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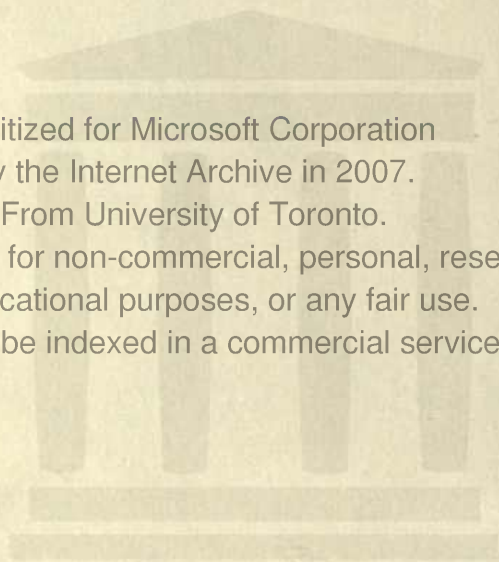
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A TREATISE

ON THE

OFFICE

AND PRACTICE

OF

A NOTARY OF ENGLAND,

AS CONNECTED WITH MERCANTILE INSTRUMENTS,

AND ON

THE LAW MERCHANT, AND STATUTES,

RELATIVE TO THE PRESENTMENT, ACCEPTANCE, AND DISHONOUR OF

BILLS OF EXCHANGE, &c.

AND TO

VARIOUS DOCUMENTS RELATING TO SHIPPING:

WITH

A FULL COLLECTION OF PRECEDENTS,

THE SECOND EDITION,

WITH ALTERATIONS AND ADDITIONS,

BY

RICHARD BROOKE, ESQ. F.S.A.

A COMMISSIONER FOR BAIL OF THE HIGH COURT OF ADMIRALTY OF ENGLAND,
AND LATELY ONE OF THE COMMISSIONERS OF BANKRUPT
FOR THE DISTRICT OF LIVERPOOL.

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111

TO
THE RIGHT WORSHIPFUL
JOHN NICHOLL,*
DOCTOR OF LAWS, COMMISSARY,
OR
MASTER OF THE COURT OF FACULTIES,
BY VIRTUE OF WHICH OFFICE, HE HAS THE SUPERINTENDENCE OVER THE
ADMISSION, AND PRACTICE OF THE NOTARIES OF ENGLAND,
AND IS
THE NATURAL PROTECTOR OF THEIR RIGHTS AND PRIVILEGES;

This Treatise

IS, BY HIS PERMISSION, DEDICATED, AS A TRIBUTE OF
RESPECT AND ADMIRATION,
FOR HIS TALENTS IN DISCHARGING HIS OFFICIAL DUTIES,
AND FOR THE COURTESY AND KINDNESS OF MANNER
REPEATEDLY EXPERIENCED FROM HIM BY

THE AUTHOR.

* This Dedication was written towards the close of 1838, whilst the first edition was in the press. Dr. Nicholl resigned the office of Master of the Faculties on the 8th of November, 1841.

ERRATA.

PAGE

111. Note (1), insert "6 Adol. and Ell." instead of "7."
293. In the Form of a Protest of a Bill for Better Security, instead of "protest against the drawer," read "protest against the drawer and acceptor."
576. In the Index, under the head "Court of Faculties," insert "Names of persons who have held the office of Master of the Faculties...9."
598. In the Index, under the head "Scotland," add the words "Execution of Deeds of Property in Scotland by Married Women...259."

OBSERVATIONS

ON THE

SECOND EDITION.

THE want which was formerly experienced, of a Treatise on the Office of a Notary of England, more than any peculiar merit to be found in the Author's publication on the subject, has probably been the reason, why the first edition has been so kindly and favourably received. It is now a considerable time since it was first ascertained, that there was a demand for a second Edition of this Treatise, but a multiplicity of other engagements has caused some delay in sending it to the press. The last Act of Parliament relating to Notaries, various recent Decisions of the Courts, and several additional Precedents, will be found in this edition, which is now submitted to the public, in the hope of its being received with the same kindness and indulgence, as were evinced towards the first.

RICHARD BROOKE.

1st November, 1847.

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PREFACE.

THE prodigious extent, of the commerce of the United Kingdom, and its rapid increase since the commencement of the present century, are owing, under Divine Providence, principally to the enterprise, integrity, and skill of British merchants; and from the variety and extensive nature of their transactions, it is obvious that questions must often come before the English Courts of Law, connected with the usages which they have adopted for the well conducting of their trade and mercantile business, and from that circumstance recognised in our Courts, by the designation of the Law Merchant.

The rules to be observed, respecting the presentment and dishonour of bills of exchange, and the general practice of a notary of England, both as connected with those, and other instruments of a mercantile nature, are in accordance with, and are governed by usage and by the Law Merchant, except in one or two rare instances, in which there have been legislative enactments; yet whenever any mercantile question arises in

an English Court of Law, in which it becomes necessary to discuss the notarial practice, the information which could easily be afforded by experienced and intelligent notaries, and perhaps by bankers or merchants, is too frequently sought for in the works, often very defective, of foreign authors: a circumstance which would excite surprise, if it were not for the fact, that at the period when the first edition of this treatise was written (in 1838) there was not any work known and read, if such ever existed, written exclusively upon the office and practice of an English Notary; although one or two authors, occasionally cited, such as Beawes, as long ago as 1750, and Montefiore, in 1801, published works, in which the notarial practice and precedents were alluded to, or introduced to a certain extent, but merely as blended with other subjects.

The usages and practice of the notaries of England may, in some measure, be considered as traditional, because they are not defined by published Rules of the Court of Faculties, or by Statute; but that is only true to a certain extent, for they are not only transmitted by oral communication from notary to apprentice, and from senior to junior notary, but the Notarial Register Books, and the Protest and Noting Books, which

are generally preserved with care, and often handed down from one generation of notaries to another, contain valuable information, respecting the forms used in times past, and the practice of those, who have since been removed from active pursuits, or from existence, by time or death; and which may, possibly be one principal cause of the uniformity in the practice of the notaries, which is in general so observable throughout England.

I cannot pretend to present to the public, a treatise free from faults; but, at least, I may be allowed to hope, that they will be treated with indulgence, when it is borne in mind, that, in writing it, much must necessarily depend upon memory, personal observation, and mercantile usages; I have however, endeavoured to give faithfully, the result of my own experience, combined with the best information which I could obtain from others.

In endeavouring to make this publication serviceable to the profession, I have at the same time been anxious to render it useful to bankers and merchants; and the chapters relating to Bills of Exchange, Promissory Notes, Ship and other Protests, Charterparties, Bottomry Bonds, Powers of Attorney,

Declarations substituted for Affidavits, Commissions from Foreign Courts of Judicature, and to various instruments connected with Shipping and Mercantile Matters, are written with the intention of being of practical use to them, and of easy reference.

I beg leave respectfully to tender my thanks to those professional and mercantile friends, who have kindly afforded me information upon matters of usage, the result of their own observations; and, in justice to the memory of my deceased friend Fletcher Raincock, Esq.⁽¹⁾, the senior of the Northern Bar, a gentleman whose extensive and combined knowledge, as a lawyer, a scholar, and an antiquary, has been rarely equalled, and perhaps never excelled, I feel pleasure in acknowledging the receipt of several important suggestions from him, whilst the work was in progress, as well as for access, both on that and on other occasions, to various rare and curious books in his extensive and valuable library.

RICHARD BROOKE.

(1) Mr. RAINCOCK died on the 17th of August, 1840, after the first edition had been published.

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A T R E A T I S E
ON
THE OFFICE
AND PRACTICE
OF
A NOTARY OF ENGLAND,
AS CONNECTED WITH MERCANTILE INSTRUMENTS.

CHAP. I.

ANTIQUITY OF THE OFFICE OF NOTARY—APPOINTMENT, FUNCTIONS, AND POWERS OF A NOTARY OF ENGLAND.

NOTARIES appear to have existed as public officers, from a period of remote antiquity, and to have been anciently scribes, who took notes, or minutes, and made drafts of writings and other instruments, public and private.⁽¹⁾ Notaries, and also other officers whose duties were of a nature somewhat similar, and who were called *Tabelliones*, were employed during the period of the Roman empire,⁽²⁾ and the difference between the functions

Antiquity of
the Office of
Notary.

(1) Burn's Ecclesiastical Law, vol. 3, title, Notary Public.

(2) Corpus Juris Civilis, in Novellis, title 23. Du Cange, Glossarium ad Scriptores mediæ et infimæ Latinitatis, title, Notarii, and Tabellio. Du Cange, Supplement, same titles.

of the two classes of officers, seems to have been, that the *Notarii* procured the information and materials, and drew up rough drafts or notes, of the writings or instruments, which were transcribed and authenticated by the *Tabelliones*.

Both of those appellations were used during the middle ages ;⁽¹⁾ but it does not appear very clearly whether the duties of the two officers were then kept distinct, or whether they were blended together ; and the appellations notary and tabellion, in comparatively modern times, were applied without distinction to the same officer ; the latter designation, however, is at present nearly gone into disuse.

