is lost before or after maturity, as the right to demand a duplicate is a part of the mercantile laws of the countries. *AIR 1924 Lah. 198.*

1 Section 45A was inserted by the Negotiable Instruments Act, 1885 (II of 1885), section 3.

Chapter IV
Of Negotiation

46. Delivery—The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument or by a person authorised by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery hereof.

Case-Law

Section 46—Beneficiary, delivery to—The delivery contemplated by section 46, must be a delivery by the maker or by someone authorised on his behalf. It need not necessarily be to the person whose name is given in the note as payee. So long as there is delivery made by the maker the note is valid and complete. Where the note is admittedly handed over to the beneficiary under the note, there is a delivery which is a sufficient delivery for the purpose of completing the transaction evidenced by the promissory note. *AIR 1939 Mad. 858=188 Ind. Cas. 48.*

Section 46—Delivery by post—Where the plaintiff went a cheque in a letter by ordinary post endorsed in favour of one T, it was held that the

plaintiff still had an interest left in him in the cheque, as there was no delivery within the meaning of section 46. *AIR 1926 Bom. 262=93 Ind. Cas. 619=50 Bom. 113.*

47. Negotiation by delivery—Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. the instrument has been negotiated.

(b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly, now possesses the instrument as B's agent. the instrument has been negotiated, and B has become the holder of it.

48. Negotiation by indorsement—Subject to the provisions of section 58, a promissory note, bill of exchange or cheque [1][payable to order] is negotiable by the holder by indorsement and delivery thereof.

Case-Law

Section 48—From reading of section 48 of the Act we do not find that institution of this case under Penal Code is barred under section 48 of the Act by an explicit provision of this Act. *Salahuddin (Md) and others vs State 51 DLR 299*

1. Subs. by the Negotiable Instruments (Amdt.) Act, 1919 (VIII of 1919), section 4, for "payable to the order of a specified person or to a specified person or order."

Section 48—Transfer by book entries—Rights and liabilities under a pronote cannot be transferred by mere book entries. It must be by assignment or endorsement according to law. *AIR 1943 Sind 67.*

Section 48—Oral assignment—Assignment can be oral but it does not confer on the assignee rights of holder in due course. The assignee has only the rights, title and interest of his assignor. Where the endorsee does not claim interest adverse to real beneficiary, oral assignment in his favour may be presumed. *AIR 1919 Lahore 85.*

Section 48—Suit by assignee—Negotiable Instruments can be enforced by an assignee only when the assignment has been effected in accordance with the provisions of the Act, and transfer of the rights of a party under a note to order to someone else, unless effected by operation of law, must be effected by endorsement and delivery and not otherwise. Where therefore a pronote is assigned by a real owner and the benamidar executes an acknowledgment admitting that he was a mere benamidar and the assignor was the real beneficiary, the assignee is not entitled to sue on the pronote, specially when the payee of the note has expressly released the maker. No consideration is required for such a release and the fact that it was collusive is immaterial. *AIR 1934 Pat 382 (DB), AIR 1930 Pat 313 AIR 1928 Cal. Dissent.*

Section 48—Suit by assignee—A promissory note which is not negotiable may be assigned by a separate deed without any endorsement and the assignee will be entitled to sue upon such promissory note. *30 MAD. 88 (FB).*

Section 48—Assignment—The assignment in writing of a promissory note is valid and it gives the assignee a right of suit upon the note, even apart from the TP Act under the General Law. *ILR (1921) LB 92.*

Section 48—Assignment—Even written assignment of a promissory note by a separate document confers on the assignee title to sue. *AIR 1921 Low Burma.*

Section 48—Transfer of registered instrument—Endorsement is not the only means by which a negotiable instrument can be transferred. Transfer of a promissory note by means of a registered instrument is valid. *AIR 1937 Patna 100.*

[1][**49. Conversion of indorsement in blank into indorsement in full**—When a negotiable instrument has been indorsed in blank, any holder may, without signing his own name, convert the blank indorsement into an indorsement in full by writing above the indorser's signature a direction to pay the amount to or to the order of himself or some other person; and the holder does not thereby incur the responsibility of an indorser.]

[2][**50. Effect of indorsement**—(1) Subject to the provisions of this Act relating to restrictive, conditional and qualified indorsement, the indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation.

(2) An indorsement is restrictive which either—

(a) restricts of excludes the right to further negotiate the instrument; or

(b) constitutes the indorsee an agent of the indorser to indorse the instrument or to receive its contents for the indorser or for some other specified person :

Provided that the mere absence of words implying right to negotiate does not make the indorsement restrictive.]

Illustrations

B signs the following indorsements on different negotiable instruments payable to bearer :

(a) "Pay the contents to C only."

(b) "Pay C for my use."

(c) "Pay C or order for the account of B."

(d) "The within must be credited to C."

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1. Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 24, for the original section 49.

2. Subs. ibid., section 25, for the original section 50.

These indorsements exclude the right of further negotiation by C.

(e) "Pay C."

(f) "Pay C value in account with the Oriental Bank."

(g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

Case-Law

Section 50—Endorsee, position of—An endorsee of a promissory note is the holder of the document under section 8 and can maintain an action in his own name for the purpose of recovering the amount due thereon. AIR 1963 Andra Pradesh 343.

Section 50—Endorsee, position of—In a suit brought by the endorsee of the payee of a promissory note against the executant, the claim by the payee or his endorsee cannot be questioned by the maker of the promissory note on the ground that the payee was only a benamidar. *AIR 1939 MAD 858.*

Section 50—Endorsement of debt or of instrument—Where the original debt in respect of which the promissory note was passed is not assigned to the endorsee of the promissory note, the endorsee can only sue on the promissory note itself and not on the debt. *AIR 1951 Bom. 345 (DB).*

Section 50—Endorsement of debt or of instrument—Where the endorsement is in blank it only operates to transfer the property in the instrument and not as an assignment of debt. An endorsement may operate to assign the debt as well when it is so worded and the requirements of the law with regard to stamping are complied with, but unless there is an endorsement of this nature the endorsee has a right merely in the instrument. *AIR 1938 MAD 377.*

Section 50—Endorsement of debt or of instrument—Where a promissory note is executed by the guardian of a minor for a debt binding upon the minor's estate, a suit by an indorsee lies when the indorsement amounts to transfer of the debt itself. The fact that it is not stamped does not mean that the indorsement does not transfer the debt. *AIR 1950 MAD 206.*

Section 50—A subscriber to a chit fund executed a promissory note for money payable to the chit fund by way of future instalments. The promissory note was to be deemed as discharged on payment of monthly instalments. A suit was brought by the endorsee of the pronote. It was held that the promissory note was not by way of security for payment of remaining instalments and the indorsee had the right to enforce that promissory note and recover whatever money was payable by the executant. *AIR 1960 Madras 314.*

Section 50—Right when endorsee is not holder in due course—Endorsees of a pronote who are not holders in due course nor holders for consideration are precluded from contending that they are not affected by the defects in title of the endorser *(1933) 142 Indian Case 17 (Travancore) (DB).*

Section 50—Transferee without consideration—A transferee of a hundi for no consideration has got the rights of the transferer and can sue the maker, but be cannot have the rights of the holder in due course. *AIR 1933 Lah. 1014.*

Section 50—Pronote without consideration—Where a pronote was endorsed to one who knew that the consideration for it had failed and the endorser had no title to negotiate, there is no cause of action on the note against the maker thereof. *10 MLT 79=(1911) 2 MWN 47=12 Ind. Cas. 78.*

Section 50—Assignee—Where an assignment of an instrument is made in writing the assignee gets a right to sue upon it. An endorsement on a pronote is not necessary to make the assignment valid. *AIR 1937 Oudh 405=13 Luck 373 (DB).*

Section 50—Conditional or restricted endorsement—The section cannot be made applicable to cases where the endorsee wishes to satisfy the Court by oral evidence, that he was endorsee for a particular purpose only. *AIR 1953 Bom. 209.*

51. Who may negotiate—Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

Explanation—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

Case-Law

Section 51—Transfer without indorsement—If the holder of negotiable instruments gave them to another with authority to that order to raise money upon them for his own purpose, he is estoppel from setting up his right to the negotiable instruments adversely to those who have lent money on the security of the instruments on the faith of the authority of the owner. *(1906) 6 Bom. LR 921.*

Section 51—Several indorsees—Where there are several indorsees of an instrument, they can negotiate it only by collective indorsement, one of them cannot indorse it to a third person but the section does not require that all the payees should endorse at the same time; endorsement on different dates is valid. *AIR 1953 Mad. 840.*

Section 51—Indorsement by one payee to other payee—Although an endorsement made by one of the two payees in favour of the other payee of a promissory note is invalid, the creditor has a right to get a decree on the ground that the endorsement amounted to an assignment of a chose-in-action. *AIR 1960 Andhra Pradesh 174+(1901) 24 Mad. 654 (DB).*

52. Indorser who excludes his own liability or makes it conditional—The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

[1][Where the right of an indorsee to receive the amount due on the negotiable instrument is made dependent in the aforesaid manner the condition is valid only as between the indorser and the indorsee.

Where the indorsement of a negotiable instrument purports to be conditional, the payer may disregard the condition, and payment to the indorsee is valid whether the condition has been fulfilled or not.]

Illustrations

(a) The indorser of a negotiable instrument signs his name adding the words—"Without recourse".

Upon this indorsement he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

[2][**53 Holder claiming through holder in due course**—(1) A holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the negotiable instrument, has all the rights therein of that holder in due course as regards the acceptor and all parties to the instrument prior to that holder.

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1. Added by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), s.26.

2. Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 27, for the original section 53.

(2) Where the title of the holder is defective—

(a) if he negotiates the instrument to a holder in due course, that holder obtains a good and complete title to the instrument; and

(b) if he obtains payment of the instrument, the person who pays him in due course gets a valid discharge for the instrument.]

Case-Law

Section 53—Holder of promissory note, rights of—A pronote executed in favour of the payee or his order is presumed to be for consideration and a transferee from the payee who is the holder in due course acquires the rights of the payee under section 53 and can maintain an action on the pronote against the maker. *5 Mad. L Tim 300+10 Bom. LR 268 (DB).*

[1][**53A. Rights of holder in due course**—A holder in due course holds the negotiable instrument free from any defect of title of prior parties, and free from defences available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.]

54. Instrument indorsed in blank—Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

55. Conversion of indorsement in blank into indorsement in full—If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full,

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1. Section 53A ins.. by the Negotiable Instrument (Amendment) Ordinance, 1962 (XLIX of 1962), section 28.

except by the person to whom it has been indorsed in full, or by one who derives title through such person.

[1][**56 Requisites of indorsement**—(1) Negotiation by indorsement must be of the entire instrument.

(2) An indorsement which purports to transfer to the indorsee only a part of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, is not valid as a negotiation of the instrument; but where such amount has been paid in part, a note to that effect may be indorsed on the instrument, which may then be indorsed for the balance.]

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

Case-Law

Section 56—Indorsement by one payee to another—Endorsement by one of two payees in favour of the other payee of a promissory note is invalid, Section 56 has no application to such a case. *AIR 1960 Andh. Pra. 174.*

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

Case-Law

Section 57—Succeeding trustees—A succeeding trustee can sue on a pronote executed in favour of his predecessor without assignment or indorsement. *AIR 1918 Mad. 482=41 Mad. 353 (DB).*

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1. Subs. by the Negotiable Instrument (Amendment) Ordinance XLIX of 1962), section 29, for the original section 56.

[1][**57A. Negotiation of instrument to party already liable thereon**—Where a negotiable instrument is negotiated back before maturity to the maker or drawer or a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the instrument, but he is not entitled to enforce payment or the instrument against any intervening party to whom he was previously liable.

57B. Rights of holder—A holder may receive payment in due course under a negotiable instrument and further negotiate it in the manner provided by this act; he may also sue on such instrument in his own name.]

[2][**58. Defective title**—When a promissory note, bill of exchange or cheque has been lost or has been obtained from any maker, drawer, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, neither the person who finds or so obtains the instrument nor any possessor or indorsee who claims through such person is entitled to receive the amount due thereon from such maker, drawer, acceptor or holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.]

Case-Law

Section 58—Tampered instrument—A plaintiff who comes to Court with tampered handnotes is not entitled to any decree. *AIR 1932 Pat. 352+11 Pat. 782 (DB) AIR 1924 Cal. 452 and 33 Cal. 812, Followed).*

Section 58—Forged instruments—No holder of a negotiable instrument, through he may be a holder in due course can acquire a title

1. Sections 57A and 57B ins. by the Negotiable Instrument (Amendment) Ordinance XLIX of 1962), section 30.

2. Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962) section 31 for the original section 58

to the instruments through a forged endorsement. Section 58, Negotiable Instruments Act, which protects a holder in due course where a negotiable instrument has been obtained by means of an offence, does not apply to case of forgery. *AIR 1923 Sind 54 (DB).*

Section 58—Where a Government promissory note was renewed by a forged indorsement and the real owner sued all subsequent endorsees without pleading conversion, only the ultimate endorsee who obtained renewal of the security from the State Bank was liable. No. claim would lie against other endorsees. *AIR 1953 Bom. 209.*

Section 58—Signatures of one executant forged—Where the signature of one of the executant of a promissory note is a forgery, the addition of forged signature prejudices the person whose signature has been forged and no action is maintainable on the pronote even against the real executant of the note. *AIR 1935 Mad. 40+AIR 1928 Mad. 1092+AIR 1934 Rang. 345.*

59. Instrument acquired after dishonour or when overdue—The holder of a negotiable instrument, who has acquired it after dishonour, whether by non acceptance or nonpayment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor [1][and is subject to the equities to which the transferor was subject at the time or acquisition by such holder]:

Accommodation note or bill—Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of

1. Ins.by the Negotiable Instrument (Amendment) Ordinance XLIX of 1962), section 32.

the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

Case-Law

Section 59—Surety—It is only when a surety presents a hundi for payment within a reasonable time and gives notice of dishonour to the drawer, that he gets into the shows of the holder in due course under section 59. If surety pays the amount of the dishonoured hundi, he can recover the amount from the drawer. *AIR 1917 Mad. 83=39 Mad. 965 (DB).*

Section 59—Promissory note payable on demand—Where a promissory note payable on demand is negotiated it is not deemed to be overdue for the purpose of affecting the holder with defects of title of which he had no notice, by reason that reasonable time for presenting it for payment has elapsed since its issue. *AIR 1935 Rang. 156 (AIR 1921 Cal. 302 Fool).*

Section 59—Endorsee who is not holder in due course—Where an endorsee of a promissory note is not proved to be a holder in due course, he is entitled only to such rights as the endorser of the note had. *AIR 1937 Mad. 438 (DB).*

Section 59—Such payment—Words 'such payment' in section 60 mean payment at or after maturity. Where maker of a promissory note payable on demand has, before there being any demand made by the payee, paid the amount without asking for return of the promissory note and the note is endorsed by the payee to a third person without latter's knowledge as to the fact of payment, the endorsee is entitled as a holder in due course to sue the maker on the promissory note. *AIR 1940 Mad. 631 (DB) (AIR 1933 Mad. 300, Overruled)+AIR 1936 Mad. 879.*

60. Instrument negotiable till payment or satisfaction—A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Chapter V

Of Presentment

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

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

[1][Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Case-Law

Section 61—Presentment by person not authorized to present— If a person having no authority to receive payment on behalf of the payee presents the bill and receives payment, there is no valid presentment by him for acceptance. *AIR 1954 SC 554=1955-1 SCR 503.*

Section 61—Delay in presentment—effect—Where a hundi is not presented for payment within a reasonable time, the drawer and the drawee are absolved from all liability. ? However, delay in presentment is excusable if it is caused by events beyond the control of the person

1 Ins. by the Negotiable Instruments Act, 1885 (II of 1885), section 4.

making the presentment and not imputable to his default, misconduct or negligence. But where the delay is unexplained, previous indorsers who are damnified thereby will be absolved from liability to the party guilty of the delay. *6 NLR 33=5 Ind. Cas. 745.*

Section 61—Bill drawn at place where Act not applicable—The stringent or technical rules of the Negotiable Instruments Act with respect to presentment or notice of dishonour cannot be called into operation in determining liability in the case of hundis which came to be executed in a territory where there was no such Act in force at the relevant time. *AIR 1956 Raj. 129=ILR (1956) 6 Raj. 612 (DB).*

62. Presentment of promissory note for sight—A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

63. Drawee's time for deliberation—The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee [1][forty-eight] hours (exclusive of public holidays) to consider whether he will accept it.

Case-Law

Section 63—Date of acceptance—Where a bill is accepted after 48 hours as prescribed by the section, the acceptance will relate back to the date of presentment. *PLD 1962 SC 376=14 DLR SC 308=1962 PSCR 336.*

64. Presentment for payment—[2][Subject to the provisions of section 76, promissory notes], bills of exchange

1. Subs. by the Negotiable Instruments (Amdt.) Act, 1921 (XII of 1921) section 2, for "twenty-four".

2. Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 33, for "Promissory notes".

and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

[1] * * * *

Exception—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof [2][nor is presentment necessary to charge the acceptor of a bill of exchange].

