NEGOTIABILITY AS IT AFFECTS "LIEN NOTES."

The question as to whether or no a "lien note" be negotiable has often been debated. The latest case in which it has been raised is one which was recently decided in the Manitoba Court of Appeal.[1] Before we can proceed to discuss the question, however, we must determine what is the meaning of "negotiable" as applied to promissory notes.[2]

A negotiable note is one, the title to which passes by delivery[3] if the instrument be payable to bearer, or by indorsement and delivery, if payable to order; and is such, that a bonâ fide holder of it for value without notice, as he was formerly called, or a holder in due course, as he is now termed, takes the instrument free from any defects which may affect the title of prior parties, as well as from mere personal defences available to such prior parties among themselves, and may sue on the instrument in his own name and enforce payment against all parties liable on the instrument. Such a holder is said to take the instrument "free from the equities." To place himself in such a position, however, the note must be complete and regular on its face when the holder takes it, the holder must become such before the instrument is overdue and without notice that it has been previously dishonoured, if such be the fact, and must take the note in good faith and for value; and at the time the note is negotiated to him he must not have any notice of any defect in the title of the person who negotiated it to him.[4] Negotiation of an instrument takes place when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the note.[5] The "holder" is the payee or indorsee of the note who is in possession of it, or its bearer[6]; and the "bearer" is the person who is in possession of a note which is payable to bearer.[7] A negotiable note may be payable either to order or to bearer, and a bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank; and a note may also

[1] *Metcalfe* v. *Adair and McNicol* (1927), 1 W.W.R. 331.

[2] Observe the difference between a "promissory note" and a note which contains a promise to pay money. The latter may not be a promissory note.

[3] *i.e.* the transfer of possession, actual or constructive, from one person to another. R.S.C. 1906, c. 119, s. 2 (f).

[4] R.S.C. 1906, c. 119, s. 56, s. 74, s-s. (a), (b).

[5] *Ibid.*, s. 60 (1).

[6] *Ibid.*, s. 2 (g).

[7] *Ibid.*, s. 2 (d).

be treated as payable to bearer if the payee be a fictitious or non-existing person.[8]

Most of the formalities and incidents affecting bills of exchange, promissory notes, and cheques have been codified in our Bills of Exchange Act, and are chiefly derived from the law merchant, which is now a part of the common law.

There are great fundamental differences between negotiability and mere assignability.[9] Through the doctrine of negotiability a transferee of a negotiable instrument, if he take under the conditions and by the mode prescribed by the law merchant, may receive a better title than his transferor had; but in the case of a mere assignment of a chose in action, the cardinal principle is summed up in the maxim, "Nemo dat qui non habet," and sometimes, perhaps, "Nihil dat qui non habet." Whilst it is true that negotiable instruments may be transferred by any of the ordinary methods of alienation of choses in action, yet the advantages of acquisition of negotiable instruments under the law merchant can only be secured by following explicitly the mode laid down by that law and embodied in the Bills of Exchange Act.[10] Any method of alienation other than the latter, apart from specific legislation dealing with a particular case,[11] will result in the transferee being in the position of a mere assignee of a chose in action, who will take the instrument "subject to the equities." The importance, therefore, of deciding whether or no an instrument be negotiable, and the correct mode of alienation, will be apparent, and we will now proceed to examine into the constituent parts of the modern trade instrument popularly and quite incorrectly styled a "lien-note."

It has often been pointed out, that the term "lien-note" is an unhappy one, as a person cannot confer upon another a lien on goods of which that other is the owner. The term, however, has passed into everyday use and is familiar to all engaged in commerce; so that throughout this article we shall refer to the instrument by its popular style.