Notaries were officers known in England before the Norman Conquest. In the reign of Edward the Confessor, whilst Reinbald was Chancellor, some manors and lands were granted by the king to the Abbot of Westminster by a charter, of which the concluding clause shows it to have been attested or subscribed by a Notary. “ Swardus, notarius, ad vicem Rein-

(1) See Canons of the General Council of London, Otho Legate, temp. Henry III, 1237, Matthew Paris, *Historia Major*, p. 454. Gibson's *Codex Juris Ecclesiastici Anglicani*, vol. 2, p. 1013. *Vocabularius, Juris Utriusque*, printed at Spire, in 1477, “ *Tabellarius sive Tabellio est publica persona*,” &c. &c. 2 *Rotuli Parliamentorum* 21st Edward III, 1347, p. 172. Statute 27th Edward III, st. 1, c. 1 ; and Statute 16th Richard II, c. 5, sec. 2. Spelman's *Glossarium Archæologicum*, title, “ *Notarius*.”

baldi regiæ dignitatis cancellarii, hanc chartam scripsi et subscripsi," &c.⁽¹⁾

There is reason to think that the office afterwards fell for a time into disuse, at least in some districts, because it appears that in the year 1237 there were parts of England where they did not then exist;⁽²⁾ and it is stated that there were not any tabellions here, in the 22nd year of the reign of Henry the 3rd (1237),⁽³⁾ or at least that they were very rare; but, however that may be, there cannot be any doubt that notaries existed, and were commonly employed in England, in 1347, as they are more than

(1) 4 Institutes c. 8, p. 78. See also the authorities referred to in Spelman's Glossarium Archæologicum, title, "Notarius," as to Notaries being known in England, as early as in the reign of Edward the Confessor, "Reperio autem Notarios nominari in Chartis Edw. Confess." &c.

(2) "Quanto Scripturarum, quæ sigillo authentico muniuntur est usus magis necessarius, in partibus Angliæ, ubi publici Notarii non existunt," &c. &c.—Canons of Gen. Council of London, Otho Legate, temp. Henry III. 1237, Matthew Paris, Historia Major, 454. Gibson's Codex Juris Ecclesiastici Anglicani, vol. 2, p. 1014.

(3) "Quoniam Tabellionum usus in Regno Angliæ non habetur, A.D. 1237. propter quod magis ad Sigilla Authentica credi est necesse, ut 22nd Henry
eorum copia facilius habeatur, statuimus ut Sigillum habeant non III.
solum Archiepiscopi, et Episcopi, sed etiam eorum officiales."—Gibson's Codex Juris Ecclesiastici Anglicani, vol. 2, p. 1013; and Canons of Gen. Council of London, Otho Legate, temp. Henry III, 1237, Matthew Paris, Historia Major, 454.

once named⁽¹⁾ in the petition, in Norman French, of the Commons, of the 21st year of the reign of Edward the 3rd; "et sur ce furent assignez per my Engleterre certaines Gentz de prendre Procuratours des Cardinalx, & d' autres Aliens Subdelegatz, & lour Notairs." And again, "Et puis en son prochein Parlement apres y tenuz, feust assentust p ñre dit Seigñr le Roi & sa dite Communaltee, Qe si nul, de quele condition q'il feust, Provisour, Procuratour, Notaire, Promotour, ou autre quecumq̃, feist nulle poursuite en la Court de Rome, ou aillours en Court Cristiene, a deffaire les Juggementz renduz en la Court ñre Seigñr le Roi, q'il feust pris p son corps & mesnez en Respons," &c. &c. And also, "Et outre ordener p ses Sages Justices, Sergeantz, & autres, tiel Punissement, autressibien devers, tiels Provisours, Aliens, lour Executours, Notairs, & autres lour Promotours quicumqes, come devers les Impugnours des Juggementz susditz, come desus est dit, ou plus durement."⁽²⁾

They are also named in the Act of Parliament usually termed the Statute of Provisors, of the 27th of Edward the 3rd, st. 1, c. 1, passed in 1353, and in the Act of the 16th of Richard

(1) 2 Rotuli Parliamentorum 21st Edward III, p. 172, "Notairs," "Notaire," and "Notairs."

(2) 2 Rot. Parl. 21st Edward III, p. 172. There are not any Statutes of that session printed in the Statute Book.

the 2nd, c. 5, sec. 2, in 1392-3, commonly called the Statute of Præmunire.

At a very early period, notaries were employed here, to attest or authenticate instruments of more than usual moment or solemnity, of which an instance is given in the Parliamentary Rolls for 1421, the 9th of Henry the 5th, where two notaries are mentioned as attesting an instrument of importance relating to the affairs of Lucie, Countess of Kent.

“Ensealee desoutz le seal d’armes du dite Countesse & desoutz le tesmoignance de deux notaries mettantz lour signes a mesme l’escript de le quele les paroles cy ensuent,” &c. &c.

And again, “In quorum omnium & singulorum testimonium atque fidem presentes literas seu presens publicum Instrumentum per Magistros Ricardum Petworth & Willielmum Fremon, Notarios Publicos feci subscribi ac suis signis consuetis signari nec non sigillum meum apposui eidem. Data & acta sunt hec, in Hospitio meo infra Monasterium sive Abbatium Monialium sancte Clare, extra muros London, die duodecimo mensis Julii anno domini Millesimo CCCC vicesimo primo,” &c. &c.⁽¹⁾

In 1430, in the 9th year of the reign of King Henry the 6th, one of those wicked scenes was

(1) 4 Rot. Parl. 9th Henry V, p. 144 & 145. Those two persons (Petworth and Fremon) are also afterwards mentioned there (p. 145) more than once, as being Notaries.

exhibited in Smithfield, which create astonishment at the folly and impiety of man ; a trial by battle, or single combat, in the presence of the king, in which one of the parties who fought was John Upton, a notary of Feversham. Such a combat was a species of presumptuous appeal to Providence, under an expectation, that Heaven would unquestionably give the victory to the innocent party.

The following is a short account given by Stow of the combat :—

“ The foure and twentieth of January a battel was done in Smithfield, within the lists, before the king, betweene two men of Feversham, in Kent, John Upton, notary, appellant, and John Downe, gentleman, defendant ; John Upton put upon John Downe, that he and his compiers should imagine the king's death, the day of his coronation : when they had long fought the king tooke up the matter and forgave both parties.”⁽¹⁾

In the enumeration of the army of King Edward the 4th, prepared for the invasion of France in 1475, a doctor of laws and public notaries are mentioned, as engaged to accompany the troops. It is reasonable to conclude that they were intended to be employed in drawing up or authenticating treaties. “*Magistro Johanni Coke, Doctori Legum pro vadiis suis ad 2s per*

(1) Stow's Annals, p. 371.

diem, et pro vadiis cujusdam Notarii Publici ad 12d per diem.”⁽¹⁾

Although it does not form any part of the plan of this treatise to describe the duties or functions of foreign notaries, yet it may not be altogether out of place here, to observe, that in Hallam’s admirable and learned work on the State of Europe during the middle ages,⁽²⁾ it is mentioned, on the authority of Galvaneus Flamma, a Milanese writer, that in 1288 there were 600 notaries in Milan;⁽³⁾ a number almost incredible, if the duties and functions of a Milanese notary of that period were at all similar to those of a modern English notary. There seems, however, every reason to believe, that in the designation of notaries, Flamma must have meant to include advocates, and all other classes of legal practitioners.

(1) 11 Rymer’s *Foedera*, 848. The emoluments of those officers for such a service appear to be very inconsiderable, even after allowing for the distant period when the circumstance occurred ; but we learn, on the same authority, that Master Jacob Fryse, Physician of the King, was engaged at 2s, and two assistants at 6d per day ; and that Master William Hobbys, Physician and Surgeon of the King, was engaged at 18d per day, and one assistant Surgeon at 6d per day, for the same expedition against France.

(2) Vol. 1, p. 271.

(3) He also mentions, on the same authority, that there were 200 Physicians, 80 Schoolmasters, and 50 Transcribers of Manuscripts there : and in another place he mentions that in the same year (about

That notaries were employed in foreign countries, to protest or record dissents in respect of public or state measures, is proved by the well-known historical fact of Francis the 1st, of France, in 1526, having made a protest before notaries, at Madrid, declaring that his consent to the treaty of Madrid, should be considered as an involuntary deed, and deemed null and void, as having been obtained from him during his captivity, consequent upon the battle of Pavia.⁽¹⁾

The law books give to a notary several names or appellations, as Actuarius, Registrarius, Scriptorius, and the like, all which words are put to signify one and the same person. But in England the word registrarius is confined to the officer of some court, who has the custody of the records and archives of such court.⁽²⁾

As the object which is wished to be compassed by this treatise, is to give an explanation, of those branches of the practice, and duties, of a notary of England, which relate to such transactions, and instruments, as are of a mercantile nature only,

1302) in which the Poet Dante was banished from Florence, a Notary of the name of Petracco was involved in a similar banishment. Retired to Arrezzo, he there became the father of the celebrated Francis Petrarch.—*Hallam's View of the State of Europe during the Middle Ages*, vol. 2, p. 599.

(1) Robertson's Charles V, vol. 1, p. 388.

(2) Burn's Ecclesiastical Law, vol. 3, title, Notary Public.

it forms no part of the plan, to detail any powers, or functions, which he either was formerly, or is now, empowered to perform, connected with any ecclesiastical or other court.

In England, a notary is a public officer of the civil and canon law, who derives his faculty, or authority to practise, from the Court of Faculties, of the Archbishop of Canterbury, in London, the chief officer of which is the Master of the Faculties, to whom applications are made, for the admission, or the removal under any special circumstances, of notaries: in the Institutes of the laws of England, the Court of Faculties is stated, to be “a court, although it holdeth no plea of controversie (like the Court of Audience next before). It belongeth to the archbishop, and his officer is called *Magister ad Facultates*.”⁽¹⁾

The following are the names of the various persons who have successively held the office of Master of the Faculties for many years back :

Sir CHARLES CÆSAR, Knt. D.C.L.
 Sir GEORGE NEWMAN, Knt. D.C.L.
 Sir CHARLES HEDGES, Knt. D.C.L.
 JAMES JOHNSON, D.C.L.
 RICHARD CHICHELEY, D.C.L.
 JOHN ANDREW, D.C.L.
 FRANCIS TOPHAM, D.C.L.
 SAMUEL HALLIFAX, D.C.L.
 Sir WM. SCOTT, afterwards Lord STOWELL, D.C.L.
 The Right Hon. JOHN NICHOLL, D.C.L.
 Sir JOHN DODSON, Knt. D.C.L.⁽²⁾

(1) 4 Institutes, c. 74, p. 337.