[2][The provisions of this section are without prejudice to the provisions relating to presentment for acceptance in the case of a bill of exchange.

Explanation—Where there are several persons, not being partners liable on the negotiable instrument, as makers, acceptors or drawees, as the case may be, and no place of payment is specified, presentment must be made to them all.]

Case-Law

Section 64—Presentment for payment—To effect presentment of an instrument, the holder must exhibit the instrument and offer to hand it over on receiving payment. A mere demand for money does not amount to presentment of the note. *AIR 1935 Pesh. 132 (DB)+AIR 1920 Lah. 80 (DB)+AIR 1951 Mad. 632.*

Section 64—Cheque—This section does not deal with rights between the payee of a cheque and the drawee and does not impliedly recognise the right of the holder of a cheque to endorse his claim against the drawee. *AIR 1953 All. 637=ILR (1954) 1 All. 268.*

Section 64—Proof of presentment—Where the holder of a hundi sues the drawer and the other parties to it without however having made

1. The second paragraph which was ins. by the Negotiable Instruments Act, 1885 (II of 1885), section 4, were omitted by Ord. XLIX of 1962, section 33.

2. Added, ibid.

any presentment of the hundi, the onus is on him to prove that the drawer could not suffer damage by such non-presentment. *AIR 1917 All. 17=39 All. 364=39 Ind. Cas. 649 (DB).*

Section 64—Effect of non-presentation—Where consequences are provided for by law as following from non-presentment, it is not open to the Court to hold that besides the consequences provided for by the law, other consequence, not mentioned by the law, are also to follow. *AIR 1930 All. 648=52 All. 696 (DB).*

Section 64—Effect of non-presentation—The words "other parties" in section 64 means parties other than those to whom the instrument is required to be presented for payment under the earlier portion of section 64. *ILR 1954 Madh. B. 233+AIR 1955 Cal. 338 (DB).* (The other parties in the case of a promissory note will be parties other than the maker, in the case of a bill of exchange, it will be all parties other than the acceptor while in the case of a cheque other parties must be parties other than the drawee).

Section 64—Suit on original cause of action after non-presentment—Where the purchaser of a hundi by payment of cash fails to discharge his obligations under the contract represented by the hundi and loses his rights to enforce the hundi he cannot fall back upon his original consideration. *AIR 1936 Nag. 260=ILR 1939 Nag. 601.* But where the hundi has been given as collateral security of a book debt and the creditor does not make use of it, there is no novation and the creditor is not debarred from suing on the original cause of action. *1913 Pun. LRN 60 p.230=1913 Pun. Re. No.48 (DB).*

Section 64—Payable of specified place—A city, town or village at large, may be taken to be a specified place within sections 64 and 69 but its presentment there would only be necessary, or indeed reasonably possible, if the maker has his residence or place of business there. *AIR 1937 Lah. 230=ILR 1937 Lah. 580 (DB).*

Section 64—Non-presentation at specified place-effect—Where a promissory note is payable at a specified place, the maker cannot be charged thereon until and unless the note is duly presented. *AIR 1935 Lah. 983=17 Lah. 275 (DB)+AIR 1937 Lah. 259=ILR 1937 Lah. 580 (DB) + AIR 1933 Lah. 133+AIR 1931 Lah. 758 (DB).*

Section 64—Proof of presentment—Where in a suit on a promissory note payable at a specified place, the plaint contains no allegation of presentment, the plaintiff cannot be given an opportunity of proving presentment. *AIR 1935 Pesh. 132 (DB).*

Section 64—Part payment made, if presentment necessary— Where the promissor makes as part payment on account of the amount due, presentment of the promissory note payable at a specified place is not necessary. *AIR 1933 Lah. 133.*

Section 64—Firms—Where a promissory note in favour of a firm is payable at a specified place and presentment is made after coming into force of section 69, Partnership Act, section 64 does not apply. *AIR 1935 Lah. 893=17 Lah. 275 (DB).*

Section 64—Jurisdiction of Court—The act has nothing to do with the question of jurisdiction in a suit on a pronote. The place of presentment for payment does not affect the issue of jurisdiction. *AIR 1942 Bom. 251+ILR 1942 Bom. 620 (DB).*

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

66. Presentment for payment of instrument payable after date or sight—A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

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

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

Case-Law

Section 68—Payable at more than one place—The word "place" must be construed as including "place" as it would be anomalous to require presentment, if one place is mentioned, but none, if two places are mentioned. If more than one place is mentioned there must be presentment at one or other of those places.

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

Case-Law

Section 69—Specified place what is—Where the maker of a note is not, residing at the place specified in the note for presentment and the note is in possession of the person in whose favour it has been executed, no presentment is necessary under section 69. *AIR 1943 Lah. 121.*

Section 69—More than one specified place—In this section the word "place" includes "places". When two places are specified, presentation must be at one or other of those places. *AIR 1926 Mad. 792 (DB)*

Section 69—Address on top of note—Where an address appears at the top of a promissory note payable at a certain place the address does not form part of the contract and the promissory note is not payable at the address mentioned. *AIR 1951 Cal. 55=ILR (1952) 1 Cal. 395 (DB).*

Section 69—Suit on note—A hundi, where the maker is the acceptor, must be presented for payment in order to render the maker liable. Where the plaintiff sues on the ground that it has been dishonoured presentment for payment must be pleaded and proved. *AIR 1951 Cal. 466.*

Section 69—Challenge to jurisdiction—In a suit on a pronote the defendant disputed the Court's jurisdiction to try the suit and filed a counter-claim in the nature of a separate suit for accounts but subsequently withdrew it. It was contended that by filing the counter-claim, the defendant had submitted to the jurisdiction of the Court. It was

held, that the counter-claim was as it were a separate suit and having been abandoned, no question of submitting to the jurisdiction of the Court in respect of the suit arose. *AIR 1942 Bom. 251=203 Ind. Cas. 27.*

70. Presentment where no exclusive place specified—A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment [1][at the address of the maker, acceptor or drawee given in the instrument, and if no such address is given] at the place of business [2][(if known), or at the ordinary residence (if known)], of the maker, drawee or acceptor thereof, as the case may be.

Case-Law

Section 70—Section 70 deals in a general way with the presentment of promissory notes or bills of exchange which are notes covered by sections 68 and 69 and its applicability is not confined only to those cases where the presentment of the instrument is necessary as a part of the cause of action. *AIR 1954 Madh. B. 184=ILR 1954 Madh. B. 343 (FB).*

71. Presentment when maker etc., has no known place of business or residence—If the maker, drawee or acceptor of a negotiable instrument has no known place of business or [3]* residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

[4][*Explanation*—In this section and sections 68 and 69, "specified place" means a place sufficiently described so as to enable the person presenting the instrument to locate it.]

1. Ins. by the Negotiable Instruments (Amdt) Ordinance, 1962 (XLIX of 1962), section 34.

2. Subs. ibid., section 34, for "(if any), or at the usual residence".

3. The word "fixed" omitted, ibid., section 35.

4. Explanation added, ibid.

[1][**71A What constitutes valid presentment and mode of presentment**—(1) To constitute a valid presentment it shall be sufficient if instead of the original negotiable instrument a copy thereof certified to be true by the holder is delivered to the person liable thereon, either personally or by registered post or by other effective means.

(2) If, after such delivery, the person liable to pay so demands, the holder shall allow him to inspect the original negotiable instrument during the hours of business of the holder, and if the holder fails to do so within a reasonable time, the presentment shall be deemed to be invalid.]

72. Presentment of cheque to charge drawer—[2][Subject to the provisions of section 84,] a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the "prejudice of the drawer.

Case-Law

Section 72—Collection of cheque by bank for its customer—Where a bank collects a cheque as an agent of the holder for the purpose of collection the proceeds of the cheque are held by the bank as a trustee for the holder of the cheque. *AIR 1950 Bom. 375.*

73. Presentment of cheque to charge any other person—A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

74. Presentment of instrument payable on demand—Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

1. Section 71A ins. by the Negotiable Instrument (Amendment) Ordinance XLIX of 1962),, section 36.
2. Ins. by the Negotiable Instruments (Amdt.) Act, 1897 (VI of 1897) section 2.

Case-Law

Section 74—Resonable time for presentment—Where the parties are non-commercial persons and mutually accommodating, a delay of ten months in presenting the pronote and a delay of 6 or 7 days in issuing notice of dishonour could not be said to be unreasonable time within the meaning of section 74 read with section 105. *AIR 1954 Mad. 855.*

Section 74—Presentment, how made—A mere demand of money does not amount to a presentment for payment—In order to comply with the law the holder must exhibit the bill to the person from whom he demands payment and offer to deliver it on payment. *AIR 1920 Lah. 80=55 Ind. Cas. 610 (DB).*

Section 74—Delay in presentment, effect—Where a note payable on demand has been indorsed, if it is not presented for payment within a reasonable time of the endorsement, the liability of the endorser is discharged. *AIR 1925 Mad. 132.*

Section 74—Delay in presentment, effect—Ordinarily loss caused by delay in presenting a draft should be suffered by the person to whom draft is given and not the drawer. *AIR 1924 Bom. 520 (DB).*

Section 74—Delay in presentment, effect—Where the person to whom a draft was sent was not entitled to receive it and he had not therefore accepted it though he had received it in the past, there was no obligation on his part to cash it. Therefore, section 74 should not apply to his case. *AIR 1953 Trav-Co. 45=ILR 1952 Trav-Co. 729 (DB).*

75. Presentment by or to agent, representative of deceased or assignee of insolvent—Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, whether the drawee, maker or acceptor has died, to his legal representative, or where he has been declared an insolvent, to his assignee.

[1][**75A. Excuse for delay in presentment for acceptance or payment**—Delay in presentment [2][for acceptance or

1. Section 75A ins. by the Negotiable Instruments (Amdt.) Act, 1920 (XXV of 1920), section 2.

2. Subs. by the Negotiable Instruments (Amdt.) Act, 1921 (XII of 1921), section 3, for "for payment".

payment] is excused if 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 within a reasonable time.]

[1]* * * * *

Case-Law

Section 75(A)—Scope—Delay in presentment is excusable if it is caused by events beyond the control of a person making the presentment and is not imputable to his default, misconduct or negligence. But where delay is unexplained, previous indorsers who are damnified thereby will be absolved from liability to the party guilty of delay. *('10) 6 Nag. LR 33.*

76. When presentment unnecessary—No presentment for payment is necessary, and the instrument [2][shall be deemed to be dishonoured] at the due date for presentment, in any of the following cases—

(a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or

if the instrument not being payable at any specified place, he cannot after due search be found;

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1. A new section 75B was temporarily inserted by the Negotiable Instruments Act (Temporary Amdt.) Ordinance, 1948 (VI of 1948).

2. Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 37, for "is dishonoured".

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non presentment:

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment [1][;] [2][(e) where the drawee is a fictitious person;

(f) as regards an indorser, where the negotiable instrument was made, drawn or accepted for the accommodation of that indorser and he had reason to expect that the instrument would not be paid if presented; and

(g) where, after the exercise of reasonable diligence, presentment as required by this Act cannot be effected.

Explanation—The fact that the holder has reason to believe that the negotiable instrument will, on presentment, be dishonoured does not dispense with the necessity for presentment.]

Case-Law

Section 76—Persons bound to pay not attending at place of payment—In section 76(a) it has been made clear that in case the debtor

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1 Subs by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962) section 37, for the full-stop.

2 Cls. (e),(f) and (g) and Explanation added. ibid.

closes his business or is not found at the usual business hours at his place of business or neither he nor any person authorised by him to pay attends at any such place of business then presentment is not necessary. *AIR 1962 All 122.*

Section 76—Drawee having no known address—No presentment is necessary where the drawee of a hundi has no residence or place of business or known address at the place where the hundi is due to be paid and on due date drawee is not present at such place. *AIR 1939 Lah. 225 (DB).*

Section 76—Instrument payable at address of creditor—Ordinarily a debtor is always to seek the creditor, and it is his duty to make payment. At the same time if in the promissory note or bill of exchange, instead of the place of business of the creditor, the place of the debtor or some of his branches is mentioned then in that event presentment will be necessary. *AIR 1962 All 122.*

Section 76—Clause (c)—Waiver of presentment—Where a person does any of the things specified in the clause notwithstanding non-presentment of the instrument, the presentment of the instrument is no more necessary. But in such cases it has to be established that he knew on the date when he did one of those things that there had been no presentment of the instrument. *AIR 1955 Cal. 338 (DB).*

Section 76—Promise to pay—Where a creditor informs the debtor that limitation is about to expire, a reply by the debtor confirming the loan amounts to a promise to pay within section 76(c) and no presentment is necessary. *17 Lah. 287=157 Ind. Cas. 875 (DB).*

Section 76—No objection taken to non-presentment—A defendant in a suit on a promissory note who does not contest the suit on the ground that no presentment has been made, waives his right to take advantage of the default in presentment, and the suit cannot therefore be dismissed on that ground. *AIR 1943 Lah. 121+AIR 1939 Lah. 225 (DB).*

Section 76—Part payment—Where a pronote is payable on demand and at a specified place and a part payment of the amount is made, presentment of the note is not necessary. *AIR 1933 Lah. 133.*

Section 76—Instance where no damage caused to drawer—Where in a suit on a promissory note, the executant pleads the payment has been made, the drawer cannot suffer damage from want of presentment of the note as required by section 74 and therefore no

presentment for payment is necessary under section 76(d). *AIR 1937 Lah. 58.*

Section 76—Set off by acceptor—The acceptor of a bill of exchange is entitled to set off on the due date against the payee and pay only the balance. *AIR 1916 Bom. 294=18 Bom. LR 689=35 Ind. Cas. 628.*

Section 76—Payment of future interest—Where the debtor had already paid practically twice the amount originally advanced to him on a pronote and in a suit brought on the basis of that pronote the trial Court did not allow interest at the contractual rate from the date of the suit onwards, it could not be said that the discretion had, in any way, been wrongly exercised. *AIR 1961 Punj. 442=(1960) 2 Punj. 400 (DB).*

Section 76—Payment of future interest—The question whether future interest should or should not be awarded in a suit on a pronote under section 76 of Negotiable Instruments Act is in the discretion of the Court. *PLD 1967 Kar. 433 (DB) + AIR 1961 Punj. 442 (DB).*

Section 76—No funds of drawer with drawee—Section 76(d) applies whether a drawer has no funds with the drawee at the time when the bill is being drawn or has no reasonable expectation that the drawee will accept it for his accommodation. *AIR 1935 Lah. 413+ILR 1954 Madh B 223+AIR 1921 All 422 (DB).*

77. Liability of banker for negligently dealing with bill presented for payment—When a bill of exchange accepted as payable at a specified bank has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Chapter VI

Of Payment and Interest

78. To whom payment should be made—Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Case-Law

Section 78—Drawee not liable under the section—The section deals with the payee's claim against the drawee and not his right to receive payment from the bank. No right has been conferred by this section on the payee against the drawee, i.e., the bank. *AIR 1953 All 637 = ILR (1954) 1 All 268.*

Section 78—Discharge can be given by holder alone—Reading sections 8 and 78 together it is clear that the person to whom payment should be made in order to discharge the maker or acceptor from all liability under the instrument is the holder of the instrument or his accredited agent, such as a banker acting as an agent for collection. The term 'holder' does not include a person who though in possession of the instrument has not the right to recover the amount due thereon from the parties thereto. Thus in order to discharge the maker or acceptor from liability, payment must be made to the payee or the holder of the instrument. *AIR 1963 AP 343+AIR 1947 All 52 (DB)+AIR 1957 Nag. 65 (DB)+8 Mad. L Tim. 247 (DB)* (Indorsee of negotiable instrument is holder of instrument and payment should be made to him).