A lien-note is given by the buyer (who is the maker of the note) to the seller (who is the payee of the note) on the sale of chattels, and ordinarily consists of a promissory note, which generally refers

[8] *Ibid.*, s. 21 (2), (3), (5).
[9] As to these, see 4 Can. Bar Rev. 440 to 456.
[10] R.S.C. 1906, c. 119.
[11] As to the position of a bank which acquires the assets, including negotiable instruments, of another bank by a general assignment under the provisions of the Bank Act without such instruments being individually indorsed, see *Bank of Montreal* v. *Irvine and Feinstein*, (Sask. C.A.), (1924), 2 W.W.R. 1047.

to the chattels which are the subject of the sale, for the whole or part of the price of which the note is given. This is followed by a number of provisions, chief amongst which is a statement that the title to, and the ownership and the right to the possession of the chattels sold are to remain in the seller and are not to pass until the amount of the note and of any renewals thereof have been paid in full. There are many other conditions, varying in different cases, such as the right of the seller to seize and sell the chattels at any time if default be made in payment of the note or any renewal of it or if the seller deem himself insecure (of which he is to be the sole judge), and to sue the buyer for any deficiency. Sometimes there are statements, that until the amount of the note and all renewals of it be paid the chattels are to be only on hire, and on any default all payments made by the buyer are to be treated as rent,[12] and a provision that the exercise of the power to seize and sell shall not relieve the buyer of his liability for any balance of the purchase price still unpaid after such sale.

The object which is sought to be attained by means of the instrument would appear to be to secure for the seller, under the thin cloak of what is at best a conditional agreement to sell, the privileges of a chattel mortgagee without the corresponding obligations. Chattel mortgages must be registered and periodically renewed, and must otherwise comply with certain statutory requirements: they also become of public record. In all the provinces[13] except four[14] lien-notes are required to be registered, the publicity and responsibility which affect chattel mortgages being avoided by the use of lien-notes in those provinces which do not require registration. The advantage to the buyer seems to consist in his being able conditionally to purchase chattels without paying for them in full, to avoid the publicity of a chattel mortgage, and to hold the chattels during the will of the seller.

We shall now consider whether or no such an instrument be negotiable within the law merchant; and for this purpose, we shall

[12] *E.g. Prescott v. Garland* (1897, C.A.), 34 N.B.R. 291.

[13] Alta.—R.S.A. 1922, c. 150; S.A. 1923, c. 5, s. 40; 1924, c. 10; 1925, c. 16.
B.C.—R.S.B.C. 1924, c. 44; S.B.C. 1924, c. 8.
N.B.—C.S.N.B. 1903, c. 143; S.N.B. 1909, c. 31; 1912, c. 30; 1925, c. 18.
Ont.—R.S.O. 1914, c. 136; S.O. 1916, c. 24, s. 23; 1925, c. 36.
N.W.T.—C.O.N.W.T. 1898, c. 44, and amendments.
Sask.—R.S.S. 1920, c. 201; S.S. 1921-22, c. 80; 1924-25, c. 48.
Yuk.—C.O.Y. 1914, c. 42.

[14] Man., N.S., P.E.I., and Que. Quære, whether in Nova Scotia registration of lien-notes may not be required by the wording of R.S.N.S. 1923, c. 201, s. 2 (a) and s. 3?

deal with the subject under three headings:—1. The promise to pay; 2. Provisions which will not affect negotiability; 3. Conditions which will destroy negotiability.

1. The Promise to Pay.

Generally speaking, the promise to pay at the head of a lien-note form is unexceptional, and complies with the definition of a promissory note contained in the Bills of Exchange Act,[15] namely, it is an unconditional[16] promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person, or to bearer. A mere statement of the transaction will not make such a promise to pay conditional.[17] Standing by itself, therefore, such a promise to pay as is indicated above is a negotiable instrument. But the very essence of a promissory note is, that the promise be unconditional; and if the instrument contain anything which makes, or which may tend to make, the money payable on a contingency, or uncertain as to amount, the instrument is not a promissory note.

Moreover, the instrument must be read as a whole, and not dealt with as divisible between the original parties on the one hand, and one or more of those parties and a third unknown party or parties on the other, or so that the instrument may be regarded as a promissory note between some of the parties but not as between others. It is also impossible to divorce the promise to pay from the remainder of the instrument, and treat the former (when so divorced) as a promissory note.[18] Furthermore, an indorsement of a promissory note must be an indorsement of the *entire* instrument, and not merely the benefit of a part of its provisions only.[19]

2. Provisions Which Will Not Affect Negotiability.

a. "Lien" blanks not filled in.