(2) Sir John Dodson is the present Master of the Faculties, having been appointed to the office on the 8th of November, 1841.

Functions and
Powers.

Amongst legal officers, a notary takes precedence, after a solicitor or an attorney; it does not appear that a notary was ever privileged, from arrest on mesne process⁽¹⁾, and unless he is admitted as an attorney or a solicitor, he cannot practise in any common law or equity court in England; but if in other respects, he is competent, by legal knowledge and experience, he is authorised to draw or prepare deeds, relating to real or personal property, and the act 44th George 3rd, c. 98, s. 14⁽²⁾, which imposes a penalty of £50 for each offence, upon any unqualified person drawing or preparing conveyances or deeds, contains an exception in favour of sergeants-at-law, barristers, solicitors, attornies, notaries, &c. &c. having obtained regular certificates⁽³⁾. In this, and in most other countries in Europe, notaries

(1) It appears to be an accidental omission in the Act 6th Geo. IV, c. 50, sec. 2, that it does not particularly mention Notaries, as exempt from serving on juries and inquests; probably they may be considered as coming within the exemption as officers of a Court of Ecclesiastical or Admiralty Jurisdiction, "actually exercising the duties of their respective offices."

(2) This Act is not repealed by the Statute 6th and 7th Victoria, c. 73; see 1st schedule, 2nd part, which contains a description of the Acts, and parts of Acts, *not* repealed by that Statute.

(3) Shakespeare had in view, one of the usual functions in his time of a Notary, when writing the following passage; "Go with me to a Notary, seal me there your single bond."—*Merchant of Venice*, act 1st.

have been, from a remote period of time, also frequently employed in preparing wills and codicils. Notaries, in England, are also employed in noting and protesting bills of exchange, preparing acts of honour, or as they are frequently called, acts for honour, authenticating and certifying examined copies of documents, and preparing and attesting various instruments going abroad, and granting and solemnizing all other notarial acts. It was once observed by the late much lamented and talented Lord Chief Justice Tenterden, that "there is another part of the duty of notaries, and that is, to receive the affidavits of mariners and masters of ships, and then to draw up their protests, which is a matter which requires care, attention, and diligence. Besides that, many documents pass before notaries, under their notarial seal, which gives effect to them, and renders them evidence in foreign courts."⁽¹⁾

The expression notarial act, is one which has a technical meaning, and it seems generally considered, to signify the act of authenticating or certifying some document or circumstance, by a written instrument, under the signature and official seal of a notary; or of authenticating or certifying as a notary, some fact or circumstance, by a written instrument, under his signature only. Whether that is, or is not the correct definition,

(1) *The King v. The Scriveners' Company*, 10 Barn. and Cress. p. 518.

of the solemnity called a notarial act, it is clear that the Acts of Parliament 41st George 3rd, c. 79, sec. 11, and 6th and 7th Victoria, c. 90, sec. 10, interdict unqualified persons from performing or solemnizing any notarial ceremony or act whatever, whether under seal or not, for they extend in the fullest manner to prohibit "any act, matter, or thing whatsoever, of or in anywise appertaining or belonging to the office, function, or practice of a public notary," being done by any unqualified person, under a penalty of £50 for each offence.

Under those clauses, if an unqualified person, pretending to act in the capacity of a notary, either in his own name or in the name of any other person, for emolument, were to take and authenticate any notarial declaration, or protest respecting the voyage of any vessel, since the act for the abolition of unnecessary oaths⁽¹⁾, or to note a bill in any place where there was a practising notary, or to sign, in the notarial capacity one of the certificates subjoined to a power of attorney for transferring American stock, which certificate is frequently signed by two notaries, or to attest a proof of debt or power of attorney to vote in choice of assignees under any fiat in bankruptcy, within the statute 6th and 7th William 4th, c. 14, secs. 56 and 72, and many other cases might be put, though the

(1) 5th and 6th William IV, c. 62, sec. 15—Vide Appendix.

above may not necessarily require a seal, yet there can be no doubt that the unqualified person so acting, would be liable to the penalties imposed by the Acts of the 41st George 3rd, c. 79, sec. 11, and 6th and 7th Victoria, c. 90, sec. 10; and a notary, permitting the use of his name by any such person, would be liable to be struck off the Roll of Faculties under the 10th section of the former act.

The English notaries in general appear (as far back as the memory of man extends) to have always considered themselves entitled to administer oaths, affidavits, and affirmations, as within the powers and functions of a notary, and Lord Chief Justice Tenterden, in the *King v. the Scriveners' Company*⁽¹⁾, stated that it was part of their duty to receive affidavits of mariners and masters of ships, and then to draw up their protests, and the Act of 6th George 4th, c. 87, sec. 20⁽²⁾, may be referred to as countenancing, in some degree, the idea that they are authorised to administer oaths; yet, at one time, a different opinion seems to have prevailed amongst the London notaries. Perhaps the doubts of the latter arose from not taking into their consideration

(1) 10 Barn. and Cress. p. 518.

(2) Vide *Infra*, c. 1, and Appendix. The 15 and 18 secs. of the Act 5th and 6th William 4th, c. 62, (*vide* Appendix,) also are so worded as to seem by implication to recognise the authority of a Notary to administer oaths.

that affidavits sworn before a notary, are not intended to be used for the purpose of commencing or forwarding any suit or legal proceedings, in any English court of common law or equity, for, of course, in that case they would require to be sworn to before an officer or commissioner specially appointed by that court, but to be used in foreign countries; a notary being, to a certain extent, not merely considered as an officer of the country where he is admitted, but as an accredited officer in other countries, affidavits sworn before, and instruments authenticated by him, are respected, and received in evidence in foreign courts.

If such doubts ever had any good foundation, all difficulty has been removed as to a public notary taking the declarations substituted for oaths, by the act for the abolition of unnecessary oaths, passed in 1835⁽¹⁾, respecting the matters or things adverted to in it, both such as are within the British colonies and dependencies abroad, and in any foreign kingdom or state, and relative to the voyage of any ship or vessel: it enacts, by the 15th section, that "in any action or suit then depending, or thereafter to be brought or intended to be brought in any court of law or equity within any of the territories, plantations, colonies, or dependencies *abroad*, being *within and part of his Majesty's dominions*, for or relating to any debt

Act 5th and
6th William
IV, c, 62.

(1) 5th and 6th William IV, c. 62, sec. 15—Vide Appendix.

or account wherein any person residing in Great Britain and Ireland shall be a party, or for or relating to any lands, tenements, or hereditaments, or other property, situate, lying, and being in the said places respectively," it shall be lawful to verify or prove any matter or thing relating thereto, by solemn declaration, in writing, in the form given in the schedule to the act, before any justice of the peace, notary public, or other officer by law authorised to administer an oath, "and certified and transmitted under the signature and seal of any such justice, notary public, duly admitted and practising, or other officer;" and then proceeds to enact, "*which declaration, and every declaration relative to any such matter or thing as aforesaid, in any foreign kingdom or state, or to the voyage of any ship or vessel, every such justice of the peace, notary public, or other officer shall be, and he is hereby authorised and empowered to administer or receive.*"

The 16th section also empowers him to administer or receive such a declaration, of any attesting witness, to the execution of any will, codicil, deed, or instrument, in writing.

The 18th section, after reciting that, "it may be necessary and proper in many cases not herein specified to require *confirmation of written instruments or allegations, or proofs of debt, or of the execution of deeds or other matters,*" enacts, that it shall be lawful for any justice of the peace, notary public, or other officer now by law

authorised to administer an oath, to take and receive the declaration of any person voluntarily making the same before him, in the form in the schedule to the act annexed.

It is considered that a notary is not a mere ministerial officer, obliged, whether he likes it or not, to execute his functions when called upon to do so; in fact, instances occur, not unfrequently, where notaries decline undertaking or performing various kinds of business; they consider that they have the same discretion in undertaking to act, or in refusing to act for any person, as that which the attornies exercise. If notaries had not an option, as to acting or declining to act for any person who might apply to them, and a right to exercise a discretion when so applied to, they might often be innocently the cause of assisting, in fraudulent or improper measures, or might be much inconvenienced by applications at improper times or places.

Notaries sue at common law to recover their fees and charges, and they also prove the amount of them under fiats in bankruptcy, and there is no reason to doubt their having a right of general lien upon bills, notes, instruments, and documents, for the amount of their general accounts; perhaps, however, an exception might arise in respect of bills or notes received from a commission merchant, or other agent, with notice that they belonged to a third party, to be noted or pro-

tested by the notary ; it is probable that in that case, it would be held, for the protection of third persons, and to prevent confusion and inconvenience, that the notary's lien was only a particular one, in respect of the charges and stamps relating to those particular bills or notes.