Section 78—Discharge can be given by holder alone—Where A executed a promissory note in favour of B and the amount was payable to B's order, a payment made by A to C, B's adopted son, who was not in possession of the note would not discharge A from liability under the note as the payment was not made to the 'holder' within the meaning of section 78. *AIR 1961 AP 301 (DB).*

Section 78—Made of discharge of negotiable instrument—In the context of modern conditions, it will be reasonable to hold that tender of a cheque is a valid tender, unless the creditor expressly objects to such tender, or unless there is an express provision in the arrangement between the creditor and the debtor that the latter should discharge his liability only by tender of money in current coins or currency notes issued under the authority of some statute. *PLD 1969 Kar. 176=21 DLR (WP) 196=PLR 1969 (2) WP 223.*

Section 78—Defect in title of transferee—The transferee of a pronote having notice of infirmity of the original document is not entitled to a decree on it. *AIR 1935 Mad. 310.*

Section 78—Beneficiary of note, etc, rights of—To say that the object to Section 78 is only to secure an effective discharge and not to deal with the right of suit and that the beneficiary can file a suit if he can secure a valid discharge for the debtor is to hold in favour of a proposition sacrificing both the spirit and form of the law on negotiable instruments. *AIR 1957 Pat. 380 (FB) (AIR 1930 Pat. 313; AIR 1932 Pat. 346 and AIR 1934 Pat. 85, Overruled: AIR 1928 Cal. 148+AIR 1957 Nag. 65 and AIR 1952 All 245 (FB), Dissented from).*

Section 78—Indorsee for collection—The indorsee of a Negotiable Instrument is the holder of the instrument and payment should be made to him. *(1910) 8 MLJ 247=8 Ind. Cas. 355 (DB).*

Section 78—Indorser, rights of—Where the endorser of an instrument purchases the instrument from his endorsee after its dishonour and takes back the instrument, payment for the instrument is acknowledged by the indorsee, the property in the instrument reverts to endorser. In such cases there is no necessity of reindorsement and a suit by an endorser, who is the holder, on the basis of the instrument is maintainable. *AIR 1958 Andh Pra 33=ILR 1957 Andh Pra. 439 (DB).*

Section 78—Transfer of instrument—In a suit by an assignee of a promissory note under a valid transfer it is not open to the executant of the note to plead payment to the original holder. Even if the original holder admits payment of the amount, it is open to the Court to believe or disbelieve him on the question of alleged payment to him. *AIR 1961 Patna 312.*

Section 78—Several payees under instrument—In the case of a promissory note made payable to two or more persons, the word 'holder' must be taken to apply to all the payees and must not be confined to one who may happen to be in physical possession of it. A joint payee of a

promissory note cannot effectively discharge the maker from liability thereunder so as to bar a claim against the maker by the other joint payees. *19 Ind. Cas. 12+36 Mad. 544 (FB)+AIR 1937 Rang. 227 (FB).*

[1][**79. Act V of 1908, Interest when rate specified or not specified**—Subject to the provisions of any law for the time being in force relating to the relief of debtors, and without prejudice to the provisions of section 34 of the Code of Civil Procedure, 1908—

(a) when interest at a specified rate is expressly made payable on a promissory note or bill of exchange and no date is fixed from which interest is to be paid, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the note, or, in the case of a bill, from the date on which the amount becomes payable, until tender or realisation of such amount, or until the date of the institution of a suit to recover such amount;

(b) when a promissory note or bill of exchange is silent as regards interest or does not specify the rate of interest, interest on the amount of the principal money due thereon shall, notwithstanding any collateral agreement relating to interest between any parties to the instrument, be allowed and calculated at the rate of six per centum per annum from the date of the note, or, in the case of a bill, from the date on which the amount becomes payable, until tender or realisation of the amount due thereon, or until the date of the institution of suit to recover such amount.]

1. Subs. by the Negotiable Instruments (Amendment) Ordinance, 1962 (XLIX of 1962), section 79.

Case-Law

Section 79—Agreement to pay interest at fixed rate—If there is an agreement for payment of interest at a fixed rate, or it is payable by usage of trade having force of law or if plaintiff is entitled under provisions of any substantive law such as section 80, interest may be awarded. *AIR 1942 Sind 165=ILR 1942 Kar. 246 (DB) +17 Ind. Cas.309.*

Section 79—The Court has no option to disallow interest—Where a specified rate is provided for in a pronote; payment by instalments may be ordered where the rate of interest is exorbitant. *(1911) 4 Bur LT 203=11 Ind Cas. 891.*

Section 79—Insufficiently stamped instrument—Where loan is evidenced by an insufficiently stamped pronote the plaintiff though entitled a decree for principal sum of money advanced, is not entitled to interest at the rate stipulated in the pronote and where notices sent to the defendants do not contain any demand that interest would be claimed from date of such demand until time of payment, plaintiff is not entitled to any interest under the Interest Act. *AIR 1933 Oudh 259 (DB).*

Section 79—Interest after institution of suit—After the institution of the suit the grant of interest is in the discretion of the Court in view of the clear provisions of section 34 of the Civil Procedure Code. *PLD 1967 Kar 433 (DB). (Overruled PLD 1963 Kar. 239).*

80. Interest when no rate specified—When rate of interest is specified in the instrument, interest on the amount due thereon shall, [1][notwithstanding any agreement relating to interest between any parties to the instrument,] be calculated at the rate of six per centum per annum from the date at which the same ought to have been paid by the party charged until tender or realisation of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to

1. Subs. by the Negotiable Instruments (Interest) Act, 1926 (XXX of 1926) section 2, for "except in cases provided for by the Code of Civil Procedure, section 532."

pay interest only from the time that he receives notice of the dishonour.

Case-Law

Section 80—Scope—The operation of section 80 is not excluded by Order 37, rule 2, Civil PC. That rule makes section 79 or section 80 of the Negotiable Instruments Act specifically applicable to a case filed under Order 37, *Civil PC. AIR 1933 Mad. 299=56 Mad. 398 (DB).*

Section 80—Document must be negotiable instrument—The section applies only to negotiable instruments. Once a document is held to be not a promissory note, the provisions of section 80 do not apply and interest could not be claimed accordingly. *AIR 1932 Lah. 616 (DB)+AIR 1927 All. 444 (DB).* (Document held to the mere acknowledgment)+*AIR 1943 Nag. 99 (FB).* (Shahjog hundis are not negotiable instruments).

Section 80—No agreement to pay interest—Statutory liability imposed by section 80 to pay interest is enforceable despite absence of agreement to pay interest. *AIR 1919 Nag. 87+6 All. L Jour. 233 (DB).*

Section 80—Rate of interest—Under section 80, when rate of interest is not specified, interest cannot be allowed at more than 6 per cent per annum. *PLD 1982 Kar. 135=PLJ 1982 Kar. 115 (DB)+AIR 1932 Lah. 30+AIR 1936 All. 160 (DB)* (Notwithstanding any contract to contrary—Interest payable is from date when principal ought to be paid)+*AIR 1931 Cal. 140=58 Cal. 290+AIR 1928 Lah. 665.* (Interest can be awarded from date of note)+*1911 Pun. LR No.113, P.433* (From date of execution)+*AIR 1933 Mad.299 (DB)+AIR 1922 Oudh 122+AIR 1937 Pat. 319 (DB).* (Hundi not mentioning interest—Selling of such hundi by payee with endorsement undertaking to pay interest—Vendee, entitled to interest from payee under hundi from due date till date of realisation)+*AIR 1917 Pat. 533 (DB).* (From date when money ought to have been paid)+*63 Ind. Cas.296 (DB)(Pat).*

Section 80—Rate of interest—In such cases no secondary evidence of unstamped written agreement, to pay interest at a certain rate is allowed. *AIR 1920 Nag. 131 = 16 Nag. LR 68 + 2 Ind. Cas. 199 (DB).*

Section 80—Date from which interest is calculated—In case of demand promissory notes the principal amount together with interest payable thereon becomes payable immediately and without any demand. Therefore it is payable from the date of the promissory note and not from

the date of the suit. *PLD 1982 Kar. 135=PLJ 1982 Kar. 115 (DB)+AIR 1928 Lah. 665+1911 Pun LR No.113. page 433*

Section 80—Instrument not admissible in evidence—Where a pronote is inadmissible in evidence, oral evidence is not admissible under section 91 of the Evidence Act to prove the terms of the contract for payment of interest and therefore claim for interest under the document cannot be maintained, but the Court may allow damages in lieu of interest. *17 CLJ 399=19 Ind. Cas. 840.*

81. Delivery of instrument on payment, or indemnity in case of loss—Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

Case-Law

Section 81—Scope—In the case of negotiable instruments the Negotiable Instruments Act itself gives an indication that the rule that the debtor should seek the creditor would not be applicable because of the provisions contained in sections *68, 69, 70, 78 and 81. AIR 1951 Punj. 33 (DB)+AIR 1953 Hyd. 289=ILR 1953 Hyd. 510 (FB).*

Section 81—Payment must be on delivery—Under this section a maker of a note should make payment to the holder of the note on delivery of the instrument. Where the ostensible holder is unable to deliver the instrument because of loss, the maker must obtain an indemnity against any further claim on the instrument before he makes payment of it. Where a pronote was assigned by the promissee but the maker made payment to the promissee on the note without delivery to him of the promissory note and he did not obtain indemnity against any further claim thereon against him. Payment cannot be pleaded by the maker in defence to the suit by the assignee on the promissory note against him and the promissee. The maker's ultimate remedy is against the promisee. *AIR 1941 Mad. 171.*

Section 81—Payment must be on delivery—Where A executed a promissory note in favour of B and the amount was payable to B's order, a payment made by A to C, B's adopted son, who was not in possession of the note would not discharge A from liability under the note as the payment was not made to the 'holder' within the meaning of section 78. Moreover, the note not having been delivered back, the liability of A to B remained unimpaired. *AIR 1961 AP 301 (DB).*

Section 81—Suit on negotiable instrument—The normal rule is that the document on which the suit is based should be produced along with the plaint. The possibility of risk is greater in the case of negotiable instruments which may change hands frequently by successive endorsements. Possession of the instrument by the holder in due course will be prima facie evidence of liability not having been discharged. *AIR 1958 Ker. 124=ILR 1957 Ker. 853.*

Chapter VII

Of Discharge from Liability on Notes, Bills and Cheques

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

by cancellation

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

by release;

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

by payment.

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

Case-Law

Section 82—Telegraphic transfers—Section 82(c) can apply only to a negotiable instrument and cannot apply to a payment and discharge in the case of a telegraphic transfer. *1960=1 Mad. L Jour 187 (DB).*

Section 82—Cancellation—clause (a)—When on due date the acceptor asks for further time, and the holder gives him further time; the bill is not cancelled nor the liability of the acceptor discharged. *AIR 1937 Bom. 13=50 Bom. 656 (DB).*

Section 82—Release-clause (b)—A fresh agreement between drawer and holder for value of a bill of exchange does not release the acceptor of the first bill from liability. *AIR 1927 All 236=49 All 257 (DB).*

Section 82—Release-clause (b)—Where a pronote is executed for a debt due on accounts, the debtor is not discharged by the mere fact that the debt is shown in the accounts as a bad debt. *AIR 1960 Kutch 24.*

Section 82—Discharge by joint payee—In the absence of fraud, intimidation or under influence a joint payee of a promissory note cannot effectively discharge the maker from the liability thereunder so as to bar a claim against the maker by the other joint payees. *AIR 1937 Rang. 227=170 Ind. Cas. 95 (FB).*

Section 82—Payment-clause (e)—This clause applies only where the instrument is payable to bearer and payment is made in due course. *AIR 1961 AP 301 (DB) + ILR 30 Mad. 88 (FB).*

Section 82—Conditional discharge—Ordinarily a promissory note given for reducing a liability only operates as a conditional discharge for the liability. *AIR 1930 Mad 874=59 MLJ 513.*

Section 82—Discharge of negotiable instrument by a fresh instrument—A promissory note may be discharged by a fresh note. *AIR 1919 Low Bur. 69 (A, B, C* and D executed a pronote in favour of K—K later on accepting a fresh note from A, B and C renewal of the original

Decree on basis of fresh note obtained against A, B and C—Subsequent suit against D on original note is not maintainable).

83. Discharge by allowing drawee more than forty-eight hours to accept—If the holder of a bill of exchange allows the drawee more than [1][forty-eight] hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

Case-Law

Section 83—Discharge of drawer—The words 'all previous parties' in Section 83 include the drawer of an instrument. Ind. Cas. *133 (DB)+1911 Pun LR No.142 p. 525=1911 Pun Re. No.39 (DB). (Per* Kensington. J—"All previous parties" do not include drawer).

Section 83—Bill payable on demand—Section 83 does not apply to a bill payable on demand inasmuch as the only presentment necessary in the case of a bill payable on demand is presentment for payment and no presentment for acceptance. *AIR 1937 Pesh. 103 (DB)+AIR 1923 All 345+AIR 1918 Oudh 314.* (Holders of hundis for valuable consideration are entitled to return of consideration money paid by them to their endorser if hundis subsequently turn out to be worthless) + *AIR 1918 Oudh 309.*

[2][**84 When cheque not duly presented and drawer damaged thereby**—(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the

1 Substituted by the Negotiable Instruments (Amendment) Act, 1921 (Act XII of 1921), section 2, for "twenty-four".

2 Substituted by the Negotiable Instruments (Amendment) Act, 1897 (VI of 1897), section 3, for the original section.

cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.]

Illustrations

(a) A draws a cheque for [1][Taka] 1,000, and when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(b) A draws a cheque at [2][Dinajpur] on a bank in [3][Chittagong]. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

Case-Law

Section 84—Applicability—The provisions of section 84 cannot be extended to negotiable instruments other than cheque. *AIR 1959 Bom. 267=ILR 1958 Bom. 1386.*

Section 84—Payee's right against bank—The payee's right to receive payment from the bank conferred by section 84 can be exercised only in the circumstances mentioned therein. The section does not

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1. The word "Taka" was substituted for the word "Rs." by Act VIII of 1973, Second Schedule, (w.e.f. 26th March, 1971).

2. The word "Dinajpur" was substituted for the word "Sialkot", ibid.

3. Subs by the Central Laws (Statute Reform) Ordinance, 1960 (Ord. XXI of 1960) section 3, and 2nd Sch. for "Calcutta" (w.e.f. 14-10-1955).

recognise the payee's right in general to receive payment from the bank. It is only when a payee presents the cheque to the bank beyond reasonable time that liability of the drawer stands discharged. The payee becomes then a creditor of the bank in respect of the amount of the cheque under section 84(3) and can claim set— off in respect of the amount. *AIR 1960 Assam 191 (DB).*

Section 84—Reasonable time for presentment—The question whether cheque is presented within a reasonable time has to be determined with regard to the nature of the instrument, the usage of trade and of bankers and the facts of the particular case. It is a question of fact. *1985 CLC 436+(1908) 11 MLJ 465=31 Mad. 364=4 MLT 89 (DB).*

85. Cheque payable to order—[1](1) Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

[2][(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.]

Case-Law

Section 85—Telegraphic transfer—Section 85(2) applies only to negotiable instruments. There can be no analogy between the mode of payment in the case of negotiable instruments and the mode of payment in the case of a telegraphic transfer. *1960-1 Mad. I Jour. 187 (DB).*

Section 85—Drawee acting in due course—Under section 85 protection is given to the drawee and also drawer if a cheque payable to order purports to be endorsed by or on behalf of the payee or endorsee and if drawee makes the payment in due course. *AIR 1926 Bom. 262=93 Ind. Cas. 619.*

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1. Section 85 re-numbered as sub-section (1) of section 85 by the Negotiable Instruments (Amendment) Act, 1934 (Act XVII of 1934), section2.

2. Sub-section (2) was added, ibid.

Section 85—Forged cheque, payment of—The important thing in a cheque is the signature of the customer, and the rest of the cheque is very often permitted to be filled in by the subordinates. No objection is or can be raised by a bank to the cashing of a cheque, if the whole of it is not in the handwriting of the customer provided it bears his signatures. The position would, of course, be different if there are clear instructions to the contrary. *ILR (1954) 1 All 734 (DB).*

Section 85—Negligence by bank—Whether a bank is guilty of negligence depends on the particular facts of each case. the onus of proving 'good faith' and 'absence of negligence' as contemplated by section 131 of the Negotiable Instruments Act is on the banker claiming protection under the Act. *AIR 1958 Ker. 316=ILR 1957 Ker. 913 (DB).*

Section 85—Stolen instrument—If a bank collects payment under a stolen order and credits the amount to the customer's account on whose behalf it has collected the money, it (bank) is liable to pay the amount to the owner of such an order if nothing in the meantime had taken place to debar the Bank from canceling the credit given to its customer prior to the receipt of the notice of the theft. *NLR 1981 CLJ 137=1981 CLC 1582.*

[1]**[85A. Drafts drawn by one branch of a bank on another payable to order**— where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.]

Case-Law

Section 85A—Draft—A demand draft is a bill of exchange drawn by a bank on another bank or by itself on its own branch and is a negotiable instrument. *AIR 1962 Ker. 210+AIR 1960 All 238+AIR 1956 Cal. 615 (DB).* (Banker's draft is negotiable instrument) + *AIR 1951 Mad. 910 (DB).*

Section 85A—Place of payment—Where payment is made by bank drafts the place where the payment is received is in law the place where

1. Section 85A was inserted by the Negotiable Instruments (Amendment) Act, 1930 (Act XXV of 1930), section 2.

the drafts are received by the assessee. *AIR 1957 Madh. B. 64=ILR 1956 Madh. B. 160 (DB).*

Section 85A—Negligence of the drawee bank—Where the drawer bank is negligent in making payment on the draft, it is liable to make good the loss. Where a bank issue a draft on their branch R for payment to H and C or order. H appeared at the R branch but the Manager refused to pay him as he did not know him. Arrangement with L, who was known to the Bank and had a current account that he should verify the endorsement of H and that the draft should be endorsed in his favour by H and paid into the account of L. This was done. The Manager did not take any steps to have the signature of G confirmed or identified: It was held, that the payment of the draft was not made in good faith and was not without negligence. Section 85-A read with section 10 did not absolve the Bank from liability for the payment. *AIR 1938 Lah. 520=40 PLR 863=181 Ind. Cas. 272 (DB).*

86. Parties not consenting discharged by qualified or limited acceptance—If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation—An acceptance is qualified—

(a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(b) where it undertakes the payment of part only of the sum ordered to be paid;

(c) where, no place of payment being specified on the order it undertakes the payment at a specified place, and not otherwise or elsewhere; or where,

a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

Case-Law

Section 86—Scope—The section is confined in its application to Bills of Exchange and has no application to cheque. *AIR 1951 Assam 127 (DB).*

Section 86—Hundis payable on presentment—Section 83 and 86 do not deal with hundis payable on presentment. They deal with documents payble after sight15.