It sometimes happens that a lien-note form is used, and signed by the maker, but the blanks in the "lien" provisions are not filled in,

[15] Section 176. The provisions of the Act which relate to bills also apply with the necessary modifications, to promissory notes.

[16] The promise must be unconditional. An instrument which is expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect. R.S.C. 1906, c. 119, s. 18 (1).

[17] R.S.C. 1906, c. 119, s. 17, s-s. 3; *Barney* v. *Lauzon* (Sask., C.A.) (1923), 2 W.W.R. 19.

[18] In support of this, see the judgment of Beck, J., in *Thien* v. *Bank of B. N. A.* (1911), 19 W.L.R. 549, at 551, 552.

[19] R.S.C. 1906, c. 119, s. 62 (3); *Heilbert and others* v. *Nevill* (1869), 4 L.R. C.P. 354, at 358; Maclaren on Bills, 214, 215.

leaving complete only the promise to pay. Under these circumstances, the court must decide whether or no it were the intention of the parties that the lien provisions should be operative or disregarded; and such intention must be gathered from the face of the instrument itself. The signature of the purchaser at the bottom of the instrument is not alone sufficient to establish the intention of the parties to fill in the blanks and make the "lien" provisions operative; nor is it sufficient merely to show an intention to give lien-notes if a sale were effected. "There must be something on the face of the document itself which is inconsistent with the idea that the printed portion was not to be operative."[20] It has been held that if by the original agreement of the parties it was intended that the "lien" provisions were to be operative, the person in whose favour the note is made may fill in blanks inadvertently left in the note respecting a "lien" on the chattels.[21] If, after construing the instrument, as indicated above, the court decide that it was the intention of the parties that such provisions were to be operative, the court will interpret the instrument as though such blanks had been filled in,[22] and it will then depend upon the absence or presence of any of the provisions referred to under heading No. 3 of this article, *infra*, whether or no the instrument be a promissory note.

Where a lien-note form is used and the blanks are not filled in, and there is nothing on the face of the instrument to show that the intention of the parties was that the "lien" provisions were to be operative, or if the blank "lien" be filled in in such a manner as to make the "lien" provisions meaningless and therefore inoperative,[23] then if the promise to pay contained in the note, standing by itself, correspond to the definition of a promissory note[24] the court will construe the note as negotiable.[25]

b. Separate "lien" agreement.

If, on a sale of chattels, the buyer give to the seller a promissory note, complete in itself, and at the same time execute a separate and distinct agreement respecting the sale and containing "lien"

[20] See judgment of Lamont, J., in *Diebert* v. *McColl and Sage* (Sask., C.A.) (1923), 2 W.W.R. 1076, at 1078; 17 S.L.R. 290, at 292; (1923) 4 D.L.R. 795, at 797, and authorities there cited.

[21] *Bell* v. *Schultz et al.* (1912, Wetmore, C.J.), 5 S.L.R. 273.

[22] *Ibid., Diebert* v. *McColl, supra.*

[23] *Robert Bell Engine & Threshing Co. Ltd.* v. *Topolo* (1916, App.), 9 S.L.R. 384.

[24] R.S.C. 1906, c. 119, s. 176.

[25] *Edgar* v. *Bahrs* (1918, Sask., C.A.), 43 D.L.R. 372; *Robert Bell Engine & Threshing Co.* v. *Topolo, supra; Barney* v. *Lauzon, supra; Diebert* v. *McColl and Sage, supra.*

and other provisions in regard to the rights of the buyer over the chattels sold, then, even though the promissory note and the agreement be written on the same piece of paper, the court will construe the promise to pay as a promissory note and accordingly negotiable.[26] Particularly is this so when the "lien" agreement contains an express provision that the holder of the note shall be considered as a holder in due course and not be affected by any equities which may exist between the maker and the promissee.[27] But the note and the agreement must be separate and distinct documents, and the note must not refer to the "lien" agreement. It may be pointed out, perhaps, that such an arrangement as is indicated above too nearly approaches the thin borderline which separates an instrument which is negotiable from one which is not to be safe to resort to, except in circumstances which are identical with those outlined above.

c. Joint Makers.