It may perhaps excite a smile to mention, as showing the importance attached to the attestation of the notary in ancient times, that it has been stated, that "one notary publick is sufficient for the exemplification of any act ; no matter requiring more than one notary to attest it ;"⁽¹⁾ and that, according to the canon law, one notary is equal to the testimony of two witnesses, "as to the credit of a notary the rule is, *unus notarius æquipollet duobus testibus*."⁽²⁾

It is by no means improbable that Massinger, the dramatist, was satirically alluding to some such rule, when, in a celebrated drama written by him above two centuries ago, (before 1633,) he caused the principal character to use the following remarkable expression :

* * * * " Besides, I know thou art
 " A publick notary, and such stand in law
 " For a dozen witnesses : the deed being drawn too
 " By thee, my careful Marrall, and delivered
 " When thou wert present, will make good my title."⁽³⁾

(1) Burn's Ecclesiastical Law, v. 3, p. 3, citing, Aylyffe's Parergon, p. 386.

(2) Gibson's Codex Juris Ecclesiastici Anglicani, p. 996.

(3) By Sir Giles Overreach, in Act 5, of the New Way to pay Old Debts.

In order to give additional powers to British consuls, and to enable them to perform and solemnize notarial acts abroad, the 20th section of the Act 6th George 4th, c. 87, provides as follows :

Powers of
British Con-
suls abroad
given by the
Act 6th Geo.
IV, cap. 87,
sec. 20.

“And whereas, it is expedient that every consul general, or consul, appointed by his Majesty at any foreign port or place, should, in all cases, have the power of administering an oath or affirmation whenever the same shall be required; and should also have power to do all such notarial acts as any notary public may do: be it therefore enacted, that from and after the passing of this act it shall and may be lawful for any and every consul general, or consul appointed by his Majesty at any foreign port and place, whenever he shall be thereto required, and whenever he shall see necessary to administer at such foreign port or place any oath, or take any affidavit or affirmation from any person or persons whomsoever, and also to do and perform at such foreign port or place all and every notarial acts or act which any notary public could or might be required, and is by law empowered to do within the united kingdom of Great Britain and Ireland; and every such oath, affidavit, or affirmation, and every such notarial act administered, sworn, affirmed, had or done by or before such consul general, or consul, shall be as good, valid, and effectual, and shall be of like force and effect to all intents and purposes as if

any such oath, affidavit, or affirmation, or notarial act respectively, had been administered, sworn, affirmed, had or done before any justice of the peace or notary public in any part of the united kingdom of Great Britain or Ireland, or before any other legal or competent authority of the like nature."⁽¹⁾

Of course that clause cannot control the laws of foreign states, for an enactment of the British Legislature cannot have any effect in courts of law out of the British dominions, if it relate to acts authenticated or done out of them ; nor can it render notarial acts, solemnized before a British consul in an independent foreign country, effectual in that country ; it can only go to the extent, that they shall be good and valid in different parts of the British dominions ; in like manner, a consul of any foreign kingdom, France for example, if residing in England, might possibly be empowered by the laws of his own country, to make or solemnize as consul, various acts, such as protests, &c. in this country, which would be as effectual in France as if done by a notary ; yet it is clear that any notarial act which a foreign consul might solemnize or make in the united kingdom, would be invalid, and useless to all legal purposes here. The case may easily be exemplified, by supposing that he granted a protest of a bill of exchange, upon which an

But the Act
does not give
those powers
to Foreign
Consuls here.

(1) 6th Geo. IV, c. 87, sec. 20.

action at law should be afterwards commenced in one of the English courts, it is clear that the protest of a foreign consul would be useless, and could not be read in evidence upon the trial. It is also evident, that in this country, prudent assureds and underwriters of vessels or goods, would not feel inclined to rely or act upon a notarial document, like a ship protest, made before any such foreign consul residing here.

Superinten-
dence and con-
trol of the
Master of the
Faculties.

On a complaint made in a summary way to the Master of the Faculties, and supported by affidavit or other proof, an offending notary will be liable to be struck off the Roll of Faculties, and disabled from practising, for permitting his name to be used by any unqualified person⁽¹⁾, or if admitted under a limited faculty, for practising out of the district specified in it⁽²⁾, or for any deceit or imposition resorted to in obtaining his faculty, or for any improper or disgraceful conduct in his practice ; and it is apprehended, that wilfully certifying to any act as done on one day, when the notary knew that it had occurred on another, or antedating any instrument in order to deceive, would be considered as an offence of that class ; and at this place, it may be proper to mention, that the Master of the Faculties would notice, in a very serious manner, the conduct of a notary who should intentionally lend

(1) 41st Geo. III, c. 79, sec. 10—Vide *Infra*, c. 2, and Appendix.

(2) 4th William IV, c. 70, sec. 4—Vide *Infra*, c. 2, and Appendix.

himself, to assist in any fraud or evasion of the stamp duties imposed upon notarial acts or instruments, in addition to any consequences to which he may have exposed himself under the provisions of the stamp acts.

“ La profession de Notaire est d’une étendue immense, puisqu’ à proprement parler, il n’y a point d’affaire qui ne puisse être de son ressort, ni de personnes qui n’en éprouvent tous les jours la nécessité.

“ Mais si sa vaste étendue fait son éloge, on ne sçauroit disconvenir qu’ elle n’ en fasse aussi la difficulté : L’emploi de dépositaire de la confiance de tout le monde, demande des qualités extraordinaires dans celui qui l’ exerce ; & il est assez difficile d’ avoir de si grandes & de si fréquentes liaisons avec le public, sans courir souvent risque de lui nuire.

“ Ainsi, la probité, qui doit être le caractere essentiel de tous les hommes, & qui suffit dans quelques-uns des emplois de la vie civile, n’ est pas suffisante dans un Notaire ; peut-être même ne seroit-elle pour lui qu’ une qualité stérile, si elle n’ étoit éclairée par la science.”⁽¹⁾

It has been remarked, perhaps in a vein of good-humoured satire,

“ Il n’est rien de plus beau qu’n Notaire honnête homme,

“ Mais dans ce Corps on a vû de tout tems

“ Se glisser des fripons parmi d’ honnêtes gens.”⁽²⁾

(1) La Science parfaite des Notaires, par De Ferriere, tome 1, p. 1.

(2) Boursault, Comedie d’Esopé, quoted in Postlethwayt’s Dictionary of Trade and Commerce, vol. 2, title, Notary.

To the credit, however, of the notaries, it may be here observed, that instances of misconduct in the members of the profession, or of complaints preferred against them to the Master of the Faculties, most rarely occur; and the very rare occurrence of them conveys a strong proof, of the honour, integrity, and respectability, of the general body of the notaries of England.

CHAP. II.

THE NOTARIAL ARTICLES, AND SERVICE OF CLERKSHIP—ADMISSION—NOTARIAL FACULTY—ANNUAL CERTIFICATE—PENALTIES, AND CONSEQUENCES OF ACTING WITHOUT ADMISSION AND CERTIFICATE.

THE mode of entering into Articles of Clerkship, and the service of clerks to notaries, are the next objects to be noticed, before proceeding to describe the steps to be taken for obtaining the notarial faculty, or the annual certificate. There is this marked distinction between an attorney and a notary, as respects his articulated clerks, that the latter is not restricted by law, as the former is⁽¹⁾, to having two clerks under articles at the same time; for it depends merely upon the convenience and arrangements of a notary, how many he has in his office.

The principal regulations as respects the notaries of England, the service of their clerks, and their admission, are contained in the Act of the 41st George 3rd, c. 79, which received the royal assent on the 27th June, 1801, and is entitled "An Act for the better regulation of Publick Notaries in England," by which it is enacted, that after the 1st of August, 1801, no person in England shall act as a public notary unless duly

(1) 6th and 7th Victoria, c. 73, sec. 4.

Act 41st Geo. III, c. 79. sworn, admitted, and inrolled⁽¹⁾. “That from and after the said 1st day of August, 1801, no person shall be sworn, admitted, and inrolled as a publick notary, unless such person shall have been bound by contract, in writing, or by indenture of apprenticeship, to serve as a clerk or apprentice for and during the space of not less than seven years to a publick notary, or a person using the art or mystery of a scrivener, (according to the privilege and custom of the city of London, such scrivener being also a publick notary,) duly sworn, admitted, and inrolled, and that such person for and during the said term of seven years shall have continued in such service;”⁽²⁾ and it proceeds to enact, that an affidavit shall be made and sworn, “by one of the subscribing witnesses,” within three months after the date of the contract or indenture of apprenticeship, of the execution thereof, and of the names and residences of the parties, and of the date thereof, and filed with

Now reduced to five years by the Act 6th and 7th Vict. c. 90.

(1) Sec. 1 of 41st Geo. III, c. 79.

(2) In the *Scriveners' Company v. The Queen*, (in Error,) Exchequer Chamber, 3 Adol. and Ellis, 939 N.S. it was decided that where a Clerk was articulated to a person who was a Notary and also an Attorney, and served him under separate articles in both capacities, he was not entitled to be admitted and inrolled as a Notary; in consequence of this decision, the Act 6th and 7th Victoria, c. 90, which will be afterwards referred to in this Chapter, was passed, in order, amongst other things, to relieve Articled Clerks of Notaries from the ill effects of that decision, and also to reduce the period of service to five years.

the proper officers⁽¹⁾. That no person bound after the said 1st of August, shall be admitted in the Court of Faculties before such affidavit shall be openly read in court at the time of such person's admission⁽²⁾. That the proper officers for taking and filing such affidavits shall be the Master of Faculties of his Grace the Lord Archbishop of Canterbury, in London, his surrogate, or commissioners⁽³⁾. That the officer filing the affidavits shall enter the substance and names in a book, for which he may take the sum of five shillings, and the books may be searched on payment of a fee of one shilling⁽⁴⁾. That no public notary shall have any clerk or apprentice so bound, but whilst in actual practice⁽⁵⁾. That every person who shall become bound to serve any public notary, shall be actually employed seven years in the business of a notary⁽⁶⁾. That if any notary shall die, or leave off practice, or any contract or indenture shall be cancelled by mutual consent, or any apprentice shall be legally discharged, in such cases, if the apprentice shall serve the residue of seven years with another notary, it shall be effectual, if an affidavit be filed of the second contract, as directed concerning such original contract⁽⁷⁾. That every person bound after the said 1st of August, before admission, shall file, or cause the notary to whom he was bound to file, an affidavit that he has really

Act 41st Geo.
III, c. 79.