Section 86—Qualified acceptance of bill—If the drawee chooses to accept, the holder of a bill is entitled to require an absolute and unconditional acceptance, that is an acceptance according to the tenor of the bill. Unless it be so accepted, he may treat the bill as dishonoured and protest accordingly. It is however, open to him to take qualified acceptance, but if he does so he does it at his own risk and discharges all parties prior to himself, unless he obtains their consent. Therefore, when the Bank as holder delivered two drafts to the state without receiving any payment. it was held that the drawer was no more liable to the bank if the state did not pay money due on the draft. *PLD 1965 Kar. 519.*

Section 86—Set off by acceptor—The acceptor of a bill of exchange is entitled to set off on due date as against the bill any amount due to him by the payee. On tender of balance due after the set off drawer is discharged who till such tender is made is surety to the extent of the balance. *AIR 1916 Bom. 294.*

87. Effect of material alteration—Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorse—and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

Case-Law

Section 87—Material alteration—what is—An alteration is a change made in an instrument after its execution. Any addition or change at the time of execution is not an alteration. Thus where a promissory note was alleged to be executed by two persons but it was found that the signature of one of the executants was forged. It was held that section 87 did not apply to it. *AIR 1925 Mad. 929=87 Ind. Cas. 48.*

Section 87—Interest or rate of interest—Insertion of rate of interest not agreed upon by the parties when the note was first made is a material alteration of the document. *AIR 1919 Low Bur. 45+AIR 1925 All 282.*

Section 87—Interest or rate of interest—An endorsement postponing payment and altering the rate of interest constitutes material alteration. In such a case the actual position of the words written is immaterial. *AIR 1936 Rang. 136.*

Section 87—Immaterial alteration—Immaterial alteration would not affect the binding nature of an instrument. *AIR 1942 Mad. 709=ILR 1943 Mad. 143.*

Section 87—Correction of clerical mistake—Correction of a clerical error is not a material alteration. *AIR 1955 NUC Assam 5528.*

Section 87—Correction of clerical mistake—The additional of the words "with interest" when rate of interest is already specified in the instrument is not a material alteration. *AIR 1925 PC 80.*

Section 87—Effect of Alteration—The rule relating to the effect of material alterations in a deed is that, if an alteration (by erasure, interlineation or otherwise) is made in a material part of a deed after its execution, by or with the consent of any party thereto or a person entitled thereunder, but without the consent of the party or parties liable

thereunder, the deed is thereby made void. *AIR 1940 PC 160=67 Ind. App. 318+AIR 1958 Pat. 211+AIR 1957 Andh. Pra. 784+AIR 1947 Nag. 145 (DB)* (Sarkhat executed by debtor in favour of creditor—Subsequent loans and repayments entered in Sarkhat according to arrangement between parties—suit for recovery on account of transaction between parties based on Sarkhar—Plaintiff not entitled to recover on Sarkhat owning to material alterations in it.)+*AIR 1936 Lah. 1016* (Rule does not apply to documents which are merely evidence of the pre-existing liability) + *AIR 1933 All 443 (DB)* (A change of date of a document is material alteration avoiding document).

Section 87—Alteration without agreement of parties—It no longer continues to be the same deed and no person can maintain an action upon it. *AIR 1943 All 24 (DB) + AIR 1954 Madh. B 31+AIR 1940 Pat. 245 (DB) + AIR 1933 Cal. 196.*

Section 87—Alteration without agreement of parties—Whether a deed has been materially altered it requires fresh stamp when material alteration is made as alteration makes it a new instrument. *AIR 1936 Rang. 136.*

Section 87—Onus of proof—Any alteration or interpolation appearing on the face of a document is presumed, in the absence of evidence to the contrary to have been made before the execution of the deed. The burden of proving that the interpolation was made later on would lie upon the contesting executant more particularly when the deed was registered with the interpolation in question already in it. *AIR 1945 Lah. 177 (DB).*

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

89. Payment of instrument on which alteration is not apparent—Where a promissory note, bill of exchanger or cheque has been materially altered but does not appear to have been so altered.

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated, payment

thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reasoned of the instrument having been altered or the cheque crossed.

Case-Law

Section 89—Liability of bank—The bank has to see whether there are any alterations in the cheque and whether they have been properly authenticated. Where an alteration in cheque is initialed not by all the drawers but only by some of them, the bank will be paying the amount on the said cheque at its own risk. Protection under section 89 is afforded to the bank paying a cheque where the alteration is not apparent. *AIR 1959 Mad. 119.*

Section 89—Negligence of drawer—The negligence in order to stop the owner drawing a cheque must be negligence in the transaction itself. The transmission by post, if it is at all any act of negligence is negligence collateral to the transaction and it cannot be regarded as proximate cause of the forgery. It will not disentitle the owner of it to recover the draft or its proceeds from person or persons who has or have wrongfully obtained possession thereof. *AIR 1956 Cal 399.*

Section 89—Alteration before signing of cheque—Section 89 is not attracted where the forged alteration had not taken place after the signing of the cheque. *PLJ 1974 Kar. 438.*

[1][**90. Extinguishment of rights of action on bill in acceptor's hands**—The maker, drawer, acceptor or indorser of a negotiable instrument is discharged from liability thereon when the person liable thereon as principal debtor becomes the holder thereof at or after its maturity.

(2) When the holder of an accepted bill or exchange enters into any contract with the acceptor of the nature referred to in section 39, the other parties are discharged, unless the holder has expressly reserved his right to charge them.]

1. Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 39, for the original section 90.

Chapter VIII

Of Notice of Dishonour

91. Dishonour by non-acceptance—A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

Case-Law

Section 91—Presentment for acceptance—Where there is no allegation that presentment was excused, the plaintiff must prove that the drawee was required to accept the bill and that he dishonoured it by non-acceptance. *AIR 1925 Mad. 444 (DB).*

Section 91—Dishonour by non-acceptance when takes place—A bill of exchange payable at sight or on demand may in the option of the holder be presented for acceptance and if it is not accepted by the drawee it will be said to have been dishonoured and the case would then be covered by sections 91 and 93. *AIR 1919 Mad. 179 (DB).*

Section 91—Bill payable after sight—A bill of exchange payable after sight is required by law to be presented for acceptance and if it is dishonoured on being presented, the provisions of sections 91 and 93 are attracted. *AIR 1958 Punj. 222=ILR 1958 Punj. 1178 (DB).*

Section 91—Drawer's right to sue on dishonoured bill—Where a bill of exchange was dishonoured at maturity by the defendant acceptor and bill was afterwards returned to the drawer without endorsement by bank to which it was endorsed; it was held that the drawer could sue the acceptor on contract between him and the acceptor when the bill was dishonoured. *36 Cal. 291=1 Ind. Cas. 972.*

92. Dishonour by non-payment— A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

Case-Law

Section 92—Bill of exchange—The provisions of section 92 dealing with dishonour by non-payment are applicable to bills of exchange payable at sight or on demand. If the drawee refuses to accept it becomes a dishonour by non-payment. There may be acceptance and dishonour by non-payment of a bill payable on demand though presentment for acceptance is not required by law in such a case. *AIR 1958 Punj. 222 (DB) + AIR 1919 Pat. 351=52 Ind. Cas. 390.*

Section 92—'Hundi' payable at sight—Where the holder of a hundi payable at sight, without presenting it for acceptance, presents it to the drawee for payment and the hundi is dishonoured, notice of dishonour to the drawee is necessary and where the same is not given within a reasonable time the drawer is absolved of his liability on the hundi. *AIR 1958 Punj. 222=ILR 1958 Punj. 1178 (DB).*

Section 92—'Hundi' payable at sight—Where a hundi has been dishonoured and returned but conditional payment is made, there is a custom that the amount paid should be refunded unless the hundi is again presented within four days. *AIR 1938 Nag. 389=144 Ind. Cas. 914.*

93. By and to whom notice should be given—When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

[1][When a bill of exchange is dishonoured by non-acceptance the drawer or any indorser to whom such notice

1. Ins. Inserted by the Negotiable Instruments (Amendment) Ordinance, 1962 (XLIX of 1962), section 40.

is not given is discharged; but the rights of a holder in due course subsequent to the omission to give notice shall not be prejudiced by that omission.

When a bill of exchange is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall, in the meantime, have been accepted.]

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note of the drawee or acceptor of the dishonoured bill of exchange or cheque.

Case-Law

Section 93—Scope—The stringent and technical provisions of the Negotiable Instruments Act with respect to presentment or notice of dishonour cannot be called into operation in determining liability in the case of hundis which came to be executed in a territory where there was no such Act in force at the relevant time. *AIR 1956 Raj. 129=ILR (1956) 6 Raj. 612 (DB).*

Section 93—Notice, what is—A notice must clearly intimate that payment was demanded from the drawee but refused and that the holder holds the person notified liable on the instrument. *AIR 1956 Raj. 129=ILR (1956) 6 Raj. 612 (DB).*

Section 93—Object of notice—The object of a notice of dishonour to the endorser is not to demand payment but clearly to indicate to the party notified that the contract arising on the negotiable instrument has been broken by the principal debtor and that the former being a surety will now be liable for the payment. This is the principal embodied in section 93. *AIR 1956 Raj. 129=ILR (1956) 6 Raj. 612 (DB) + AIR 1962 Pun. 158 (DB).*

Section 93—To whom notice must be given—Section 93 enumerates the persons by and to whom notice is to be given. The section is not meant to be an exhaustive code of cases in which notice is necessary. *AIR 1958 Punj. 222=ILR 1958 Punj. 1178 (DB).*

Section 93—To whom notice must be given—Under the section a holder must give notice of dishonour to persons other than drawee or acceptor whom he seeks to make liable on the bill, except in cases enumerated under section 98. *AIR 1920 Lah. 80=1 Lah. 262 (DB)+AIR 1954 Orissa 124 (DB).*

Section 93—The obligation of endorsee to given notice of dishonour by non-acceptance or non-payment to his endorser exists, whether the promissory note was dishonoured or not before endorsement. *AIR 1931 Mad. 113.*

Section 93—Lost note or bill—The loss of a bill or note does not absolve the party who lost it from making an application for payment when it becomes due and to give notice of dishonour to all parties. *AIR 1936 Nag. 260=ILR 1939 Nag. 661.*

Section 93—Notice not given-effect—Neglect to give notice of dishonour within a reasonable time exonerates the endorsers and others where they are likely to suffer damage thereby. Similarly, in the absence of notice of dishonour the endorsee of a promissory note is not liable unless special contract to the contrary is proved. *AIR 1935 Mad. 22.*

Section 93—Reasonable time—It is necessary to give notice within a reasonable time. Where a cheque was dishonoured and notice was given after two years of dishonour of the notice; it was held that the provisions of sections 93 and 94 were not complied with as notice of dishonour had not been given within a reasonable time. *AIR 1962 Punj. 158 (DB).*

Section 93—Guaranteed payment—No notice need be given where in an instrument payment is guaranteed by the maker. Thus where a promissory note concluded with the endorsement. "If the amount on the aforesaid pronote is not realised as aforesaid, I will myself be liable for the same." It was held that the endorsement should be construed as a guarantee to pay, which should be sufficient to take away the necessity of complying with the formalities required by the Act of presentment under section 64 and notice of dishonour under section 93. *1954-2 Mad. L Jour. 603.*

Section 93—Hundi payable at sight—Notice of dishonour is not compulsory where a hundi payable at sight has been dishonoured. *AIR 1937 Pesh. 103 (DB).*

Section 93—Bill payable after sight—A bill of exchange payable after sight is required by law to be presented for acceptance and if it is dishonoured on being presented, the provisions of sections 91 and 93 are

attracted and a notice of dishonour becomes essential. Where the holder of a bill of exchange payable at sight does not elect to present the instrument for acceptance, but merely presents the same for payment to the drawee, if the drawee in such a case makes default in payment section 93 would not come into play. *AIR 1958 Punj. 222=ILR 1958 Punj. 1178 (DB).*

94. Mode in which notice may be given—Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place or business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Case-Law

Section 94—Notice of dishonour—The giving of a notice of dishonour is a part of the plaintiff's cause of action and is a condition precedent for making the endorser liable and in the absence of such notice his liability to the endorsee must stand extinguished. *AIR 1956 Raj. 129=ILR (1956) 6 Raj. 612 (DB).*

Section 94—Notice to drawer—Notice of dishonour must be given even to a drawer though he may be primarily liable where the drawee does not accept. Section 94 recognises that the person to whom notice of dishonour is given should be informed not only that the instrument was dishonoured and in what way, but also "that he will be held liable thereon." *(1902) 26 Mad. 526=13 MLJ 252 (DB).*

Section 94—Notice must be given within reasonable time—A notice may be oral or written but it is necessary that it must have been given within a reasonable time. *AIR 1956 Raj. 129=ILR (1956) 6 Raj 612 (DB).*

Section 94—Notice must be given within reasonable time—Where either due notice of dishonour is not given or is given after the lapse of a reasonable time, the person liable in case of dishonour will be discharged. *(1902) 26 Mad. 526=13 MLJ 252 (DB).*

Section 94—Notice must be given within reasonable time—A notice of dishonour given four years after dishonour cannot be said to have been given within a reasonable time. The burden of proof that no damage could be suffered by the drawer for want of notice of dishonour is on the plaintiff. *AIR 1930 Raj. 55.*

Section 94—Notice must be given within reasonable time—Similarly, a notice of dishonour given two years after dishonour of a cheque was held to be not within reasonable time. *AIR 1942 Punj. 158 (DB).*

95. Party receiving must transmit notice of dishonour—Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

96. Agent for presentment—When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

97. When party to whom notice given is dead—When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

98. When notice of dishonour is unnecessary—No notice of dishonour is necessary—

(a) when it is dispensed with by the party entitled thereto;

(b) in order to charge the drawer when he has countermanded payment;

(c) when the party charged could not suffer damage for want of notice;

(d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(e) to charge the drawers when the acceptor is also a drawer;

(f) in the case of a promissory note which is not negotiable;

(g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

Case-Law

Section 98—Exemption from giving notice—Where it is alleged that notice of dishonour was not necessary as the party charged could not suffer damage for want of notice, the onus lies upon the party who wants to excuse himself for non-presentment, to prove that the other party could not suffer damage. *AIR 1932 Nag. 55 (DB) + (11) 33 All 4(DB) + ('11) 1911 Pun. LR No. 173 P.637.*

Section 98—No damage caused to defendant—If an intermediate endorser sues the earlier endorsers and drawers for the recovery of money due on a hundi, without giving them notice of dishonour, he must establish that the defendant could not suffer damage from want of such notice. *(1910) 33 All 4=6 Ind. Cas. 793 (DB).*

Section 98—Payment countermanded by defendant—A party who has countermanded payment of an instrument need not be given

notice of dishonour of the instrument, because the later effect is his own doing. *PLD 1986 Kar. 157 (2) + AIR 1936 Mad. 506.*

Section 98—Acceptor one of the drawers—If an acceptor is one of the drawers, both the drawers would be liable even though no notice of dishonour has been given. *AIR 1929 All 254=51 All 530 (DB).*

Section 98—Unconditional promise to pay—Where the drawer has no funds belonging to himself in the drawee's hands neither the presentment of a cheque for payment nor notice of dishonour is necessary to charge the drawer. There was no question of giving the drawer a notice with the object of protecting himself against the drawee because the possibility of his being held liable by the drawee had ceased as soon as the account was closed and he did not suffer any damage for want of notice. *AIR 1962 Punj. 158 (DB).*

Section 98—Suit on original cause of action—Where a suit by the holder is not for compensation on the amount of dishonour of the cheque but, on the contrary, for the recovery of the balance of money due on the original transaction of having supplied paddy and in discharge of which the dishonoured cheque was given, no question of notice of dishonour can rise. *AIR 1954 Orissa 124=ILR 1954 Cut. 46 (DB).*

Chapter IX

Of Noting and Protest

99. Noting—When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

100. Protest—When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security—When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

101. Contents of protest—A protest under section 100 must contain—

(a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(b) the name of the person for whom and against whom the instrument has been protested;

(c) a statement the payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer or that he could not be found;

(d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(e) the subscription of the notary public making the protest;

(f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, or the person for whom, and the manner in which, such acceptance or payment was offered and effected.

[1][A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk of, where authorised by agreement or usage, by registered letter.]

102. Notice of protest—When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

1. Ins. by the Negotiable Instrument Act, 1885 (II of 1885), section 5.

103. Protest for nonpayment after dishonour by non-acceptance—All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

104. Protest of foreign bills—Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

Case-Law

Section 104—Bill drawn outside Pakistan—A bill drawn outside Pakistan on a resident of Pakistan is an inland bill and not a foreign bill and if it is dishonoured no protest is necessary. *AIR 1930 Cal. 692=57 Cal. 730.*

[1][**104A. When nothing equivalent to protest**—For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken , it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.]