A provision in the note that the holder may give time or make any other arrangements with one or more of joint debtors on a note without releasing the others will not invalidate an instrument as a promissory note.[28]

d. Instalment, acceleration, and judicial jurisdiction clauses.

A clause which provides for the payment of the amount of the note by instalments,[29] or for the acceleration of payment before the due date of the instrument upon the happening of certain specified events, which are certain to happen,[30] or as to the court in which any action upon the note may be taken,[31] will not make the instrument not negotiable. Such stipulations are construed merely as licenses in favour of the holder.

3. Conditions Which Will Destroy Negotiability.

a. Collateral Security.

Cases dealing with this matter are sometimes cited in support of or against the contention that a lien-note is a negotiable security. We have already pointed out, that if there be anything in the instrument which makes the promise to pay conditional, this will destroy

[26] *Killoran* v. *Monticello State Bank* (1921), 61 S.C.R. 528.
[27] *Ibid.*
[28] *Yates et al.* v. *Evans et al.* (1892), 61 L.J.Q.B. 446: *Kirkwood* v. *Carroll* (1903), 1 K.B. 531, over-ruling *Kirkwood* v. *Smith* (1896), 1 Q.B. 582.
[29] *Yates et al.* v. *Evans et al., supra; Dominion Bank* v. *Wiggins* (1894), 21 O.A.R. 275; *Kirkwood* v. *Carroll, supra.*
[30] *Ibid;* R.S.C. 1906, c. 119, s. 34(*b*).
[31] *Dominion Bank* v. *Wiggins, supra.*

the negotiability of the note. When, therefore, the note contains a statement, that it is given as collateral security, the effect is to subject the holder to the equities, and the note will not be negotiable;[32] as the promise in the note might at any time be defeated by the discharge of the principal security, and implied notice of this is given on the instrument itself. But if the note be unexceptional in itself, and merely contain a memorandum of pledge of collateral security to the note, it being clear from the instrument itself that payment of the amount of the note is not conditional upon the return of the pledged security, such a memorandum will not destroy the negotiability, as the pledge does not affect the unconditional nature of the promise to pay;[33] and it is so provided in the Bills of Exchange Act.[34] If, however, the payment of the money and the delivery up of the security be contemporaneous, then we "progress in a circle"; for, on the one hand, the maker of the note is not compelled to pay it until the security be delivered up and, on the other hand, the holder is not compelled to deliver up the security until the note be paid; so that the promise to pay becomes conditional upon the delivery up of the security and the note is, therefore, not a negotiable security.[35]

Moreover, the pledge of collateral security, with authority to sell, which will not affect the negotiability of a note and is contemplated by the Bills of Exchange Act[36] must have reference to property which the pledgor has an interest in, and does not mean property to which the pledgor has no title whatever and has no right to the possession of, except for such time as the other party sees fit to allow, as in the case of a lien-note.[37]

b. Hire Purchase.

A condition that until the amount of the note be paid the chattels, for the price or part of the price of which the note is given, shall be deemed to be on hire only, that upon any default the seller may repossess himself of the chattels, and that all payments made on account of the note are to be treated as rent, will destroy the nego-

[32] *Hall* v. *Merrick* (1877, App.), 40 U.C.Q.B. 566, and cases there cited; *Sutherland* v. *Patterson* (1884, App.), 4 O.R. 565; Maclaren, Bills, Notes and Cheques (1916 edn.), 54.

[33] R.S.C. 1906, c. 119, s. 176 (3); *Lecomte* v. *O'Grady* (1918), 57 S.C.R. 563.