(1) Sec. 2 of 41st Geo. III, cap. 79—Vide Appendix. (2) Sec. 3.

(3) Sec. 4. (4) Sec. 5. (5) Sec. 6. (6) Sec. 7. (7) Sec. 8.

Act 41st Geo. III, c. 79. served the whole term of seven years⁽¹⁾. "That from and after the said 1st of August, if any publick notary shall act as such, or permit or suffer his name to be in any manner used for or on account, or for the profit and benefit, of any person or persons not entitled to act as a publick notary, and complaint shall be made in a summary way to the Court of Faculties wherein he hath been admitted and inrolled, upon oath, to the satisfaction of the said court, that such notary hath offended therein as aforesaid, then and in such case every such notary so offending shall be struck off the Roll of Faculties, and be for ever after disabled from practising as a publick notary, or doing any notarial act."⁽²⁾

"That from and after the said 1st day of August, in case any person shall, in his own name or in the name of any other person, make, do, act, exercise, or execute and perform, any act, matter, or thing whatsoever, in anywise appertaining or belonging to the office, function, and practice of a publick notary, for or in expectation of any gain, fee, or reward, without being admitted and inrolled, every such person for every such offence, shall forfeit and pay the sum of fifty pounds, to be sued for and recovered in manner hereinafter mentioned."⁽³⁾ That the act shall not exclude any person from admission

(1) Sec. 9 of 41st Geo. III, cap. 79—Vide Appendix. (2) Sec.

10. (3) Sec. 11.

who was bound on or before the 1st of January, 1801, for seven years, to a notary⁽¹⁾. That persons applying for a faculty, to become notaries within the jurisdiction of the Company of Scriveners, shall previously take up their freedom of the company⁽²⁾. That the act shall not extend to proctors in Ecclesiastical Courts, nor to secretaries to bishops, nor to any person necessarily created a notary public for the purpose of holding or exercising any office or appointment, or performing any public duty or service under government, and not as a general practitioner⁽³⁾. Act 41st Geo. III, c. 79.

That nothing in the act shall extend to prevent persons, who on or before the passing of the act have been admitted as notaries, from acting as public notaries⁽⁴⁾. That all pecuniary forfeitures and penalties imposed on any person or persons, for offences committed against the act, shall and may be sued for and recovered in any of his Majesty's Courts of Record, at Westminster, by action of debt, bill, plaint, or information, wherein no essoign, protection, privilege, wager of law, or more than one imparlance shall be allowed, and wherein the plaintiff, if he or she shall recover any penalty or penalties, shall recover the same for his or her own use, with full costs of suit⁽⁵⁾. That all actions brought for any thing done in pursuance of the act, shall be commenced

(1) Sec. 12 of 41st Geo. III, cap. 79—Vide Appendix. (2) Sec.

13. (3) Sec. 14. (4) Sec. 15. (5) Sec. 16.

Act 41st Geo.
III, c. 79.

within three calendar months next after the fact committed, and shall be tried in the county wherein the cause of action shall have arisen, and that the defendant may plead the general issue, and give the act and the special matter in evidence⁽¹⁾. That the act shall be deemed and taken to be a public act⁽²⁾.

This act is declared not to extend to the registrars, solicitors, &c. &c. of the Universities of Oxford or Cambridge by the Act 1st and 2nd George 4th, c. 48, sec. 3.

Where a person was, with a view to admission under the Act of the 41st George 3rd, c. 79, articulated as a clerk to a notary who was also an attorney, and the clerk was also articulated to him in his capacity of attorney, and served him under separate articles in both capacities, it was decided, by the Court of Exchequer Chamber reversing the judgment of the Court of Queen's Bench, that such person was not entitled to admission and enrolment as a notary⁽³⁾. As there were many young men serving clerkships to persons in the capacity of solicitor or attorney as well as notary, it was naturally apprehended that the decision would be productive of great hardship and mischief to them; and in order to prevent its having any such ill

(1) Sec. 17 of 41st Geo. III, cap. 79—Vide Appendix. (2) Sec. 18.

(3) *The Scriveners' Company v. The Queen (in Error)*, in the Exchequer Chamber, 3 Adol. and Ellis, N.S. 939.

effects, and at the same time to curtail the period of service, and to make some other provisions relative to the admission of notaries, it was considered expedient that a new act should be passed; and accordingly the Act of the 6th and 7th Victoria, c. 90, entitled, "An Act for Act 6th & 7th Vict. c. 90. removing doubts as to the service of Clerks or Apprentices to Public Notaries, and for amending the Laws regulating the admission of Public Notaries," was passed.

By that statute it is enacted, that from and after the passing of it every person who has been duly admitted, sworn, and enrolled a public notary in England, may take, have, and retain any clerk or apprentice to serve him under the provisions of the before-mentioned Act of the 41st George 3rd, c. 79, or of that act, in the proper business of a public notary; or if such person is also an attorney or solicitor in any of the Courts of law or equity, or a proctor in any Ecclesiastical Court in England or Wales, to serve him at the same time in the general business of a notary as well as that of an attorney, solicitor, or proctor; and that no person who shall have regularly and duly served any such public notary, being also an attorney, solicitor, or proctor, for the time required by the said act, or that act, and be otherwise entitled to be admitted a public notary, shall be prevented or disqualified from being so admitted a public notary by reason of his having also

Act 6th & 7th
Vict. c. 90. served a clerkship to such public notary, or his partner, as an attorney, solicitor, or proctor, during the same time or any part thereof⁽¹⁾. That no public notary may have and retain any such clerk or apprentice to serve him under the provisions of the said act, or of that act, if he has been admitted, sworn, and enrolled a public notary, for the purpose only of carrying on any business, or holding or exercising any office or appointment, and not as a general practitioner; nor shall any public notary be allowed to have and retain such clerk or apprentice after he shall have discontinued or left off, or during such time as he shall not actually practise and carry on the profession or business of a public notary⁽²⁾. That from and after the passing of the act, in case any person shall have been, or shall be bound by any contract to serve, and shall have actually served, as a clerk or apprentice for the term of *five years* any public notary as aforesaid, and shall have caused an affidavit to be made and filed as to the due execution of such contract, and shall have complied with the other provisions of the said act, save as to the length of service, then and in such case every such person shall be qualified and entitled to be sworn, admitted, and enrolled a public notary, to practise in England, as fully and effectually as any person having been

(1) Sec. 1 of 6th and 7th Victoria, cap. 90.

(2) Sec. 2.

bound and having served seven years, as required by the said act, would be qualified and entitled to be sworn, admitted, and enrolled a public notary under and by virtue of the said act: Provided always, that no person shall be entitled to be admitted and enrolled a public notary at the expiration of the term of *five years*, if bound for a longer time, without the consent in writing of the public notary, if living, to whom he shall have been so bound being first obtained and produced at the time of his admission, and filed with the other papers relating thereto; and provided also, that in case the affidavit required by the said recited act as to the execution of any contract be not filed within the time required by the said act, the same may be filed by the proper officer after the expiration thereof, but the service of such clerk shall be reckoned to commence and be computed from the day of filing such affidavit, unless the Master of the Faculties shall otherwise order; and such service shall be as effectual, and the public notary and clerk shall be equally bound for and during the term, reckoning as aforesaid, as if such term had been originally intended and mentioned in the contract⁽¹⁾. That the Master of the Faculties for the time being may make any general rule or rules requiring testimonials, certificates, or proofs as to the character, in-

Act 6th & 7th
Vict. c. 90.

(1) Sec. 3 of 6th and 7th Victoria, cap. 90.

Act 6th & 7th
Vict. c. 90. integrity, ability, and competency of any person who shall apply for admission or re-admission as a public notary to practise either in England or in any of her Majesty's foreign territories, colonies, settlements, dominions, forts, factories, or possessions, whether such person shall have served a clerkship or not, and from time to time alter and vary such rules as to the Master of the Faculties shall seem meet, and may admit or reject any person so applying at his discretion, any law, custom, usage, or prescription to the contrary notwithstanding⁽¹⁾. That if the Master of the Faculties shall refuse to grant any faculty to practise as a public notary to any person without just and reasonable cause, then the Chancellor of England, or the Lord Keeper of the Great Seal for the time being, upon complaint thereof being made, shall direct the Queen's writ to the said Master of the Faculties to the effect, and shall proceed thereon according to the intent and meaning of the Act of Parliament of the twenty-fifth year of the reign of King Henry the Eighth, intituled, "*An Act concerning Peterpence and Dispensations*," and in manner and form as is therein provided and set forth in case of the refusal of any licenses, dispensations, faculties, instruments, or other writings, as fully and effectually, and with the same powers and authority, as if the same were

(1) Sec. 4 of 6th and 7th Victoria, cap. 90.

here inserted and re-enacted⁽¹⁾. That nothing Act 6th & 7th
therein contained, nor any service under the act, Vict. c. 90.
shall authorise any person to be admitted a
public notary to practise within the jurisdiction
of the incorporated Company of Scriveners of
London⁽²⁾. That from and after the passing of
the act every person to be admitted and enrolled
a public notary shall, before a faculty is granted
to him authorising him to practise as such,
in addition to the oaths of allegiance and
supremacy, make oath before the said Master
of the Faculties, his surrogate or other proper
officer, in substance and to the effect following :
“ I, *A. B.* do swear that I will faithfully exercise
the office of a public notary ; I will faithfully
make contracts or instruments for or between
any party or parties requiring the same, and I
will not add or diminish anything without the
knowledge and consent of such party or parties
that may alter the substance of the fact ; I will
not make or attest any act, contract, or instru-
ment in which I shall know there is violence or
fraud ; and in all things I will act uprightly and
justly in the business of a public notary, accord-
ing to the best of my skill and ability—so help
me God.” And that such oath shall be received
and taken instead of the oath of office now in
use on the admission of a notary public, which

(1) Sec. 5 of 6th and 7th Victoria, cap. 90—Vide Appendix.