1. Section 104A ins. Negotiable Instrument Act 1885 (II of 1885), section 6.

Chapter X

Of Reasonable Time

105. Reasonable time—In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments, and, in calculating such time, public holidays shall be excluded.

Case-Law

Section 105—Reasonable time, ascertainment of—Reasonableness of time for presenting a bill of exchange for payment is mixed question of law and fact. *AIR 1920 Lah. 413 (DB)+AIR 1929 Lah. 577=11 Lah. 34 (DB).*

Section 105—Reasonable time, ascertainment of—In considering the question of reasonable time facts such as the distance at which persons live from each other, the course of dealings with respect to similar instruments, the nature of the instrument and all such other circumstances applicable to the case ought to be considered. *AIR 1929 Lah. 577=11 Lah. 34 (DB)*

Section 105—Commercial and non-commercial transactions—Though section 105 does not make any distinction between bills of exchange payable on demand and promissory notes payable on demand, the section gives a wide discretion to Court to distinguish between commercial negotiable instruments and pronotes, particularly those as between parties who are not merchants. *AIR 1954 Mad. 855.* (Parties being non-commercial persons and mutually accommodating, delay of 6 or 7 days in issuing notice of dishonour-Held, not unreasonable time within meaning of section 74 read with section 105).

106. Reasonable time of giving notice of dishonour—If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the days of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Case-Law

Section 106—Notice of dishonour, reasonable time for—A perusal of section 106 of the Act leaves no doubt that the notice of dishonour should be given as the bill is dishonoured. It is the duty of the holder to prove that due notice was given and if not given, he was excused from doing so for any of the reasons specified in section 98. The omission to give notice of dishonour has the effect of discharging the persons who are entitled to such notice. *AIR 1929 Lah. 577 (DB)* (Case of delay of 27 days in giving notice of dishonour).

Section 106—'Hundi'—A notice of dishonour must be given so far as the endorser is concerned. It is a matter of principle and not technicality. Failure to given notice within a reasonable time will absolve the endorser from all liability to the holder. This requirement must be enforced in case of hundis even though the Act may not, in terms, apply. This rule is in accord with justice, equity and good conscience. Such a notice must be given within a reasonable time. This requirement may be dispensed with only in the case of negotiable instruments in an oriental language where local usage or custom is established to the contrary. *AIR 1956 Raj. 129=ILR (1956) 6 Raj. 612 (DB).*

Section 106—'Hundi'—Where the parties carry on business at the same place and a hundi is dishonoured on 2nd September, 1943, a notice of dishonour, given on 1st. October, 1943, is much beyond reasonable time within the meaning of section 106. *AIR 1958 Punj. 222=ILR 1958 Punj. 1178 (DB).*

107. Reasonable time for transmitting such notice—A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

Chapter XI

Of Acceptance and Payment for Honour and Reference in Case of Need

108. Acceptance for honour—When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the honour, by writing on the bill, accept the same for the honour of any party thereto.

[1]* * * *

109. How acceptance for honour must be made—A person desiring to accept for honour must, [2][by writing on the bill under his hand;] declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; [3]* * *.

110. Acceptance not specifying for whose honour it is made—Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

111. Liability of acceptor for honour—An acceptor for honour binds himself to all parties subsequent to the party

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1. The second paragraph of the section was rep. by the Negotiable Instruments Act, 1885 (II of 1885), section 7.

2. Subs. ibid., section 8, for "in the presence of a notary public subscribe the bill with his own hand and",

3. The words "and such declaration must be recorded by the notary in his register" rep., ibid.

for whose honour he accepts to pay the amount of the bill if the drawee does not and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

112. When acceptor for honour may be charged—An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

113. Payment for honour—When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying [1][or his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded to such notary public.

114. Right of payer for honour—Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

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1. Ins. by the Negotiable Instruments Act, 1885 (II of 1885),. section 9.

115. Drawee in case of need—Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Case-Law

Section 115—Presentment to drawee in case of "need" necessary—Where a bill of exchange was accepted by the drawee but was subsequently dishonoured by non-payment. It was not presented to the drawee in case of need for acceptance. It was held that the bill should have been presented to the drawee in case of need in all cases for acceptance by him, even where the drawee accepts it and subsequently dishonours; failing which the drawee in case of need cannot be made Liable. *AIR 1938 Bom 364.*

Section 115—Presentment to drawee in case of "need" necessary—When the purchaser accepts the bill and dishonours it on presentment, the contract between him and the vendor comes to an end and thereafter when the bill is accepted and met on presentment by the drawee in case of need, the property in the goods passes to the drawee in case of need unless the purchaser can show some new contract between him and the vendor. *AIR 1941 Rang. 270 (DB).*

116. Acceptance and payment without protest—A drawee in case of need may accept and pay the bill of exchange without previous protest.

Case-Law

Section 116—Presentment and acceptance by drawee in case of need—As it is necessary that a drawee in case of need must accept before he is bound, it follows that the bill must be presented to him for acceptance in all cases, even if the drawee in the first instances accepts and then dishonours the bill by non-payment. hence where such bill is not presented for acceptances nor accepted by the drawee in case of need, he is not liable. *AIR 1938 Bom. 364.*

Chapter XII
Of Compensation

117. Rules as to compensation—The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall [1]* * * be determined by the following rules :

(a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, nothing and protesting it;

(b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by

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1. Certain words were omitted by the Negotiable Instruments (Interest) Act, 1926 (XXX of 1926), section 3.

him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any), If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

Chapter XIII
Special Rules of Evidence

118. Presumptions as to negotiable instruments of consideration—Until the contrary is proved, the following presumptions shall be made:

(a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

as to them;

(b) that every negotiable instrument bearing a date was made or drawn on such date;

as to time of acceptance;

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

as to time of transfer;

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

(e) As to order of indorsement that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

as to stamp;

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

that holder is a holder in due course

(g) that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

Case-Law

Section 118—Scope—The 'special rules of evidence' laid down in section 118 apply on as between parties to instrument of those claiming under them. In other cases, presumption will only be in terms of section 114 of the Evidence Act. *AIR 1937 Mad. 182-ILR 1937 Mad. 299 (DB).*

Section 118—Purpose of loan—When a loan been taken and is evidence by a document such as a promissory note, oral evidence is not excluded to show what the purpose of the loan was and especially when the document is silent on the point. By such oral evidence the terms of the document are not varied. *AIR 1940 Cal. 137 (DB)+AIR 1922 Low Bur. 10.*

Section 118—Denial of execution—Where in a suit on a pronote, the defendant while admitting his signature contended that his signature was taken on a blank paper. It was held, that the statement amounted to a denial and not admission of execution and that the burden was on the plaintiff to prove the execution of the pronote. *AIR 1934 Lah. 293=36 PLR 275=151 Ind. Cas. 60 (DB).*

Section 118—Presumption as to consideration—Where execution of a promissory note is proved. Until contrary is proved there would be presumption that every negotiable instrument was made or drawn for consideration, and that such instrument when accepted, endorsed, negotiated or transferred, was endorsed, negotiated or transferred for consideration. *PLD 1986 Quetta 232=KLR 1986 CC 714=NLR 1987 AC 84 (DB).*

Section 118—No presomption as to nature or consideration—Where a promissory note was given in consideration of a sum of money, it is a question of fact in each case whether the sum of money was given as a loan or not as a loan. In the absence of all evidence the presumption is that it was given by way of a loan, and there is a further presumption that the promissory note was given in conditional payment of the loan. *AIR 1943 All 220=ILR 1943 All 610 (FB).*

Section 118—Purpose of consideration—Section 118 raises presumption only regarding existence of consideration and does not presume that consideration of a promissory note was advanced for legal necessity and burden of proving legal necessity rests on the plaintiff making the advance. *AIR 1935 Nag. 127=31 Nag. LR 243.*

Section 118—Post-dated negotiable instrument—Post-dating of a promissory note does not denote "per se" that there is no consideration because consideration can be paid at any time and also when the promissory note is originally executed and need not necessarily be left over to be paid on the date which the promissory note bears. *AIR 1952 Nag. 308=ILR 1953 Nag. 233 (DB).*

Section 118—Presumption is rebutable—Under section 118 of the Negotiable Instruments Act, 1881 there is an initial presumption that a negotiable instrument is made, drawn, accepted or endorsed for consideration, but this presumption is a rebutable presumption. *NLR 1990 UC 788+1973 SCMR 100+PLD 1963 SC 163=15 DLR (SC) 86+PLD 1958 Lah. 208+PLD 1947 PC 82+AIR 1938 PC 123+AIR 1924 Lah. 39 (DB)+AIR 1920 Lah.*

Section 118—Minor executant—Where the executant of a promissory note is minor and the accounts of the creditor are defective and his conduct is suspicious, there is a presumption against the creditor and not against the executant. *AIR 1930 Oudh 108.*

SSection 118—Minor, bond by—A bond executed by a minor being void is not a negotiable instrument, nor can such a presumption even arise

with regard to a contract made by a minor. *AIR 1938 Oudh 14-171 Ind. Cas. 96.*

Section 118—Renewed note—Where a promissory note is executed to renew a previous note and the executrix of promissory note admits that she was executing it for a sum remaining due on the previous note executed by her, the creditor need not produce evidence regarding previous transactions. Burden shifts on her to disprove existence of previous promissory note. *AIR 1938 Nag. 294.*

Section 118—Quantum of consideration—Presumption under section 118 is that an instrument is supported by some consideration, adequate or inadequate and is not a nudum pactum. There is no presumption regarding the quantum of consideration and the amount or value mentioned in a negotiable instrument should not be presumed to have been given or taken under the instrument. A recital in a negotiable instrument as to the passing of consideration is, no doubt, prima facie evidence of such consideration having passed and the parties to the instrument are bound by the recital till the contrary is proved. *AIR 1920 Mad. 219+AIR 1961 Orissa 8+AIR 1935 Mad. 769+AIR 1959 Andh Pra. 370.*

Section 118—Holder presumption as to—When an endorsee has no sufficient cause to believe that there was any defect in title of the person from whom he derived title, section 118 will raise a presumption in his favour that he is a holder in due course and that the endorsement was for consideration. *AIR 1924 Pat. 521.*

Section 118—Holder, presumption as to—An endorsee from the payee of a hundi is presumed, until contrary is proved, to be holder in due course, by reason of section 118(g) and is unaffected by absence of failure of consideration as between drawer and payee. *AIR 1914 Bom. 136 (DB).*

Section 118—Claim for recovery of money by a Bank, whether can be decreed in the absence of any evidence as to actual payment of the amount—In view of the fact that title deeds were deposited with the bank along with all other usual documents, executed by the predecessor of defendant company and regular entries in the ledger and clean cash book of the Bank in respect of the loan the claim is established—There is also admission of the Managing Director of defendant company as to the liability to the Bank—More-over there is presumption under the Negotiable Instruments Act, Bankers Book of Evidence Act and banking Companies Ordinance. *Planters (Bangladesh) Ltd. vs Mahaluxmi Bank Ltd. & others. Bangladesh Supreme Court Digest 222.*

119. Presumption on proof of protest—In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Case-Law

Section 119—Scope—Under section 119, Negotiable Instruments Act, a Court is entitled to presume dishonour if there is a proper protest. A mere entry by a notary public of the words "noted for non-payment" without giving the date of dishonour and in the absence of a certificate of protest would not raise the presumption. *AIR 1919 Mad. 179 (DB).*

120. Estoppel against denying original validity of instrument—No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Case-Law

Section 120—Void note—The section applies only to those notes which are legally and properly made, and not to the instruments which are not properly stamped or executed. *AIR 1926 All. 359=48 All. 332.*

Section 120—Defence in suit on instrument—The section only prevents the maker of an instrument from denying the validity of the instruments as originally made or drawn. It does not bar any defence which is independent of a plea that the instrument as originally made or drawn was invalid. *AIR 1942 Mad. 169 (DB)* (Suit by endorsee of promissory note-Maker is not barred by Section 120 from pleading or setting up defence open to promissory under Madras Act, 4 of 1938).

Section 120—Conditional loan on instrument—Oral evidence of a condition precedent that unless there was a final balance of account on a certain transaction against the defendant, which he failed to pay, a promissory note would not take effect, is admissible. *AIR 1928 All. 289 (DB).*

121. Estoppel against denying capacity of payee to indorse—No maker of a promissory note and no acceptor of a bill or exchange[1][payable to order] shall, in suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Case-Law

Section 121—Scope—The words "suit thereon" in section 121 denote a proceeding initiated by someone who was entitled to sue or take legal steps to recover the money due on a negotiable instrument that is to say by the promisee or payee and cannot apply to proceedings initiated by the maker or promissory for relief under an Agriculturists Relief Act. *AIR 1940 Mad. 52.*

122. Estoppel against denying signature or capacity or prior party—No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

1. Subs. by the Negotiable Instruments (Amdt.) Act, 1919 (VIII of 1919), section 5, for "payable to, or to the order of, a specified person".

Chapter XIV

[1][Special Provisions Relating to Cheques]

[1][**122A. Revocation of banker's authority**—The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

(1) countermand of payment;

(2) notice of the customer's death;

(3) notice of adjudication of the customer as an insolvent.]

123. Cheque crossed generally—Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two paralleled transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

[3][**123A. Cheque crossed "account payee**—(1) Where a cheque crossed generally bears across its face an addition of the words "account payee" between the two parallel transverse lines constituting the general crossing, the cheque, besides being crossed generally, is said to be crossed "account payee."

(2) When a cheque is crossed "account payee"—

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1. Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 41, for the original heading "Of Crossed Cheques".

2. Section 122A ins. ibid., section 42.

3. Section 123A ins. ibid., section 43.

(a) it shall cease to be negotiable; and

(b) it shall be the duty of the banker collecting payment of the cheque to credit the proceeds thereof only to the account of the payee named in the cheque.]

Case-Law

Section 123A—Scope—Previous to the introduction of this section a cheque crossed "account payee" was a negotiable instrument but when it was collected by a bank, the banker had a duty to put the money into the account of the payee and into no other account. *AIR 1963 Cal. (SB).*

Section 123A—Scope—Under this section the cheques so crossed have ceased to be negotiable instruments. But as Order 37, CPC applies to all bills of exchange whether negotiable or non-negotiable, a suit upon a cheque crossed "A/C Payee only" is maintainable. *PLD 1975 Kar. 90.*

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

125. Crossing after issue—Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

[1][When an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.]

[2][**125A. Crossing a material part of a cheque**—A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate, or, except as authorised by this Act, to add to or alter, the crossing.]

126. Payment of cheque crossed generally—Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of Cheque crossed specially—Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

127. Payment of cheque crossed specially more than once—Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Payment in due course of crossed cheque—Where the banker on whom a crossed cheque is drawn [3][in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed or his agent for collection, being a banker], the

1. New paragraph ins. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 44.

2. Section 125A ins. ibid.,

3. Subs. ibid., section 46, for "has paid the same in due course".

banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

129. Payment of crossed cheque out of due course—Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid [1][:]

[2][Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability nor shall the payment be questioned, by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection, being a banker, as the case may be.]

Case-Law

Section 129—Liability of bank to payee of cheque—The phrase "the true owner of the cheque" undoubtedly includes the payee. To this extent a right has been conferred by section 129 on the payee to maintain

1. Subs. by the Negotiable Instruments (Amendment) Ordinance 1962 (XLIX of 1962), section 47, for the full-stop.

2. Proviso added, ibid.

an action against the bank. But this right has been specially created by the statute in the particular circumstances mentioned in the section. The section does not confer a right on the payee in general to enforce payment of a cheque against a bank. *AIR 1953 All. 637=ILR (1954) 1 All. 268 (DB).*

130. Cheque bearing "not negotiable"—A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

131. Non-liability of banker receiving payment of Cheque—[1][Subject to the provisions of this Act relating to cheques crossed "account payee", where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.]

[2][*Explanation*—A banker receives payment of a crossed cheque for a customer within the meaning of this section not withstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.]

Case-Law

Section 131—Scope—When a banker receives from its customer a cheque crossed in its customer's behalf, the fact that the customer's title to the cheque is defective does not render the banker liable to the true owner. But the protection under the section is afforded only if the banker

1. Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 48, for the original paragraph.