[34] Section 176 (3).

[35] *Dominion Bank* v. *Wiggins, supra: Re Mitchell and Union Bank of Canada* (1923, C.A.), 22 O.W.R. 504; (1923) 4 D.L.R. 1132; 52 O.L.R. 523.

[36] Section 176 (3).

[37] See in this respect the judgment of Van Wart, J., in *Massey-Harris Co.* v. *Crandell* (1897), 33 C.L.J. 367.

tiability of the note,[38] as such a document would be tantamount to a hire-purchase agreement.

c. The right to seize and sell the chattels.

Most lien-notes contain a provision, empowering the seller to seize and sell the chattels, upon default being made in payment of the note or any renewal of it, or if the seller at any time deem himself to be insecure (of which he is to be the sole judge), and to sue the buyer for any deficiency. It is obvious that the effect of such a provision will be to destroy the negotiability of the instrument by making uncertain both the amount payable under the note and the time of payment,—two things concerning which there must be no uncertainty: otherwise the instrument is not a promissory note within the meaning of the Bills of Exchange Act,[39] and this is so even where the instrument also contains a provision that such seizure and sale of the chattels shall not relieve the promissor of his liability for any balance of the note remaining unpaid after the sale.[40]

Attempts which from time to time have been made to liken the powers of seizure and resale in a lien-note to the similar powers of a mortgagee cannot be supported; for the two transactions are entirely dissimilar, and give rise to completely different incidents. A mortgage of goods is a transfer of the general property in the goods from the mortgagor to the mortgagee to secure a debt; whereas it is expressly provided in a lien-note that the property in the goods shall remain in the vendor, and, therefore, the buyer has nothing to transfer to the seller, and the seller cannot have a lien on his own goods. It may also be noted, that the Sale of Goods Acts in all the Common Law provinces respectively retain, where not inconsistent with statute, the rules of the common law and the law merchant, and in particular those relating to principal and agent and the effect of fraud, misrepresentation, duress or coercion, mistake or other invalidating cause, and provide specifically that the provisions of such statutory enactments relating to contracts of sale shall not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.[41]

[38] *Prescott* v. *Garland* (1897, C.A.), 34 N.B.R. 291.
[39] Section 176 (1).
[40] *E.g., Prescott* v. *Garland, supra.*
[41] Alta.—R.S.A. 1922, c. 146, s. 58 (1), (3);
B.C.—R.S.B.C. 1924, c. 225, s. 71 (1), (3);
Man.—R.S.M. 1913, c. 174, s. 58 (1), (3);
N.B.—S.N.B. 1919, c. 4, s. 61 (1), (3);
N.S.—R.S.N.S. 1923, c. 206, s. 59 (1), (3);
N.W.T.—C.O.N.W.T. 1898, c. 39, s. 58 (1), (3);

Nor can the transaction be regarded as a pledge, seeing that the buyer does not, as in a pledge, give up possession, nor does the title remain in the buyer, because he has not got title, which the lien-note provides is to remain in the seller.

d. The reservation of the title in the Vendor.

The condition whereby the ownership of the chattels, and the title thereto, and the right to possession thereof are to remain in the vendor has been the main subject of consideration in the great majority of cases in which the question as to whether or no a lien-note were negotiable was considered. A great deal of legal discussion has taken place concerning the sale attributes of the transaction, although it is difficult to appreciate why this should have been so. One thing stands out pre-eminently above all others: the transaction evidenced by the lien-note is not a sale. To constitute a sale the property—*i.e.* the general property in the goods and not merely a special property in the goods—must be transferred from the seller to the buyer.[42] A sale is "a contract plus a conveyance;"[43] whereas in a lien-note transaction there is an express stipulation that the seller's title does not pass.