(2) Sec. 6.

Act 6th & 7th
Vict. c. 90. oath shall, from and after the passing of the act,
be wholly discontinued: Provided always, that
in such cases where, by any act, an affirmation
or declaration is allowed to be received instead
of an oath, or any form of oath or declaration
substituted instead of the oaths of allegiance and
supremacy, the said Master of the Faculties,
his surrogate or other proper officer, is hereby
authorised and empowered to receive a declara-
tion or affirmation instead of any oath required
by the act, or such form of oath or declaration
instead of the oaths of allegiance or supremacy
as by any act of Parliament is authorised and
allowed⁽¹⁾. That the Master of the Faculties
for the time being, or his surrogate, shall, and
he is thereby authorised and empowered to issue
commissions to take any oaths, affidavits, affirma-
tions, or declarations required by law to be taken
before the grant of any faculty, marriage license,
or other instrument issuing from the said office of
Faculties; and that all oaths, affidavits, affirma-
tions, or declarations taken before the commis-
sioner so appointed, and the faculty, marriage
license, or other instrument granted in pursuance
thereof shall be as valid and effectual as if such
oath, affidavit, affirmation, or declaration was
taken before the said Master or his surrogate,
anything in any act or law to the contrary

(1) Sec. 7 of 6th and 7th Victoria, cap. 90—Vide Appendix.

thereof notwithstanding⁽¹⁾. That no person who has been admitted and enrolled a public notary shall be liable to be struck off the Rolls for or on account of any defect in the articles of clerkship, or in the registry thereof, or in his service under such articles, or in his admission and enrolment, unless the application for striking him off the Roll be made within twelve months from the time of his admission and enrolment; provided that such articles, registration, service, admission or enrolment be without fraud⁽²⁾. That from and after the passing of the act, in case any person shall, in his own name, or in the name of any other person, make, do, act, exercise, or execute or perform any act, matter, or thing whatsoever, of or in anywise appertaining or belonging to the office, function, or practice of a public notary, for or in expectation of any gain, fee, or reward, without being able to prove, if required, that he is duly authorised so to do, every such person, for every such offence, shall forfeit and pay the sum of fifty pounds, to be sued for and recovered by action of debt, plaint, or information, in any of her Majesty's Superior Courts of Record, at Westminster; or if the cause of action shall have arisen in any colony or place, to her Majesty belonging, out of England, then in the Supreme Court of Law of

Act 6th & 7th
Vict. c. 90.

(1) Sec. 8 of 6th and 7th Victoria, cap. 90—Vide Appendix.

(2) Sec. 9.

Act 6th & 7th Vict. c. 90. such colony or place, provided the action for the recovery thereof shall be commenced within twelve months next after the fact committed; and that, save so far as they are altered or repealed, or repugnant to the provisions of the act, the like remedies for recovering thereof, and all other the rules, directions, powers, and provisions contained in the said recited act, and also in the act passed in the third and fourth years of the reign of his late Majesty King William the Fourth, intituled, "An Act to alter and amend an Act of the forty-first year of his Majesty King George the Third, for the better regulation of Public Notaries in England," shall, and may severally and respectively attach and be in force as fully and effectually as if the said penalties were imposed or the said remedies were given, or the same powers, rules, directions, and provisions were particularly enacted in or by the act, or repealed and re-enacted⁽¹⁾.

Stamp Duty
on Articles of
Clerkship.

The Articles of Clerkship must be prepared on a stamp of £1⁽²⁾, and if containing more than *fifteen* common law folios, of *seventy-two* words each, then £1 15s; but if there be an apprentice fee or consideration paid, in that case the articles require an *ad valorem* duty: as-

(1) Sec. 10 of 6th and 7th Victoria, cap. 90.

(2) 55th George III, cap. 184.

signments, or similar instruments, when the clerk is placed with another notary, are subject to the same duties as the original articles. And if there shall be duplicates, or two parts of any indenture or other instrument or writing, relating to such clerk, each part is to be charged with the duty before mentioned, in all cases where the same shall not exceed 35s, and where the same shall exceed that sum, only one part shall be charged with the said *ad valorem* duty, and the other part shall be charged with a duty of £1 15s⁽¹⁾.

The Act of the 7th George 4th, c. 44, sec. 4, by which the commissioners of stamps are prohibited from stamping after the expiration of six months from the date any articles of clerkship to a solicitor, attorney, proctor, writer to the signet, agent, or procurator, in any of the courts of law or equity, &c. does not mention notaries, thereby impliedly conveying the idea that the subsequent stamping of articles to a notary is not prohibited.

The Articles of Clerkship may either commence by designating them as articles of agreement, or as an indenture, it is not material which form is adopted⁽²⁾; they are executed in the presence of two witnesses, and the 2nd section of the Act

Form of
Articles of
Clerkship.

(1) 55th George III, c. 184.

(2) See Form of Articles, Precedents, No. 1.

41st George 3rd, c. 79, appears to contemplate that that should be the number, by the use of the words of “one of the subscribing witnesses.”

Affidavit of
Execution.

If the articles are executed at a place out of London, a commission is obtained from the court, addressed to a surrogate at the place, who swears the witness to the affidavit of execution⁽¹⁾, and marks the articles as being referred to in the affidavit. The articles and affidavit are then sent to the Faculty-office⁽²⁾, and the latter is filed there, and the former returned, with a memorandum made at the foot of the articles, and signed by the registrar, to the following effect:—

Filing
Affidavit.

“An Affidavit as to the execution of this Contract, was filed at the Faculty-office, Doctors Commons, this day of in the year of our Lord one thousand eight hundred and

“*A. B.* Registrar.”

The expense of the commission, return, and filing the affidavit, is about £3 8s, and the surrogate’s fee on swearing the affidavit, is 5s.

Service of the
full term of
Years.

It is hardly necessary to observe, that the full and complete term of years mentioned in the articles must be served by the clerk, though the 8th section of the Act 41st George 3rd, c. 79,

(1) See Form of Affidavit, Precedents, No. 2.

(2) The Faculty Office is at No. 10, Great Knight-riders-street, Doctors Commons, London.

contains a provision to remedy any evil arising from the notary's dying, giving up practice, or the cancelling of the articles, or the clerk's being legally discharged before the end of the term, by his serving the additional time to another notary, so as to complete the full term.

The Court of King's Bench has decided that where a person was articled to a notary for seven years, but who during that term, acted as a banker's clerk daily until five o'clock in the evening, and after that hour went to the notary's office each day, and presented bills of exchange, and prepared protests, it was not such a service as was contemplated by the Act of the 41st George 3rd, c. 79, and that he was not entitled to admission as a notary⁽¹⁾.

The applicant for admission, after serving the Admission. term, will have to produce at the Faculty-office the original articles, upon which a certificate is to be endorsed signed by the notary, certifying to the clerk's faithful service during the term of years, and the notary also makes an affidavit of the due service by the clerk, for which, if the notary reside out of London, a commission will issue, and he may be sworn before a surrogate, and a certificate on a 5s stamp is also required to be produced by the applicant, from two notaries,

(1) *The King v. The Scriveners' Company*, 10 Barn. and Cress. p. 511.

certifying to his skill and probity, and that he is a proper person to become a notary⁽¹⁾.

Oaths on Admission.

The oaths taken on admission are, the oath of allegiance, the oath of supremacy, the oath of due service under the articles of clerkship "according to the true intent and meaning" of the Act of Parliament, and also the before-mentioned oath⁽²⁾ for the faithful exercise of the office of notary directed by the Act 6th and 7th Victoria, c. 90, sec. 7.

If the applicant for admission reside at a distance from London, a commission may be obtained, for a surrogate to administer the oaths to him at the place of his residence.

It would perhaps be an improvement, if something analagous to the present ceremony of notice and previous examination of applicants, for admission as attorneys in the courts of law at Westminster, were insisted upon with respect to applicants for notarial faculties, which would tend to keep the profession of a notary respectable, and would be a salutary check upon the admission of ignorant or improper persons.

In addition to any other ceremony, when a person applies for a notarial faculty, and intends to practise in London, it is necessary, as before mentioned⁽³⁾, that he should become a member,

(1) A Form of the Certificate is given in this Chapter, *Infra*.

(2) *Vide Supra*, p. 33.

(3) 41st Geo. III, c. 79, sec. 13. *Supra*, p. 27.

and take up his freedom, of the Company of Scriveners, of London, an ancient and most respectable company, incorporated on the 28th of January, 14th James 1st, in 1616; their arms are quaintly described as, “*azure*, an eagle with wings expanded *or*, standing on a book in base lying fessewise *gules*, close clasped and garnished of the second; holding in his mouth a penner” [a case to keep pens in] “and inkhorn *sable*, stringed *gules*.”⁽¹⁾

The stamp duty on the notarial faculty, whether intending to practise in or out of London, is the same, viz. £30⁽²⁾. Stamp Duty
on Notarial
Faculty.