2. Explanation ins. by the Negotiable Instruments (Amdt.) Act, 1922 (XVIII of 1922), section 2.

has received payment in good faith and without negligence, otherwise the bank which receives payment on a forged cheque or a cheque to which the customer has no title or only a defective title, is liable in action for conversion to the true owner. *AIR 1956 Cal. 399.*

Section 131—Crossed cheque—Section 131 protects a banker who in good faith and without negligence receives payment for a customer of a crossed cheque when title to the cheque proves defective. *AIR 1952 All. 590=ILR (1951) 2 All. 674 (DB).*

Section 131—Onus of proof—The onus of proving good faith and absence of negligence as contemplated by section 131 is on the banker claiming protection under the Act. *PLD 1982 Lah. 384+AIR 1958 Ker. 316 (DB)+AIR 1956 Cal. 399.*

Section 131—Collection of cheque by Bank—When a Bank collects a cheque it may do so as a holder for value or a mere agent of the holder for the purpose of collection. In the latter case the proceeds of the cheque are held by the bank as a trustee for the holder of the cheque. When the holder of the cheque or claimant has no account with the Bank, the latter is only an agent for collection. *AIR 1950 Bom. 375 = 1950 Comp. C. 49=52 Bom. LR 587.*

Section 131—Negligence of owner of cheque—The plea of negligence of true owner is not available to the collecting bank. *AIR 1948 Bom. 1=ILR 1947 Bom. 643.*

[1][**131A. Application of Chapter to drafts**—The provisions of this Chapter shall apply to any draft, as defined in section 85A, as if the draft were a cheque.]

[2][**131B. Protection to banker crediting cheque crossed "account payee"**—Where a cheque is delivered for collection to a banker which does not at the time of such delivery appear to be crossed "account payee" or to have had a

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1. Section 131A was added by the Negotiable Instruments (Amdt.) Act, 1947 (XXXIII of 1947), section 2.

2. Sections 131B and 131C ins. by Ord.XLIX of 1962, section 49.

crossing "account payee" which has been obliterated or altered, the banker, in good faith and without negligence collecting payment of the cheque and crediting the proceeds thereof to a customer, shall not incur any liability by reason of the cheque having been crossed "account payee", or of such crossing having been obliterated or altered, and of the proceeds of the cheque having been credited to a person who is not the payee thereof.

131C. Cheque not operating as assignment of funds—A cheque, of itself, does not operate as an assignment of any part of the funds to the credit of the drawer with the banker.]

Case-Law

Section 131B—Scope—If a banker receives payment of a draft for customer while customer had no title or had defective title thereto, can seek shelter under section 131-B provided he could prove or establish that he had received such payment in good faith and without negligence. But where the Banker made no enquiries at strange and suspicious behaviour of a customer who opened an account with banker under a wrong name, and it failed to make further enquiries to detect whether in given circumstances account was being opened by customer for ulterior purposes. The Bank was held to have committed gross negligence. The suit was decreed against bank and other defendants jointly and severally with interest. *1985 CLC 857.*

Chapter XV

[1][Special Provisions Relating to Bills of Exchange]

[2][**131D. Several drawees**—A bill of exchange may be addressed to two or more drawees, whether they are partners or not; but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill or exchange.

131E. In whose favour a bill may be drawn—A bill of exchange may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

131F. When presentment for acceptance is necessary—A bill of exchange, in order to fix the acceptor with liability, must be presented for acceptance before it is presented for payment.

131G. When presentment excused—Presentment for acceptance is excused, and a bill of exchange may be treated as dishonoured by non-acceptance—

(a) where the drawee is dead or is insolvent or is a fictitious person or a person not having capacity to contract by bill or exchange;

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1. Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962), section 50, for the original heading "of bills in sets."

2. Sections 131D, 131E, 131F, 131G, 131H and 131-I, ins. ibid., section 51.

(b) where, at the due date for presentment, the drawee cannot, after reasonable search, be found at the place at which the bill is to be presented;

(c) where, after the exercise of reasonable diligence such, presentment cannot be effected;

(d) where, although the presentment has been irregular, acceptance has been refused on some other ground.

131H. Holder's right of recourse against drawer and indorsers—Subject to the provisions of this Act, when a bill of exchange is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues, to the holder, and no presentment for payment is necessary.

131-I. Holder may refuse qualified acceptance—The holder of a bill of exchange may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance.]

132. Set of bills—Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. Holder of first acquired part entitled to all—As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Chapter XVI
Of International Law

[1][**134. Law governing liability of parties to a foreign instrument**—In the absence of a contract to the contrary and subject to the provisions of section 136, in the case of a foreign promissory note, bill of exchange or cheque—

(a) the law of the place where the instrument was made or drawn, or accepted or negotiated shall determine—

(i) the capacity of the parties; and

(ii) the validity of the instrument or, as the case may be, of its acceptance or negotiation:

Provided that such instrument shall not be invalid or inadmissible in evidence by reason only that it was not stamped or not sufficiently stamped according to the law of the place where it was made or drawn;

(b) the law of the place where such instrument is payable shall determine—

(i) the liability of all parties thereto;

(ii) the duties of the holder with respect to presentment for acceptance or payment;

(iii) the date of maturity of the instrument;

(iv what constitutes dishonour;

(v) the necessity for and sufficiency of a protest or notice of dishonour;

(vi) all questions relating to payment and satisfaction including the currency in which and the rate of exchange at which the instrument is to be paid.]

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1 Substituted by the Negotiable Instruments (Amendment) Ordinance, 1962 (XLIX of 1962), section 2, for the original section 134.

Illustration

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent, and accepted by B, payable in Washington, where the rate of interest is 6 per cent. the bill is indorsed in [1][Bangladesh], and is dishonoured. An action on the bill is brought against B in [1][Bangladesh]. He is liable to pay Interest at the rate of 6 per cent. only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. [Law of place of payment governs dishonour.]—Omitted by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962) s. 53.

136. Instrument made, etc, outside Bangladesh but in accordance with their law—If a negotiable instrument is made, drawn, accepted or indorsed [2][outside [1][Bangladesh], but in accordance with the law of [1][Bangladesh], the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon [3][within [1][Bangladesh]].

137. Presumption as to foreign law—The law of any [4]* * * foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of [1][Bangladesh], unless and until the contrary is proved.

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1. The word "Bangladesh" was substituted for the word "Pakistan" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), Second Schedule (w.e.f. 26th March, 1971).

2. Substituted by A.O. 1949, Sch. read with Art.4, for "out of British India".

3. Substituted by A.O., 1949, Sch. read with Art. 4, for "in British India",

4 The words "Acceding State or" which were inserted by the Federal Laws (Revision and Declaration) Act, 1951 (Act XXVI of 1951), section 4 and III Schedule, omitted by Act No.V of 1958, section 6 (with effect from the 14th October, 1955).

[1]Chapter XVII

On Penalties in case of dishonour of certain cheques for insufficiency of funds in the account

138. Dishonour of cheque for insufficiency, etc. of funds in the account—[2][1]. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account [3][* * * * *] is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an

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1. Chapter XVII i.e. "Notaries Public" of The Negotiable Instruments Act, XXVI of 1881 was substituted by the Chapter XVII i.e. "On penalties in case of dishonour of certain cheques for insufficiency of funds in the Account" in the year 1994 by the Act No.XIX of 1994, dated 12th September. And the Sections 138 & 139 of the said Chapter was newly inserted and the sections 140 & 141 was added by the said Amendment. The previous Chapter i.e. "Notaries Public" and the said sections i.e. 138 & 139 are as follows :

Notaries Public

138. Power to appoint notaries public—The Government may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

139. Power to make notaries public—The Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act , and may, by such rules (among other matters) fix the fees payable to such notaries.

2. This existing statute was numbered as sub-section (1) of the remaining section by the Act No.XVII of 2000 dated 6th July.

3. The words and comas i.e. "for the discharge in whole or in part, of any debt or other liability." were repealed by the Act No.XVII of 2000 dated 6th July.

offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to [1][thrice] the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unles—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within [2][thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within [2][thirty days] of the receipt of the said notice.

[3][* * * * * *]

[4][(1A) The notice required to be served under clause (b) of sub-section (1) shall be served in the following manner—

1. The word "thrice" was substituted for the word "twice" by the Act No.XVII of 2000 dated 6th July.

2. The words "thirty days" were substituted for the words "fifteen days" by Act No. III of 2006 dated 9th February 2006.

3. "Explanation" was omitted by Act No.XVII of 2000 dated 6th July. The omitted Explanation is as follows :

Explanation—For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

4. Sub-section 1A was inserted after sub-section 1 by the Act No. III of 2006, section 2(ঘ) (with effect from 9th February 2006).

(a) by delivering it to the person on whom it is to be served; or

(b) by sending it by registered post with acknowledgement due to that person at his usual or last known place of abode or business in Bangladesh; or

(c) by publication in a daily Bangla national newspaper having wide circulation.]

[1](2) Where any fine is realised under sub-section (1), any amount up to the face value of the cheque as far as is covered by the fine realised shall be paid to the holder.

[2](3)Notwithstanding anything contained in sub-sections (1) and (2), the holder of the cheque shall retain his right to establish his claim through civil Court if whole or any part of the value of the cheque remains unrealized.

[3][**138A. Restriction in respect of appeal**—Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no appeal against any order of sentence under sub-section (1) of section 138 shall lie, unless an amount of not less than fifty per cent of the amount of the dishonoured cheque is deposited before filing the appeal in the court which awarded the sentence.]

Case-Law

Section 138—Liability of bank to payee of cheque—The complainant served a legal notice within 15 days of the receipt of the information of return of the cheques. So there is no valid ground for quashing the proceeding under section 138 of the Act. *Habibur Rahman Howlader vs State and another 53 DLR (AD) 111.*

1. This sub-section i.e. 2 was added by the Act No.XVII of 2000 dated 6th July.

2. This sub-section i.e. 3 was added by the Act No.XVII of 2000 dated 6th July.

3. Section 138A was inserted after section 138 by Act No. III of 2006, section 3 (with effect from 9th February 2006).

Section 138—Where there is no non-obstante clause the jurisdiction of the court, constituted under the Code of Criminal Procedure cannot be taken away or barred—the court below committed no illegality in taking cognizance or framing of charge under the general provision of law. *Moniruzzaman (Md) vs ANM Didar-e-Alam and others 54 DLR 445.*

Section 138—In the petition of complaint it is stated that the complainant opposite party No. 1 issued notice demanding payment of the amount of money stated in the cheque within 7 (seven) days. By issuing such notice there was no breach of the provision of law as contained in proviso (b) to section 138 of the Negotiable Instrument Act. The legal implication is that the issuing date of notice must not exceed 15 (Fifteen) days and notice can very well be given 7 (Seven) days time. *Noor Hossain (Md) vs State 7 BLC 241.*

Section 138—Since under section 138 of the Act an offence is committed if a cheque is dishonoured and if payment is not within 15 days after receipt of a legal notice, criminal proceeding can be proceeded independently of the civil suit. Since there is a *prima facie* case the criminal proceedings cannot be quashed. *Md Monzur Alam vs State and another 2002 BLD (AD) 228.*

Section 138—Under section 138 of the Negotiable Instruments Act an offence is committed if a cheque is dishonoured and if payment is not made within 15 days after receipt of a legal notice. It is a settled law that criminal proceeding can be proceeded independently of the civil suit. *Monzur Alam (Md) vs State and another 55 DLR (AD) 62.*

Section 138—The convict respondent admitted about the loan, issuance of cheques by him and dishonour of cheques and that a notice under section 138(1)(b) has been given by the complainant. Thus, all the legal requirements are present to bring the offence under section 138 of the Negotiable Instruments Act. *Amir Hossain vs MA Malek and others 56 DLR (AD) 146.*

Section 138—Admittedly, in the present case the cheque was presented to the bank after expiry of 6 months from the date of drawing of the cheque. So, obviously this case under section 138 of Negotiable Instruments Act is not maintainable in view of the restriction imposed by proviso (a) to the said section. So, the proceeding is liable to be quashed. *MA Mazid vs Md Abdul Motaleb 56 DLR 636.*

Section 138—In the instant case the plain subject matter of this case is the dishonour of the cheque issued by the accused now late Khalilur Rahman in favour of the complainant which clearly comes within the mischief of section 138 of the Negotiable Instruments Act since the impugned cheque has been returned unpiad for insufficiency of fund. *Khalilur Rahman being dead his heirs Mrs Nazma Begum vs Md Habibullah 57 DLR 603.*

Section 138—When the reason for return of the cheque has been mentioned as "refer to drawer" or insufficiency of fund, it is the primary duty of the drawer of the cheque to make payment of the money to the payee within 15 days from the receipt of the notice. *Khalilur Rahman being dead his heirs Mrs Nazma Begum vs Md Habibullah 57 DLR 603.*

Section 138—From the heading of the section it becomes clear that the legislature never intended dishonour of the cheques to be made punishable only in case of insufficiency of fund or exceeds the amount arranged to be paid since the word "etc" has also been used there by the caption of the section. So, it can be presumed that legislature contemplated various other reasons where the cheque is dishonoured. *Khalilur Rahman vs Md Habibullah 57 DLR 603.*

Section 138—Facts disclosed in the case also make out a case under section 138 of the Negotiable Instruments Act. In such a case, it is all too open to the complainant to proceed under any of the two Penal Code laws available to him. Learned Magistrate duly applied his judicial mind into the facts and circumstances of the case and the materials on record and rightly framed charge against the accused-petitioners under section 420 of the Penal Code which does not suffer from any illegality or legal infirmity occasioning failure of justice and as such the proceeding is not liable to be quashed. *Aminur Rahman (Md) vs State and another 8 BLC 518.*

Section 138—Under section 138 of the Negotiable Instruments Act, an offence is committed if a cheque is dishonoured and if payment is not made within 15 days after receipt of a legal notice. So, if an offence is committed under the above section, the Criminal Court will be competent to try the case and pendency of civil suit will not put any hindrance to proceed with the criminal cases because there is no possibility of any conflicting decision in the civil suit and criminal cases. *Monzur Alam (Md) vs State and another 9 BLC 88.*

Section 138—It appears that though the appellant presented the cheque on four dates but after the cheque was dishonoured for the last time on 26-10-2000, he served the required notice on 6-11-2000, well within statutory period and as such filing of the instant complaint on 11-12-2000 cannot be regarded as illegal. *Munshi Md Rashed Kamal vs Abdus Salam and another 10 BLC (AD) 186.*

Section 138—When the Bank returns the cheque referring it to the drawer for want of sufficient fund and the matter is brought to the notice of the drawer, a duty is immediately cast upon the author of the cheque to make immediate arrangement for payment of the money covered by the cheque for saving himself from criminal liability. In the instant case, dishonest intention being apparent on the face of the record, awarding a sentence of fine only without any substantive sentence of imprisonment is wholly unjustified and improper. Considering the provision of section 138 of the Negotiable Instruments Act and the scheme behind making the provision, it will be justified if the accused-respondent is sentenced to imprisonment for 6 (six) months in addition to fine already imposed. *Abdul Halim Chowdhury (Md) vs GMM Rahman, Managing Director 10 BLC 747.*

Section 138—It appears from the record that the post-dated cheques were returned unpaid to the opposite party, who took steps against the petitioner in accordance with the provisions of the Negotiable Instruments Act, where-upon the learned Magistrate took cognisance of the offence under section 138 of the Negotiable Instruments Act against the petitioner. In the petition of complaint there are some omissions as to disclosure of some material facts and such omissions will not make the prosecution case fatal. The instant transaction disclosed civil liability and the criminal offence under section 138 of the Negotiable Instruments Act as well inas-much as the criminal case stands for the offence when the civil suit is for realisation of money and, as such, it calls for no interference with the criminal proceeding. *Shamsul Islam Chowdhury (Md) vs Uttara Bank Ltd 11 BLC 116.*

Section 138—It appears that lastly, three post-dated cheques were presented but the bank on the same day, that is on 17-1-99, returned the same unpaid and then the complainant took legal steps under section 138(b) of the Negotiable Instruments Act by issuing legal notice on 24-1-99 which was received by the petitioner on 28-1-99 and then the

petitioner promised to settle the entire outstanding dues by 4-2-99 but then he refused to repay on 15-2-99. On receipt of the petition of complaint, the learned Magistrate examined complainant and took cognisance of the offence under sections 406 and 420 of the Penal Code read with section 138 of the Negotiable Instruments Act.