Upon a strict interpretation of the wording of the contract contained in an ordinary lien-note, the transaction does not even amount to an agreement for sale; for the seller does not agree to sell the goods which form the subject of the transaction. But the court will nevertheless draw the inference that although the seller does not in *strictissime jure* agree to sell the chattel, yet if the buyer duly pay the amount of the note and otherwise fulfil the agreements on his part contained in the lien-note, then the property of the seller in the chattel will pass to the buyer. In other words, the instrument is evidence of a conditional agreement to sell, giving rise merely to a right to the seller or to the buyer, as the case may be, against the other of them, to damages in case the contract be broken by the latter.[44] This being so, it will be readily seen that the instrument which is styled a lien-note cannot by its very nature be a negotiable instrument, transferable free from the equities by delivery, or by indorsement and delivery, as the case may be; but it is a chose in action,

Ont.—S.O. 1920, c. 40, s. 58 (1), (3);
P.E.I.—S.P.E.I. 1919, c. 11, s. 63 (1), (3);
Sask.—R.S.S. 1920, c. 197, s. 57 (1), (3);
Yukon—C.O.Y. 1914, c. 78, s. 58 (1), (3).

[42] See the several Sale of Goods Acts, *supra;* Chalmers, Sale of Goods, 8th edn. (1920), 2 *et seq.*

[43] Chalmers: Sale of Goods, 8th edn. (1920), at 8. See also Falconbridge, Law of Sale of Goods (1921), 30, 31.

[44] *Ibid.*

which must be transferred by assignment, and the assignee takes subject to the equities. And these rights may consist in many things. For example, the buyer may show that the lien-note does not contain the whole of the contract, and may prove that the sale was subject to a condition to be fulfilled by the seller, on breach of which the buyer may treat the sale as repudiated, or to a warranty, the breach of which may give rise to a claim for damages.[45]

Furthermore, in the case of an agreement to sell, unless the circumstances of the contract be such as to show a different intention, there is an implied condition on the part of the seller, that he will have a right to sell the goods at the time when the property is to pass, in addition to the implied warranty that the goods are free from any charge or incumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.[46] It often happens that a man purports to sell goods to which he can give no title, or which he has, unknown to the buyer, charged or encumbered. In the former case, the buyer may repudiate the contract and sue for a return of any sum he may have paid on account of the purchase price as on a consideration which has failed[47]; while the latter case will give rise to a claim for damages. Anyone, therefore, who acquires a lien-note takes it with implied notice of these equities from the very nature of the instrument which evidences the contract or part of it.

Even assuming that the agreement for sale were not merely a conditional one but absolute,[48] it is difficult to see how this would alter the nature of the promise to pay, which might be defeated for the reasons outlined above.

It follows from the foregoing, therefore, that because the promise to pay contained in an ordinary lien-note may be either wholly or partly defeated, it is conditional, and the amount payable under the

[45] *McKenzie* v. *McMullen* (1906, Perdue, J.), 16 M.R. 11.

[46] *Dominion Bank* v. *Wiggins, supra; Prescott* v. *Garland, supra;*
Alta.—R.S.A. 1922, c. 146, s. 14;
B.C.—R.S.B.C. 1924, c. 225, s. 20;
Man.—R.S.M. 1913, c. 174, s. 14;
N.B.—S.N.B. 1919, c. 4, s. 12;
N.S.—R.S.N.S. 1923, c. 206, s. 14;
N.W.T.—C.O.N.W.T. 1898, c. 39, s. 14;
Ont.—S.O. 1920, c. 40, s. 14;
P.E.I.—S.P.E.I. 1919, c. 11, s. 19;
Sask.—R.S.S. 1920, c. 20, s. 14;
Yukon—C.O.Y. 1914, c. 78, s. 14.

[47] Bullen & Leake's Precedents and Pleadings, 8th edn. (1924), 269, 270, n. (i), 618, 619, n. (b), and cases there cited.

[48] See *International Harvester Co. of Canada* v. *Grant* (1907, P.E.I. App.) 4 E.L.R. 1.

instrument is also uncertain; and as either of these reasons is sufficient to destroy the negotiability of an instrument, the ordinary lien-note is not a negotiable instrument within the meaning of the law merchant or the Bills of Exchange Act.