The notarial faculty to practise out of London is in the following form:—

“William, by Divine Providence, Archbishop of Canterbury, Primate of all England, and Metropolitan, by authority of Parliament lawfully empowered for the purposes herein written: To our beloved in Christ, C—— D——, a literate person, now residing at Liverpool, in the county of Lancaster, health and grace, we being willing, by reason of your merits, to confer on you a suitable title of promotion, do create you a Publick Notary, previous examination and the other requisites to be herein observed having been had, and do, out of our favour towards you, admit you into the number and society of other Form of Notarial Faculty.

(1) Edmondson's Heraldry, vol. 1.

(2) 55th Geo. III, c. 184, Schedule, part 1.

notaries, to the end that you may henceforward, in all places, (except within the jurisdiction of the incorporated Company of Scriveners of London,) exercise such office of notary, hereby decreeing that full faith ought to be given, as well in judgment as thereout, to the instruments to be from this time made by you, the oaths hereunder written having been by us, or our Master of the Faculties, first required of you, and by you taken.

[Copies of the before-mentioned Oaths are here introduced.]

“Provided always that these presents do not avail you any thing, unless duly registered and subscribed by the Clerk of her Majesty for Faculties in Chancery.—Given under the Seal of our office of Faculties at Doctors Commons, this day of , in the year of our Lord one thousand eight hundred and , and in the year of our translation.

(Seal) J. H. T. MANNERS SUTTON, Registrar.”

The expense of the commission, the admission, and the notarial faculty to practise out of London, in the whole amounts to about fifteen guineas, exclusive of the stamp duty of £30.

The faculty is signed by the Registrar, passed under the seal of the Office of Faculties, at Doctors Commons, and registered by the Clerk of her Majesty for Faculties in Chancery.

In case it can be proved to the satisfaction of the Master of the Faculties, that there is not a sufficient number of notaries admitted under the provisions of the Act 41st George 3rd, c. 79, for the convenience and accommodation of any particular district out of London, the Act 3rd and 4th William 4th, c. 70, gives the Master of the Faculties the power of appointing attornies, solicitors, or proctors, to act as notaries in any such district, but not elsewhere; it is entitled “An Act to alter and amend an Act of the 41st year of his Majesty King George the Third, for the better regulation of Public Notaries in England:” and after reciting the Act of the 41st George 3rd, c. 79, it enacts, That from and after the passing of the act, so much of the said recited act, as requires that persons to be admitted notaries public shall have served a clerkship or apprenticeship for seven years as hereinbefore mentioned, shall, so far as the same affects persons being attornies, solicitors, or proctors admitted as hereinafter mentioned, be limited and confined to the city of London and liberties of Westminster, the borough of Southwark, and the circuit of ten miles from the Royal Exchange in the city of London⁽¹⁾.

That from and after the passing of the act, it shall and may be lawful for the Master of the Court of Faculties, of his Grace the Lord Arch-

The Act of 3rd and 4th Wm. IV, c. 70, enabling Attornies and Proctors to have limited Notarial Faculties to act in places where there is not a sufficient number of Notaries.

Recital of the Act 41st Geo. III, c. 79.

Recited Act limited to London and ten miles therefrom.

Attornies and Proctors may be admitted as Notaries out of those limits.

(1) Sec. 1 of 3rd and 4th William IV, c. 70.

Act 3rd and 4th Wm. IV, c. 70. bishop of Canterbury, in London, from time to time, upon being satisfied as well of the fitness of the person as of the expediency of the appointment, to appoint, admit, and cause to be sworn and inrolled in the said Court of Faculties, any person or persons residing at any place distant more than ten miles from the Royal Exchange, in the said city of London, who shall have been previously admitted, sworn, and inrolled an attorney or solicitor, in any of the Courts at Westminster, or who shall be a proctor, practising in any Ecclesiastical Court, to be a notary public or notaries public, to practise within any district in which it shall have been made to appear to the said Master of the Court of Faculties that there is not (or shall not hereafter be) a sufficient number of such notaries public admitted, or to be admitted, under the provisions of the said recited act, for the due convenience and accommodation of such district as the said Master of the Court of Faculties shall think fit, and not elsewhere, any law or usage to the contrary notwithstanding⁽¹⁾.

Not to authorise Notaries appointed thereby to act in London, or within ten miles thereof.

That nothing therein contained shall extend to authorise any notary, who shall be admitted by virtue of the act, to practise as a notary, or to perform or certify any notarial act whatsoever, within the said city of London, the liberties of Westminster, the borough of Southwark, or

(1) Sec. 2 of 3rd and 4th William IV, c. 70.

within the circuit of ten miles from the Royal Exchange in the said city of London⁽¹⁾.

Act 3rd and 4th Wm. IV, c. 70.

That if any notary, admitted by virtue of the act, shall practise as a notary, or perform or certify any notarial act whatsoever, out of the district specified and limited in and by the faculty to be granted to him by virtue of the act, or within the city of London, the liberties of Westminster, the borough of Southwark, or the circuit of ten miles from the Royal Exchange, in London aforesaid, then and in every such case it shall be lawful for the said Court of Faculties, on complaint made in a summary way, and duly verified on oath, to cause every such notary so offending to be struck off the Roll of Faculties, and every person so struck off shall thenceforth for ever after be wholly disabled from practising as a notary, or performing or certifying any notarial act whatsoever, any thing therein contained to the contrary notwithstanding⁽²⁾.

Notary admitted under the Act practising out of his District, to be struck off the Roll of Faculties.

It will be observed, that the act does not contain any provision respecting a notary who may obtain such a District Faculty, having a clerk articulated to him with a view to the clerk's becoming a notary, and who serves an apprenticeship under the articles⁽³⁾; it is, however, understood that

(1) Sec. 3 of 3rd and 4th William IV, c. 70. (2) Sec. 4.

(3) See the prohibition in the Act of 6 and 7 Victoria, c. 90, sec. 2, against the service (with a view to admission) to a Notary admitted only for the purpose of carrying on any business, or holding any office or appointment, "and not as a general practitioner."

Act 3rd and 4th Wm. IV, c. 70. an opinion of high judicial authority has been expressed in favour of the right of the clerk to a notarial faculty after such a service under articles: it would, however, be very desirable that the point should be raised and decided, so as to remove all doubts upon the subject.

The Applicant under that Act must prove that there is an insufficient number of Notaries for the District. It is not enough for an applicant for admission under that act, to assert or represent that there is not a sufficient number of notaries for the due convenience of any particular district, the applicant will have to prove such assertion, so as to satisfy the Master of the Faculties that a want of more notaries is actually experienced at the place; and in justice to the notaries admitted, and now practising under the provisions of the other act, the Master of the Faculties has rejected the applications for admission under the act now under consideration, where the applicants could not prove that the public sustained inconvenience from there being an insufficient number of notaries.

The following are copies of the rules received from the Court of Faculties⁽¹⁾ respecting the articles of clerkship, the admission of notaries, and the documents requisite on their admission:—

(1) The Author considers it only correct, here to express his acknowledgments to PHILIP CHARLES MOORE, Esq. Deputy-Registrar of the Court, for the courtesy and attention with which he forwarded the above copies of Rules, and also other useful information respecting the Court, to the Author.

“ RETURNS of all Rules relating to the Articling and Admission of Notaries, and of the Qualifications required in Persons so admitted; and also of the Forms of Certificates, Documents, or Declarations, required or used on their Admission.

Rules.

“ The articling and admission of notaries in England is now regulated by the Acts of Parliament passed in the 41st year of George 3rd, c. 79, in the 3rd and 4th year of William 4th, c. 70, and in the 6th and 7th year of Victoria, c. 90; and in pursuance of, and accordance with the provisions of those statutes, different documents are required or used, varying according to the circumstances of the case of each applicant for admission.

“ The paper annexed, marked (A), contains the form of certificate required from two notaries, that the applicant is qualified, as therein stated, previous to his admission as a notary.

“ Under the Act 3rd and 4th William 4th, c. 70, the Master of the Faculties is authorised to admit attornies, solicitors, or proctors, general notaries, to practise in places and districts where it is made to appear to him that there is not a sufficient number of notaries admitted, or to be admitted, for the due convenience and accommodation of the district; and the Masters of the Faculties have made certain rules and regulations respecting such admissions, which are contained in the paper hereto annexed, marked (B).

“ No service is required previous to the ad-

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mission of notaries to practise out of England, (viz. in any of her Majesty's foreign territories, colonies, or dominions,) or as registrar or proctor of any Ecclesiastical Court, or for any limited purpose ; but in all cases a certificate, as to the applicant's qualifications, according to the form in the paper annexed, marked (A), is required.

(Signed) " P. C. MOORE, } Deputy Registrars."
 " J. SHARPE, }

(A)

" To the Right Worshipful *Sir John Dodson, Knight*,
Doctor of Laws, Commissary or Master of the Faculties, or his Surrogate.

" We, whose names are hereunder written, do make known and certify unto you, that *A. B.* a literate person, now residing at ———, aged 21 years and upwards, to us well known, was and is a person of sober life and conversation, *conformable to the doctrine and discipline of the Church of England as by law established,** and well affected to her Majesty Queen Victoria and the present Constitution, both in Church and State. And we do further certify, that the said *A. B.* is a person of known probity, and well skilled in affairs of notarial concern ; wherefore we do conceive him to be a person fully qua-

* " These words are altered according to circumstances, when the applicant is a Roman Catholic, Quaker, or any Dissenter authorised by law to be admitted a Notary."

lified to be created a notary public.—In witness
whereof, we have hereunto set our hands, this
day of in the year of our Lord 184 .