It is submitted on behalf of the petitioner that the offences committed under the general law cannot be tried with the offences under special law. An offence under section 138 of the Negotiable Instruments Act is for dishonour of the cheque simpliciter for insufficient fund, etc. whereas an offence under section 420 of the Penal Code of cheating is a distinct offence. In case of holding trial the general law and special law are not material, it is only to be seen what the offence in FIR prima facie discloses. It is not a case of want of jurisdiction. In the instant case, the charge has not yet been framed for which the issue as raised may be settled at the time of framing charge or after framing of charge. Initial intention of deception can be gathered by the subsequent act of the accused and that there is no bar to prosecute the accused for criminal offence apart from civil liability. *Shamsul Islam Chowdhury (Md) vs Uttara Bank Ltd 11 BLC 119.*

Sections 138, 139, 140, 141 and 142—In all these cases, the notices were served demanding for payment of the money within 15 (fifteen) days of the date of the last dishonour of the cheques and that the complaint petitions were filed within 1(one) month of the date on which the cause of action arises under clause (c) of the proviso to section 138 of the Act. Therefores the complaints were made within statutory period of limitation as provided in clause (b) of section 141 of the Negotiable Instruments Act. The learned Magistrate in the premises have committed no error of law in taking cognizance of offence. The proceedings were legally initiated in accordance with law and the learned Magistrates were justified in taking cognizance of offence against the accused-petitioners. *Sarwar M Kamal vs State 9 BLC 436.*

Section 138(a)—Cheques were presented to the bank twice within six months from the date it was drawn—Computation of 15 days for serving notice should be done from the date on which the cheques lastly returned by the bank—This having were been done the application under section 561A of Code of Criminal Procedure is misconceived. *Habibur Rahman Howlader vs State and another 55 DLR 199.*

Section 138(b)—The petitioner would get opportunity to raise the point whether the cheque was presented within time at the time of framing charge and the question when the cheque was presented to the bank for the 1st time cannot be decided in this application under section 561A of the Code of Criminal Procedure which is a disputed question of fact. *Hasibul Bashar (Md) vs Dilshed Huda and another 55 DLR 200.*

Section 138 & 141—An offence under section 138 of the Negotiable Instruments Act is for dishonour of cheque simpliciter for insufficiency of fund, etc. whereas an offence under section 420 of the Penal Code for cheating is a distinct offence. The rule of law about the peremptory application of the special law in place of the general law for trial of an offence hardly applies when the offences are distinct under the two laws. *Nurul Islam vs State and another 49 DLR 464.*

Section 138 & 141—Even though the case is pre-mature and it was filed before the expiry of 15 days from the date of receipt of the notice, the proceeding is not liable to be quashed. *Satya Harayan Poddar vs State and another 53 DLR 403.*

Sections 138 & 141—Subsequent allegations will not save limitation for prosecution—The requirement under the law is that the complaint against non-payment of money has to be filed within one month of the date on which the cause of action arises—The High Court Division wrongly rejected the application for quashing. *SM Anwar Hossain vs Md Shafiul Alam (Chand) and another 51 DLR (AD) 218.*

Sections 138 & 141—In view of discussions made in the facts and circumstance of the case, there was no other alternative but to quash the proceeding as the opposite party No. 1 complainant had earlier taken recourse to clause (b) of section 138 of the Act in an unsuccessful manner which does not in any way give rise to further cause of action as cause of action as provided under sections 138 and 141 of the Act arises only for once. *Dr Md Mofizur Rahman and ors vs Md Bashirullah and another 55 DLR 630.*

Sections 138 & 141—Taking of cognisance upon the petition of complaint filed by the Attorney upon due examination under section 200 of the Code of Criminal Procedure is "perfectly valid and appropriate". *Hashibul Bashar vs Gulzar Rahman and another 56 DLR (AD) 17.*

Sections 138 and 141—The cause of action for prosecution will arise under clause (c) of the proviso to section 138 of the Negotiable Instruments Act on the failure of the appellant to pay the amount within 15 days of the receipt of the notice of the complainant. In the present case, the cause of action arose on 19-1-96 and the petition of complaint was required to be filed within one month from 19-1-96 in compliance with clause (b) of section 141 of the Act which having not been done by the complainant the cognizance of the offence cannot be taken upon such complaint and hence the impugned proceeding is quashed. *SM Anwar Hossain vs Shafiul Alam (Chand) & another 4 BLC (AD) 106.*

Sections 138 & 141—The combined reading of the clause (c) of the proviso to section 138(1) and the section 141 of the Act leaves no room for doubt that cause of action within the meaning of section 141(c) arises and can arise only once. Thus, the settled position of law is that the payee or holder of a cheque in due course can present a cheque as many times as he or she wishes within the period of validity of the cheque and at his or her option can choose on which bouncing of the cheque shall initiate a proceeding under section 138 of the Act. *Nazrul Islam Mallik vs Tofazzal Hossain 8 BLC 443.*

Sections 138 & 141—If any cheque is presented to the Bank twice or on many more times, within six months from the date it was drawn, computation of the period for prosecution under section 138 of the Negotiable Instruments Act should be done from which the cheque is lastly returned. In the instant case, in view of the non-disclosure of the date as to receipt of notice by the accused and failure to mention any legal cause of action in the petition of complaint, the proceeding cannot be allowed to continue and as such it is liable to be quashed. *Nizam Uddin Mahmood vs Abdul Hamid Bhuiyan 9 BLC (AD) 177.*

Section 138(1)—Under the scheme of the Act the offence punishable under section 138 would be complete only upon the failure by the drawer to pay within fortnight of the receipt of notice from the payee of the dishonour of the cheque. When drawer fails to make payment within the period specified in clause (c) of the proviso the offence is complete. *Khalilur Rahman being dead his heirs Mrs Nazma Begum vs Md Habibullah 57 DLR 603.*

Section 138(3)—Sub-section (3) of section 138 gives additional authority to the civil Court to satisfy the complainant if any other grievances is found to be left out. *Khalilur Rahman being dead his heirs Mrs Nazma Begum vs Md Habibullah and another 57 DLR 603.*

Section 138—The cheque is returned unpaid because the amount available in the drawer's account is insufficient for paying the cheque. Refusal by the bank because of its suit against the drawer and his account was held to be dishonoured, complaint not quashed, *Pawankumar vs Ashish Enterprises, (1993) 78 Company Cases 346 Bom.*

Section 138—The payee has given a notice to the drawer claiming the amount within 15 days of the receipt of the information by the bank. The Court can examine the documents accompanying the complaint to find out whether it is sustainable and not merely the complaint itself. Where the complaint failed to state the reason for the dishonour but the bank memo attached with it carried the remark "exceeds arrangement" and the failure to state the date of notice were held to be not sufficient for quashing the complaint, *N Velayutham vs Sri Ganesh Steel Syndicate, (1995) 83 Company Cases 785 Mad; Ad Circle P Ltd vs Shankar, (1993) 76 Company Cases 764 Delhi.*

Section 138—The drawer has failed to pay within 15 days from the date of the receipt of notice. Abdul Samad vs Sat Narayan Mahawar. Averments of facts constituting the offence must be stated therein, banker's remark is not material, even if it says that the amount is closed, all such matters are to be examined at the trial. *(1993) 76 Company Cases 241, 243.*

Section 138—One Cheque, One Offence—The payee or holder of a cheque has the right to present the cheque for payment for any number of times and he may have it repeatedly dishonoured, but he can prosecute the drawer only once.

"It is common knowledge that a cheque can be presented any number of times within the period of its validity. The principle of *autrefois acquit or autrefois convict* will also come into pay and the drawer of the cheque cannot be subjected to repeated prosecutions and convictions on the strength of one cheque. So we feel that as there is no restriction with regard to the presentment of the cheque any number of times within the validity period and it is not open to the court by adding anything more to

hold that a cheque cannot be presented a second time, double prosecution on the same cheque is out of question". *Syed Rasool & Sons vs Aildas & Co, (1993) 78 Company Cases 738 : (1992) Cri LJ 4048 AP; NC Kumaran vs Ameerappa, (1992) 74 Company Cases 848 Ker; Mahadevan Sunil Kumar vs Bhadran, (1992) 74 Company Cases 805.*

Section 138—Holder in due course or Payee—In order to enable a person to exercise this special statutory remedy, it is necessary that he should be the payee of the cheque or a holder in due course. Where a person became the recipient of a cheque with knowledge that the cheque has been dishonoured by the bank, he could not become a holder in due course though he received the cheque for consideration. He was the brother of the payee and was aware of the fact of the dishonour. His proceedings under the section were not maintainable. *Sukhanraj Khimraja vs N Rajagopalan, (1989) 1 Law Weekly 401.*

Section 138—Where the payee died before the complaint, a complaint by his son in his capacity as executor of the will of his father was not allowed. *PK Koya Moideen vs G Hariharan, (1996) 86 Company Cases 399.*

Section 138—An endorsee from payee becomes a holder and every holder is presumed under section 118 to be a holder in due course. He gets the right to proceed against the drawer as well as the payee under section 138. He has not to prove that he is a holder in due course. The burden would be on the opposite party to show that he had paid no consideration or that he had reason to believe that a defect existed in the title of the payee from whom he received the cheque. *Praveen Metal Agencies vs M Balasubramaniam, (1995) 84 Company Cases 782* Knt, the drawer and payee held jointly and severally liable.

Section 138—The holder of a blank signed cheque was not allowed to claim the protection of the cheque. He had obtained the blank cheque in order to enable him to prosecute his borrower if he had failed to pay the amount due under a promissory note. The court said that the section was introduced to avoid the malignant trade practice of indiscriminately issuing cheques without sufficient funds. The complainant in this case presented the cheque only with a view to get the endorsement of dishonour. If this were allowed, every creditor would make abusive use of section 138 by putting the debtor in fear of prosecution. *Taher N*

Khambat vs Vinayak Enterprises, (1996) 86 Company Cases 471 AP, the cheque was presented within six months from the date filled by the holder and so the presentment was held to be valid.

Section 138—Stop payment instructions cannot obviate the liability of the drawer under section 138 of the Act, for issuing cheque without funds and on failure to pay despite the notice. *Electronics Trade & Technology Devp. Corpn Ltd vs Indian Technologists & Engrs. P Ltd, (1996) 2 SCC 739 : (1996) 86 Company Cases 30 : AIR 1996 SC 2339.*

Section 138—The court said that failure to pay after receiving notice shows dishonest intention and, therefore, the offence under the section is made out. The unique contribution of the decision is that refusal to pay because of stop payment notice is a dishonour within the meaning of the provisions dealing with dishonour of cheques and this is so irrespective of the remarks of the bank on the dishonour slip. *1996 Supreme Court Yearly Digest 711.*

Section 138—In this particular case, the contention of the respondent was that the cheque had been returned on account of stop payment instructions and not on account of insufficiency of funds and thus all the ingredients of the section were not available. According to section 138 it is only when the cheque bounces on account of inadequate balance in the account that a complaint is maintainable and if this ground is not available, the complaint is not maintainable and there would be no justification to let the proceedings to continue. *Abdul Samad vs Satya Narayan Mahawar, (1990) 2 PLR 269; (1990) 2 B.C.P. 305 : (1993) 79 Company Cases 241.*

Section 138—The offence under section 138 of the Act cannot depend on the endorsement made by the banker while returning the cheque. Irrespective of the endorsement made by the banker, it is established that in fact the cheque was returned unpaid either because the amount of the money standing to the credit of the account of the drawer is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank, the offence will be established. The endorsement made by the banker while returning the cheque cannot be the decisive factor. *Thomas Varghese vs P Jerome, 1992 Cri LJ 3080.*

Section 138—The Court has held that "in the light of the specific scheme of section 138, the return of the cheque by the banker with any of the endorsements "Refer to Drawer", "Insufficiency of funds", "Funds not arranged" or "Account closed" ultimately connotes dishonour of the cheque on account of fault on the part of the person who has issued the cheque in not providing sufficient funds or in not arranging for the funds or in closing the account. We should keep in mind the fact that in the scheme of the Act the legislature has provided an opportunity to the drawer to explain the endorsement made by the banker, and it is always open to the drawer of the cheque to explain and establish that dishonouring of the cheque was not referable to insufficiency of funds or he did not make provision of necessary funds. The object of the legislature while introducing Chapter XVII in the Act cannot be allowed to be frustrated. *Dada Silk Mills vs Indian Overseas Bank, (1995) 82 Company Cases 35.*

Section 138—Where a cheque issued by the petitioner was returned unpaid with the endorsement "Effects not cleared, please present again" and upon being presented again, was again returned with the endorsement "Payment stopped by the Drawer" there was no indication that the return was not due to insufficiency of funds or exceeding the amount arranged to be paid. The complaint could not be quashed. *V Arunmugham vs MK Ponnusamy, (1995) 82 Company Cases 296 Mad.*

Section 138—When a cheque is drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person out of the account for the discharge of the debt in whole or in part or other liability and is returned by the bank with the endorsement like (1) "refer to the drawer" (2) "instructions for stoppage of payment" and (3) "exceeds arrangement", it amounts to dishonour within the meaning of section 138 of the Act. On issuance of the notice by the payee or the holder in due course after dishonour, to the drawer demanding payment within 15 days from the date of the receipt of such a notice, if he does not pay the same, the statutory presumption of dishonest intention in instruction the bank to stop payment is evident from the conduct of the accused. Hence, he is liable for the offence under section 138. *Electronics Trade & Technology Development Corpn Ltd vs Indian Technologists & Engineers (Electronics) Pvt. Ltd, (1996) 2 SCC 739.*

Section 138—Even if the payment of a post-dated cheque is countermanded before due date, the offence would be made out unless the drawer is able to show that he had sufficient money in the bank for the cheque and that its payment was stopped for some other reason. *Deepak Agarwal vs S S Jain, (1996) 85 Company Cases 771 All Rama Gupta vs Bakeman's Home Products Ltd., (1992) II CCR 1484 : (1992) ISJ (Banking) 269 P&H.*

Section 138—Refer to Drawer—It has been held by the High Court that the endorsement "refer to drawer" necessarily in banking parlance mens that "the cheque has been returned for want of funds in the account of the drawer of the cheque." *Syed Rasool & Sons vs Aildas & Co., (1992) Criminal Law Journal 4048.* Refer to drawer means cheque has been returned for wants of funds. *Dada Silk Mills vs Indian Overseas Bank, (1995) 82 Company Cases 35,* "Refer to drawer" means that the cheque has been returned for want of funds. *MM Malik vs PK Goyal, (1991) Cri LJ 2594.*

Section 138—By the use of the phraseology the banker euphemistically by way of courtesy to his customer informs the payee that the bank account is not credited with money sufficient to honour the cheque and that it exceeds the amount arranged to be paid from the account by an arrangement made to the bank. This is to convey the reason in a most civilised manner and in a courteous way without hurting the customer's feelings. The banker's remark is not decisive of the matter. The reality behind the dishonour should be the guiding factor. *Thomas Varghese vs P Jerome, (1993) 76 Company Cases 380 Ker.*

Section 138—Appearance of complainant—When a complaint raises all pleas regarding ingredients of the offence under section 138 of the Negotiable Instruments Act, then at the time of taking cognizance, the Magistrate cannot be expected to go into the niceties of the case which would be set up by the accused and for which complainant's personal presence should be needed. *Pearey Lal Rajendra Kumar Pvt Ltd vs State of Rajasthan, (1994) 3 Crimes 308.* The complainant was by a Government company through its manager. The manager was exempted from personal attendance. The counsel of the company did not appear on

the listed date. The dismissal of the complaint for such non-appearance was held to be not justified. The was nothing to show lack of diligence to prosecute the complaint. *Steel Authority of India Ltd vs Vishwakarma Agro and Allied Industries, (1996) 86 Company Cases 929 P&H.*

Section 138—Proper evidence—When the accused challenged the prosecution for the offence under section 138 of the Act on the ground that goods supplied by the complainant were defective and having been rejected there would be no liability to pay, it was held that without proper evidence at the stage of the accused being summoned, it could not be said that the accused company did not have the liability for which cheque was issued. *Dilip Kumar Jaiswal vs D Banerjee, (1992) 1 Crimes 1233.*

Section 138—Where a complaint was filed on the basis of three cheques in a year, the court demanded the complainant to make up his mind as to the cheque on which the prosecution was to continue. *Printo Stick vs HC Oswal, (1996) 86 Company Cases 942 Mad.*

Section 138—Clause (c) of the proviso makes it clear that it is only when the drawer of the cheque fails to make the payment within 15 days of the receipt of notice that the offence shall be deemed to have been committed. *Sugesan Finance Investment vs Union of India, (1992) 75 Company Cases 298.*

Section 138—The notice should contain the demand and should not merely be in the nature of show-cause why proceedings should not be launched. *Harbinder Singh vs Suman Rani, (1996) 87 Company Cases 135 P&H.*

Section 138—A complaint filed before the expiry of fifteen days is liable to be quashed, *Kanchana Kamalnathan vs Nagaraj, (1996) 84 Company Cases 959 Mad.*

Section 138—Limitation for complaint—A complaint for an offence under section 138 can be filed within one month from the date of cause of action. The cause of action starts from expiry of 15 days from the date of service of notice to the accused. One month to be calculated from the date of expiry of 15 days from the date of service of notice served on 14-7-1990, 15 days time to pay expired on 30-7-1990, a complaint should be filed within one month from 30-7-1990. *Venu vs Krishnappa, (1992) 2 Crimes 542.*

Section 138—Under section 138(c) of the Negotiable Instruments Act, 15 days' time is given for payment of the amount due under the cheque from the date of receipt of notice regarding dishonour issued by the payee. Therefore, the payee has to wait for 15 days anticipating payment of the amount by the drawer. After the expiry of fifteen days, if the drawer does not pay the amount, the cause of action starts from the sixteenth day onwards. The limitation to file a complaint as prescribed under section 142(b) of the Act is one month. The period of limitation, therefore, starts from the sixteenth day after receipt of notice by the drawer. *Mahalakshmi Enterprises vs Vishnu Trading Co; (1993) 77 Company Cases 249; 1991 Bank J 493; (1991) 1 BC 415 (AP).*

Section 138—Where the drawer of the cheque denied his liability to pay the cheque amount within 15 days after receiving notice, it was held that he could still pay off before the expiry of 15 days so as to wipe out his liability. *V Suresh Kumar vs C Shree Krishnan, (1995) 83 Company Cases Mad. 103.*

Section 138—The notice need not state that proceedings would be launched if payment is not made within 15 days. *T Shyamala vs SMR Finance, (1994) 81 Company Cases 919 Mad,* the averment in reply that the payment had been made to be examined at the trial, complaint not to be quashed.