In this article we believe we have reviewed all the Canadian cases in which the subject of the negotiability of a lien-note has been raised,[49] and the following is a summary of the effect of those cases:—

1. In three cases[50] it was held that a lien-note was negotiable. Of these, one has been virtually overruled[51]; in another[52] the question as to the negotiability of the note was not raised, the court and counsel apparently assuming that the note was negotiable and placing their attention upon the effect of the re-taking and consequent sale on the question of the failure of consideration for the giving of the note,—the court holding that the failure of consideration could not be supported; and the other[53] still remains good in the province in which it was decided by its appellate court; (53*a*) *i.e.*, in P.E.I.

2. One case,[54] which is sometimes cited in respect to lien-notes, merely decided that the person in whose favour a lien-note is made may fill in blanks inadvertently left in the lien-note respecting a lien on the goods, if by the original agreement of the parties it was intended to confer such a lien.

3. Another decision,[55] referred to at times, is merely an illustration of a note containing a pledge of collateral security under sec. 176 (3) of the Bills of Exchange Act.

4. In respect to four other cases, whilst the promissory note part was complete, the "lien" provisions in one case[56] were filled in in a manner which made them meaningless, and, therefore, inoperative, and in each of the remaining three cases[57] the blanks were not filled in at all, leaving operative in each of the four cases only the promissory note, which in itself complied with the requirements of the Bills of Exchange Act and was therefore treated as negotiable.

[49] For a detailed discussion of certain of the cases reviewed in this article, see the annotation of John D. Falconbridge, K.C., in (1927) 1 D.L.R. 1 *et seq.*

[50] *Mercants Bank* v. *Dunlop* (1894, Man., Killam, J.) 9 M.R. 623; *John Watson Manufacturing Company* v. *Sample* (1899, Man., App.) 12 M.R. 343; *International Harvester Co. of Canada* v. *Grant, supra.*

[51] *Merchants Bank* v. *Dunlop, supra;* by *Bank of Hamilton* v. *Gillies,* the same v. *Murray* (1899, Man. App.) 12 M.R. 495.

[52] *John Watson Manufacturing Co.* v. *Sample, supra.*

[53] *International Harvester Co. of Canada* v. *Grant, supra.*

[54] *Bell* v. *Schultze et al.* (1912, Wetmore, C.J.) 5 S.L.R. 273.

[55] *Lecomte* v. *O'Grady, supra.*

[56] *Robert Bell Engine and Threshing Co.* v. *Topolo, supra.*

[57] *Edgar* v. *Bahrs and Chapman* (1918, Sask C.A.) 43 D.L.R. 372; *Barney* v. *Lauzon, supra; Diebert* v. *McColl and Sage, supra.*

5. Two decisions[58] have held that in the case of an assignment of a note, which assignment was written on a separate piece of paper and not attached to the bill, such assignment did not operate as an "indorsement" of the note within the meaning of the Bills of Exchange Act or the law merchant.[59]

6. Where there were two separate and distinct documents, one being a perfect promissory note, and the other a "lien" agreement, which contained (amongst other things) a statement that the holder of the note should be considered as a holder in due course and not be affected by any equities existing between the maker and the payee, our Supreme Court has held[60] that although the note and the lien agreement were written on the same sheet of paper, the lien agreement was collateral to and no part of the note, and the holder was not affected by notice of the agreement.

7. In each of the remaining twenty-one cases in which the question of the negotiability of lien-notes has been raised, the instrument has been pronounced either by the trial judge from whose decision no appeal was taken,[61] or if there were an appeal, then by both the trial judge and the appellate court,[62] or by the appellate court reversing the trial judge or lower appellate tribunal,[63] not to be negotiable.

[58] *Hamilton* v. *Bjarnson* (1896, Wetmore, J.) 3 Terr. L.R. 398; *Barney* v. *Lauzon, supra.*

[59] An indorsement, in order to operate as a negotiation, must be written on the bill itself and be signed by the indorser; but an indorsement written on an "allonge" is deemed to be written on the bill itself. R.S.C. 1906, c. 119, s. 62. An allonge is a slip of paper attached to a bill or note on which indorsements are made when the back of the instrument is not sufficient to carry all the indorsements.

[60] *Killoran* v. *Monticello State Bank, supra.*

[61] Alta.—*Frank* v. *Gazelle Live Stock Co.* (1906, Harvey, J.) 5 W.L.R. 573; *George* v. *Kidd* (1909, Beck, J.) 2 Alta. L.R. 386; *Thien* v. *Bank of B.N.A.* (1911, Beck, J.), *supra; International Harvester Co. of Canada* v. *Maxwell* (1914, Walsh, J.) 27 W.L.R. 41, 15 D.L.R. 654.
Man.—*Keddy* v. *Morden* (1905, Richards, J.) 42 C.L.J. 124; *Greenwood* v. *Kirby* (1914, Curran, J.) 24 M.R. 532, 6 W.W.R. 1176, 20 D.L.R. 725.
N.B.—*Massey-Harris Co.* v. *Crandell* (1897, Van Wart, J.) 33 C.L.J. 367.
Ont.—*Molson's Bank* v. *Howard* (1912, Widdifield, C.C.J.) 3 O.W.N. 661; 21 O.W.R. 278; 5 D.L.R. 875.
Que.—*Dorval* v. *Carrier* (1916, McCorkill, J.) 51 Que. S.C. 343.
Sask.—*New Hamburg Manufacturing Co.* v. *Weisbrod* (Newlands, J.), 1906, 4 W.L.R. 125.

[62] Alta.—*Douglas Bros. Ltd.* v. *Auten & Schultze* (1913, C.A.) 6 Alta. L.R. 75, 24 W.L.R. 676, 4 W.W.R. 989, 12 D.L.R. 196.
Imperial Bank of Canada v. *Bromish* (1895, Rouleau, J.) 16 C.L.T. Occ. Notes, 21.

[63] Alta.—*Canadian Bank of Commerce* v. *Johnson* (C.A.) (1925), 3 W.W.R. 328; 21 Alta. L.R. 504; (1925) 4 D.L.R. 511.
B.C.—*Mellis* v. *Blair* (1916, C.A.) 22 B.C.R. 450, Macdonald, C.J.A., at 453.

As the law merchant is of perpetual growth and will accommodate itself to the exigencies of expanding trade and commerce, it may be that in the course of time the lien-note will by the custom of merchants be treated as negotiable; but, to use the words of a learned judge in a case cited above,[64] " it is not yet."

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PARIS DIVORCES.—So thriving has the divorce business become in Paris that to-day one can see in certain quarters of the city such street signs as "Divorce in two weeks—strictly confidential." Many Americans are so naïve about legal matters that they follow where these signs lead and become the dupes of shyster agents or *entrepreneurs,* men both of French and American nationality who have no standing in the French courts but who succeed in charging their clients huge sums for worthless paper divorces. On the other hand, those Americans who are wise enough to put their cases in the hands of reputable lawyers to secure divorces which comply with the French law; but even so their attorneys cannot assure them that their decrees will be valid for all time in America.—D. D. Bromley in *Harper's Magazine.*

Man.—*Bank of Hamilton* v. *Gillies;* the same v. *Murray* (1899, C.A.) 12 M.R. 495; *Metcalf* v. *Adair and McNicol* (C.A.) (1927), 1 W. W. R. 331.

N.B.—*Prescott* v. *Garland* (1897, C.A.) 34 N.B.R. 291.

Ont.—*Dominion Bank* v. *Wiggins* (1894, Maclennan, J.A.) 21 O.A.R. 275; *Re Mitchell and Union Bank of Canada* (1923, C.A.) 22 O.W.R. 504; (1923) 4 D.L.R. 1132; 52 O.L.R. 523.

Sask.—*Gardiner* v. *Muir* (C.A.) (1917) 3 W.W.R. 1080.

[64] Beck, J., in *Thien* v. *Bank of B.N.A., supra,* at p. 552.