Section 138—Requirement as to notice [clause (b), proviso]—As regards liability for dishonour of cheque under section 138 it is necessary to *prima facie* show that even after 15 days of receipt of the notice as contemplated under section 138(b), the accused failed to pay the amount. In order to fasten a criminal liability on person, the requirement of law has to be fully complied with. Therefore, where the notice of demand as required under section 138(b) was not served on the opposite party, no prosecution and cognizance of offence was permissible. *Rajiv Kumar vs State of UP, (1991) All LJ 994 : (1993) 78 Company Cases 507 All. Arsoka Engineer vs Duroka Fuse, (1992) 3 CCR 2982.*

Section 138—Issue of notice is a must and it is mandatory. The notice may even be sent by a telegram and in case it is refused then it gives a cause of action. *Ghanshyam M Swamy vs Classic Steel Products, (1992) 1 BC 240 : (1992) 75 Company Cases 695 (Guj).* A notice is also

valid if it is for a part of a large claim. *Revathi vs Asha Bagree, (1992) 75 Company Cases 372 : (1992) 1 Crimes 743.*

Section 138—In the case of a firm, if the receipt of the notice is by one partner who is habitually acting for the business of the firm, it shall be deemed to be a notice to the firm. *Renu Vora vs Shruyans KN Paper Mills, (1993) 2 CCR 1471.*

Section 138—In case a complainant does not issue notice, there cannot be any cause of action. *Ghanshyam Swamy vs Classic Steel Products, (1992) 75 Company Cases 695.*

Section 138—Drawing of a cheque does not constitute any offence in itself. It is when the cheque is presented within time and dishonoured for reasons specified that one of the requirements is completed. It becomes an offence only after the expiry of 15 days from the date of written demand. *KS Auto vs Union of India, (1993) 76 Company Cases 105.* The date of the cheque is relevant only for the purpose of a finding whether the cheque was presented within six months from its date, otherwise the offence is constituted by notice and default after notice. *Anil K Mehra vs Hans Raj, (1993) 78 Comp CAs 784 P&H.*

Section 138—Service of notice—Where the notice was returned by the post office with the remark that the addressee was not found, it was held to be no notice for the purposes of a complaint. The court noted the language used in section 138(c) "receipt of the said notice" and said that this unambiguously pointed to the actual notice to the other party. The return of the notice must show at least wilful evasion. *L Mani vs Kandan Finance, (1996) 86 Company Cases 205 Mad.*

Section 138—Mode of communication—It is not necessary that the notice of dishonour (notice in writing) which is required under section 138(b) should be sent by registered post. It may be sent by an ordinary letter or even by a telegram. *MV Muthuramalingam vs D Narayanaswamy, (1995) 83 Company Cases 77 Mad.*

Section 138—Where a complaint was filed after the dishonour of a cheque but was dismissed because of the absence of the complainant and he presented the cheque again, obtained dishonour and proceeded again, the second complaint was held to be maintainable. The earlier acquittal

was not a bar upon subsequent prosecution. *P Jawahar vs SS Pillai, (1994) 81 Company Cases 34 Mad.*

Section 138—A cheque may be presented more than once. The cause of action arises only upon refusal to pay after notice. *P Ravindranathan vs CV Hussain, (1994) 79 Comp Cases 78 Ker.*

Section 138—There is no compulsion on the holder that he should issue notice on first default. A single complaint in respect of eleven cheques would not cause any prejudice to the drawer. Hence, it was maintainable. *Stalion Shox Co P Ltd vs Auto Tensions P Ltd, (1994) 79 Company Cases 808 Delhi.*

Section 138—Cause of action—The cause of action under the proviso (b) and (c) of section 138 of the Negotiable Instruments Act, for filing complaint cannot be said to arise merely on the cheque being dishonoured but will arise only after the giving of notice of demand of the amount of the cheque by payee or holder in due course of the cheque to the drawer of the cheque and coupled with the failure of the drawer of the cheque to pay the amount within fifteen days of the date of the service or receipt of the notice on or by him. *VD Agarwal vs Ist Addl. Munsif Magistrate, (1993) 11 LCD 1108 All.*

Section 138—Mere presentment and dishonour do not create the cause of action. It is the notice which gives the cause. There is no restriction on the number of times of presenting the cheque for payment. Accordingly, any one of those presentments, within the time limit of six months, may be chosen for giving notice and lunching prosecution. *K Annakodi Ammal vs K Ethiraj, (1994) 80 Company Cases 870 Mad.*

Section 138—Stay of proceedings—After the issue of notice to the drawer of the dishonour of his cheque, he filed a civil suit denying his liability to pay and, therefore, contending that section 138 was not attracted and obtained an interlocutory injunction restraining the payee of the cheque from proceeding under section 138. The grant of the injunction was held to be illegal. *Aristo Printers P Ltd vs Purbanchal Erade Centre, AIR 1992 Gau 81.*

Section 138—Where a civil suit was pending at the time when criminal proceedings were launched for the dishonour of a cheque and the High Court stayed the civil proceedings under the apprehension that the

defendant's defences in the criminal case would become disclosed in advance, the Supreme Court held that this approach of the High Court was not correct. The court noted that the defence in the criminal case had already been filed and therefore, nothing remained which deserved protection from disclosure. *State of Rajasthan vs Kalyan Sundaram Cement Industries Ltd, (1996) 3 SCC 87 : (1996) 86 Company Cases 433.*

Section 138—Civil and criminal proceedings are simultaneously possible. Hence, a complaint is not liable to be stayed pending the disposal of a civil suit. The court said that a civil suit cannot debar a criminal prosecution. The successful end of a civil suit cannot by itself amount to abuse of the process of the court. *Sanjiv Kumar vs Surendra Steel Rolling Mills, (1996) 86 Company Case 418 P&H.*

Section 138—Jurisdiction—Where a cheque issued for business purchased at one place and the recipient of the cheque also deposited the cheque into his account at that very place, but, after dishonour, he issued notice of dishonour from his place of business in some other town, it was held that a complaint filed at that place was competent. The cause of action partly arose there because to discharge his liability the drawer would have to make arrangement for payment at the recipient's place. *Kirti Dal Udyog, Nagpur vs Bhanwarlal, (1996) AIHC 330 Bom.*

Section 138—Complaint through power of attorney—Complaint may be filed through the holder of a power of attorney on behalf of the payee. *S Ramaswamy vs K Sudarsan Rao, (1995) 83 Company Cases 673 (Mad).*

139. [1]***[Repealed]***

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1. Section 139 was repeapled by the Act No. XVII of 2000 dated 6th July. The Omitted section is as follows :

139. Presumption in favour holder—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole of in part, of any debt or other liability.

140. Offences of companies—(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (I), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation—For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

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Section 140—The extent of liability of the accused has to be established by evidence during trial. Where the Magistrate found that the

allegations made in the complaint made out a *prima facie* offence and that all the accused partners, being responsible for carrying on the business of the partnership firm, *prima facie* committed the offence and therefore, took cognizance of the offence and issued process against all the accused, it was held that the High Court erred in holding that some of the accused were not responsible for the man- agreement and conduct of the firm and on that basis in quashing the proceeding against the accused. *Drugs Inspector vs BK Krishnaiah, AIR 1981 SC 1164 : (1981) 2 SCC 454.*

Section 140—Where there was no allegation inthe complaint that the directors were in charge of and responsible to the company for the conduct of the business of the company. Where a cheque was in fact issued by the managing director and not by directors named in the complaint, it was held that the directors could not be held responsible for dishonour. *Sharda Agarwal vs Addl. Chief Metropolitan Magistrate, II Kanpur, 1992 All LJ 571 : 1992 Cri LJ 1442 : (1993) 78 Company Cases 123 All.*

Section 140—So far as a complaint by a company is concerned, an authorised person of the company can sign the complaint. The action of the Magistrate of returning the complaint that the complainant was not the payee or holder in due course and hence he could not file the complaint, was not sustainable. The representative was only representing the company. Hence, company was the complainant and not the representative. *CBS Gramophone Records & Types (India) Ltd vs PA Noorudeen, (1992) 73 Company Cases 494.*

Section 140—Where the complaint was filed by a person who was described as the senior accountant and who was authorised by a deed of power of attorney, the complaint was held to be properly instituted. *Jayalakshmi Nataraj vs Jeena & Co. (1996) 86 Comp Cas 265 Mad.*

Section 140—A complaint filed by the managing partner of the payee, partnership firm was held to be competent. *S Krishnamurthy vs AR Rajan, (1996) 87 Company Cases 212 Mad* A complaint filed by a manager was held to be incompetent and also in the same case that a cheque issued by the son of the proprietor of a firm would not permit proceedings against the proprietor, *Sudesh Kumar Sharma vs KS Selvamani, (1995) 84 Comp Case 806 Mad.*

Section 140—A company as a payee is competent to maintain petition. *Nandagopal vs NEPC Agro Foods Ltd, (1995) 83 Comp Cas 213 (Mad).*

Section 140—A duly authorised manager of a company was held to be competent. *Solar Solvent Extractions Ltd vs South India Viscose Ltd., (1995) 83 Company Cases 540 Mad,* following Gopalakrishna *Trading Co vs Baskaran (D), (1994) 80 Comp Cas 53 Mad.*

Section 140—Where the managing director of a company issued his personal cheque to meet the liability of the company which was dishonoured, it was held that an offence had been committed by the company. *Jagarlamudi Surya Prasad vs State of AP (1992) 1 BC 120.* Where the managing partner issued the cheque on behalf of the firm, the other partners could not be made liable, *ESSB Food Specialities vs Kapoor Bros., 1992 CriLJ 739 P&H.*

Section 140—Unless company is made an accused, the person who is in charge of and responsible to the company for the conduct of the business of the company cannot be made an accused. *UP Pollution Control Board vs Modi Distillery, (1987) 3 SCC 684 : 1987 SCC (Cri) 632.*

Section 140—Offences by Firms or Association of Individuals—Where a cheque is issued on behalf of a firm by partner of the firm and the cheque is dishonoured and notice in terms of clause (b) of the proviso to section 138 of the Act is issued to the firm, the firm is the drawer of the cheque and there is no question of issuing the notices to all the partners. It is sufficient that there is an averment in the complaint that all partners of the firm were taking part in the running of the business of the firm and all the partners are liable to be prosecuted against by virtue of sub-clause (1) of section 141. *Oswal Ispat Udyog vs Salem Steel Suppliers, (1991) 1 BC 559.*

Section 140—An action under section 138 cannot be taken against a person who is a sleeping partner and who has not been shown to be in charge of business or affairs of the firm. *Amrit Rani vs Malhotra Industrial Corpn., (1992) 1 BC 262.*

Section 140—A sole proprietary concern is outside the purview of the Explanation to section 140, i.e, it is not a company within the meaning

of "company" as defined under the Explanation to section 140 of the Negotiable Instruments Act, thus sole proprietary concern could not be made a party in the complaint apart from the sole proprietor. *P Muthuraman vs Padmavathi Finance Regd., (1994) 80 Company Cases 656. Sivasakthi Industries vs Arihant Metal Corpn., (1992) 74 Company Cases 749; Habibunisa Akhtar vs S&S Engrs and Enterprises Ltd., (1995) 83 Company Cases 593 Mad.*

Section 140—Notice of dishonour served on the firm has been held to be sufficient to entail the prosecution of all the partners who were alleged in the complaint to be actively taking part in running the business of the firm. There was no question of serving notices on all the partners. *Oswal Ispat Udyog vs Salem Steel, (1993) 78 Company Cases 512 Mad.*

Section 140—Where the cheque in question was issued by the managing partner and there was no allegation that his copartner was in charge of affairs, it was held that the managing partner alone could be prosecuted. *Ess Bee Bood Specialties vs Kapoor Bros., (1993) 78 Company Cases 570 P&H.*

Section 140—A managing director was not allowed to be prosecuted without jointing the company. *Krishan Bai vs Arti Press, (1994) 80 Comp CAs 750 Mad.*

Section 140—Complaints by companies, firms etc—Where a company or a partnership firm is the payee of a cheque, its manager, managing partner, partner, director or any other person authorised for the purpose can file a complaint. *Gopalkrishna Trading Co vs D Bhaskaran, (1994) 80 Company Cases 53 Mad.*

Section 140—Period of limitation—The complaint has to be made within one month from the date of the cause of action. The period of one month starts running from the 16th day after receipt of notice of dishonour by the drawer. Under section 138(c) there is 15 days time for payment of the amount due under the cheque from the date on which the drawer is given the notice of the dishonour. If he does not pay up to the expiry of the 15th day, the cause of action takes birth from the 16th day and remains alive up to one month from that day. In this case the notice was received by he drawer on 24-8-1989. He had 15 days time to pay from that day. The period started after the expiry of 15 days, namely, from 9-9-1989, the 16th day. The complaint was filed on 5-10-1989 and the

same was held to be within time. *Ghanshyam M Swamy vs Classical Steel Products, (1992) 75 Company Cases 695 Guj, KT Kuriyan vs KK Shreedharan (1992) 74 Comp Cas 853 Ker. Venu vs Krishanappa (1992) 74 Company Cases 734 Knt.*

Section 140—Under section 138 the requirement is that of "giving notice in writing". This would naturally impose the requirement of giving notice."A person notifies or gives notice to another by taking such steps as may reasonably be required to inform the other in the ordinary course (of things) whether or not such other actually comes to know of it." *Ghanshyan M Swamy vs Classical Steel Products, (1992) 74 Company Cases 695 Guj; K Madhu vs Omega Pipes Ltd 1994 Cri LJ 3439 Ker*

Section 140—Where the complaint served on the opposite party did not carry the date seal of the court on it so as to enable the higher court to know whether it was filed within time or not, the court looked at the fact from the relevant evidence that the complaint was filed out of time. The court emphasized the need of putting the stamp seal and date of filing before the complaint is served upon the opposite party. *T Vanamamalai vs TD Sundra Vardhan, (1996) 36 Comp Cas 188 Mad.*

Section 140—Condonation of delay.—The period of limitation has to be reckoned from the expiry of fifteen days. Where a complaint is filed after the expiry of the prescribed period, it being in the nature of a petition, section 5 of the Limitation Act, becomes applicable. Hence, delay may be condoned on a sufficient cause shown and cognizance taken accordingly. *Janardhan Mohapatra vs Saroj Kumar Choudhury, (1994) 79 Comp Cas 821 Ori,* the matter was remanded for reconsideration. Delay should not be condoned without hearing the party proposed to be proceeded against. *P. Sengupta vs ROC, (1991) 72 Comp Cas 421 Cal.*

141. Cognizance of offences—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898)—

(a) no Court shall take cognizance of any offence punishable under section 138 except upon a

complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque:

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;

[1][(c) no court inferior to that of a Court of Sessions shall try any offence punishable under section 138.]

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Section 141 & 138—Even though the case is pre-mature and it was filed before the expiry of 15 days from the date of receipt of the notice, the proceeding is not liable to be quashed. *Satya Narayan Poddar vs State and another 53 DLR 403.*

Section 141 & 138—An offence under section 138 of the Negotiable Instruments Act is for dishonour of cheque simpliciter for insufficiency of fund, etc. whereas an offence under section 420 of the Penal Code for cheating is a distinct offence. The rule of law about the peremptory application of the special law in place of the general law for trial of an offence hardly applies when the offences are distinct under the two laws. *Nurul Islam vs State and another 49 DLR 464.*

Sections 141 & 138—Admittedly there was a transaction between the parties and the petitioner issued the cheque in question but the law of limitation stands as an impediment to proceed further with the case in view of clause (b) of section 138 and clause (b) to section 141 of the Act. Time is a great factor of human life specially when it comes into play for legal purpose. The proceeding of the CR case is quashed. *Abdus Salam vs Md Munshi Rashed Kamal and anr 54 DLR 234.*

Sections 141 & 138—The cause of action for prosecution will arise under clause (c) of the proviso to section 138 of the Negotiable Instruments Act on the failure of the appellant to pay the amount within

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1. Clause (c) was substituted for the original clause (c) by Act No. III of 2006, section 4 (with effect from 9th February 2006). The original clause (c) is as follows :

(c) no court inferior to that of a Metropolitan Magistrate or a Magistrate of the First Class shall try any offence punishable under section 138.

15 days of the receipt of the notice of the complainant. In the present case, the cause of action arose on 19-1-1996 and the petition of complaint was required to be filed within one month from 19-1-1996 in compliance with clause (b) of section 141 of the Act which having not been done by the complainant the cognizance of the offence cannot be taken upon such complaint and hence the impugned proceeding is quashed. *SM Anwar Hossain vs Shafiul Alam (Chand) and another 4 BLC (AD) 106.*

Schedule—*[Enactments repealed] Rep. by the Amending Act, 1891 (XII of 1891).*

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