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(B)

“DISTRICT NOTARY ACT,

3rd & 4th Wm. 4th, c. 70.

“Persons applying to be made notaries under the provisions of the above act, must present a memorial to the Master of the Faculties, signed by the magistrates, bankers, merchants, and principal inhabitants of the place and district for which the application is made, showing that there is not a sufficient number of notaries public admitted, or to be admitted, for the due convenience and accommodation of such district, the expediency of appointing one or more notaries therein, and recommending the person applying as a fit and proper person to be so appointed. This memorial must be left at the Faculty Office, together with the usual certificate of two notaries, the admission in one of the courts at Westminster, or as a proctor in an ecclesiastical court, and the last annual certificate.—September, 1833.

“WHEREAS caveats have been entered on behalf of notaries resident in several towns of England, against the admission of any person to practise in such towns under the provisions of the above act: and whereas, without such caveats, the applications of any attorney, or solicitor, must

H

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necessarily have been decided on an *ex-parte* representation, that there is not a sufficient number of notaries public for the due convenience and accommodation of the place for which the application is made ;

“ It is ordered, That in all cases where caveats are now entered, or shall hereafter be entered, the persons entering such caveats shall, when any such application is made for a faculty, have notice thereof in writing, and the papers relating to the application shall be detained for the period of one week from the date of such notice, in order that the person entering such caveat may send in such statement as he, or the person or persons on whose behalf it is entered, shall think fit : Provided nevertheless, that if such statement is not delivered into the office within the time before mentioned, the application for the faculty shall proceed as if no such caveat had been entered.

(Signed)

“ STOWELL, Master.”

“ 19th November, 1833.”

“ WHEREAS applications have been made to the Master of the Faculties, by persons desirous to be admitted notaries public, under the provisions of the 3rd and 4th William 4th, c. 70, to practise as such within a town, and district around the same, in which there are two or more notaries public already admitted, under the provisions of the Act 41st George 3rd, c. 79, without such notaries being aware of, or having an

opportunity of being heard in opposition thereto;

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“It is ordered, That in all cases where it appears that there are two or more notaries public admitted under the provisions of the Act 41st George 3rd, c. 79, and practising in the town and district around the same, for which an application is made by any person to be a notary public under the provisions of the Act of the 3rd and 4th William 4th, c. 70, that a notice thereof, containing a copy of this order, shall be personally shown to, and a true copy left with every notary public resident and practising therein, subscribed by the person applying to be so admitted, and that such notice, with certificates as to the service thereof, signed by the person who served the same, adding his place of abode and profession, shall be brought into the registry of the Office of Faculties, in Doctors Commons, together with the memorial and other papers relating to the application, and that they be detained in the registry one week before they are taken into consideration.

The person applying for a District Faculty must give notice to every Notary practising in the district.

“And it is further ordered, That if any caveat be entered on behalf of any notary public to whom it shall appear that a notice has been given in pursuance of the preceding order, it shall not be necessary that the person entering such caveat shall have any further notice of the application as required by the order of the Right Honourable William Baron Stowell, late Master of the Faculties, bearing date the 19th day of

Rules.

November, 1833, but such person shall be allowed, and the papers relating to the application shall be further detained one week, commencing at the termination of the week mentioned in the preceding order, so that he may send in such statement as he, or the person or persons on whose behalf it is entered, shall think fit: provided nevertheless, that if such statement is not delivered into the office within the time before mentioned, the application for the faculty shall proceed as if no such caveat had been entered.

“ And it is further ordered, That in all cases where a reply is considered necessary to any statement which is brought in, in opposition to the application of any person to be admitted a notary public under the provisions of the said act, one week shall be allowed for the same to be brought into the registry, and also, that the same time be allowed for any further replies which the parties may respectively consider requisite.

“ And it is further ordered, That in all cases where opposition is made to the appointment of any person applying to be admitted as aforesaid, the disputed facts stated in the original memorial, as well as those stated in all subsequent papers, shall be verified by the affidavits of the magistrates, bankers, merchants, or other principal inhabitants.

(Signed) “ JOHN NICHOLL, Master.”

“ 23rd February, 1838.”

In the Annual Indemnity Act, passed each session of Parliament, to indemnify those persons who have omitted to qualify themselves for various offices, several provisions were formerly introduced relating to attornies, solicitors, notaries, &c. but in the last annual Indemnity Act, 9th Victoria, c. 13, those provisions were not introduced, it probably having been considered by the Legislature that the Act 6th and 7th Victoria, c. 73, "An Act for consolidating and amending several of the laws relating to Attornies and Solicitors practising in England and Wales," and the before-mentioned Act 6th and 7th Victoria, c. 90, respecting Notaries, rendered the re-enactment of them unnecessary.

The Act 25th Geo. 3rd, c. 80, enacts, that an Annual Certificate, on a stamp, shall be taken out by every solicitor, attorney, notary, &c.; and section 7 imposes a penalty of £50 in case of various proceedings done or performed by any solicitor, attorney, notary, &c. without such certificate⁽¹⁾.

(1) The following is an Extract from the Act 6th and 7th Victoria, chapter 73, "An Act for consolidating and amending several of the laws relating to Attornies and Solicitors practising in England and Wales;" First Schedule, 2nd part, containing "A description of the Acts, and parts of Acts, *not* repealed by this Act." It will be observed that *Notaries* are *not* mentioned :

<i>Date of Act.</i>	<i>Title.</i>	<i>Extent of Saving.</i>
25th Geo. III, chap. 80.	An Act for granting to his Majesty certain duties on Certificates to be taken out by Solicitors, Attornies, and others, practising in certain Courts of Justice in Great Britain, and certain other duties with respect to warrants, mandates, and authorities to be entered or filed of record, as therein mentioned.	The whole.

Annual Certificate.

The Act 37th George 3rd, c. 90, in secs. 26, 27, and 28, contains some further provisions for ensuring the taking out of the annual certificates of solicitors, attornies, notaries, &c. at the head office of stamps in Middlesex, for the entry of the same, with the respective officers of the Courts, and declares each certificate to cease and determine in the following November⁽¹⁾.

Practitioners disqualified by not taking out Annual Certificate.

The Act 39th and 40th George 3rd, c. 72, sec. 7, recites those two acts, and after reciting, that doubts had arisen whether notaries were liable to the duties imposed by them, enacts, "That from and after the first day of November, 1800, every person who shall act as a public notary, or use or exercise the office of a notary in any manner, or do any notarial act whatsoever, without having been duly admitted in the Court or Courts

(1) The following is an Extract from the before-mentioned Act 6th and 7th Victoria, chapter 73; First Schedule, 1st part, containing "A description of the Acts, and parts of Acts, *repealed* by this Act." Notaries are *not* mentioned.

<i>Date of Act.</i>	<i>Title.</i>	<i>Extent of Repeal.</i>
37th Geo. III, chap. 90.	An Act for granting to his Majesty certain stamp duties on the several matters therein mentioned, and for better securing the duties on Certificates to be taken out by Solicitors, Attornies, and others.	<i>So much</i> as renders every person admitted an <i>Attorney or Solicitor</i> in any of the Courts therein mentioned or referred to, who shall neglect for one whole year to obtain such Certificate as therein mentioned, incapable of practising, and directs that the admission of such person in any of the Courts shall be null and void: and so much as enacts that every Certificate to be obtained under the same Act shall be entered in one of the Courts in which the person described therein shall be admitted, enrolled, sworn, or registered.

wherein notaries are usually admitted, and without having delivered in, his name and usual place of residence, and taken out such certificate as is directed in and by the said last-recited acts of the twenty-fifth and thirty-seventh years of the reign of his present Majesty, or one of them, shall, for every such offence, forfeit and pay the sum of fifty pounds, and shall be and is hereby made incapable to do any act, matter, or thing, as a notary publick, or recover any fee or reward on account of any such act, matter, or thing, without such certificate as aforesaid; and every such penalty shall be recoverable and recovered and applied in like manner, in every respect, as any penalty of the like value imposed by the said last-recited acts, or either of them, may be recovered and applied."⁽¹⁾

Annual Certificate.

Penalty £50.
Declared incapable to do any act as a Notary.

The Acts 41st George 3rd, c. 79, sec. 11, and 6th and 7th Victoria, c. 90, sec. 10, impose, as before mentioned⁽²⁾, a penalty of £50 upon any unqualified person performing any notarial act whatever; and the 10th section of 41st George 3rd, c. 79, enacts, that any notary acting as such, or permitting his name to be used for, or for the benefit of, any person, not entitled to act as a notary, shall be struck off the Roll of Faculties.

Unqualified persons practising, penalty £50. Notaries lending their names, to be struck off the Roll of Faculties.

(1) Vide also Sections 7, 29, and 36 of 25th George III, c. 80, and Sections 30 and 38 of 37th George III, c. 90.

(2) Vide Supra, pages 26 and 35.

Duty upon
Annual Certi-
ficate.

The Act 55th George 3rd, c. 184⁽¹⁾, imposes a duty upon the certificate to be taken out yearly by every attorney, solicitor, proctor, procurator or notary public, in England or Scotland, or sworn clerk, clerk in Court, or other clerk or officer in the Courts therein mentioned, who shall practise in any of such Courts, or who shall do any notarial act whatever, &c. &c.

“ If he shall reside in the city of London, or city of Westminster, or within the limits of the two-penny post in England, or within the city or shire of Edinburgh ; and if he shall have been admitted, or been in possession of his office for the space of three years or upwards	£12	0	0
“ Or if he shall not have been admitted, or been in possession so long	6	0	0
“ If he shall reside elsewhere ; and if he shall have been admitted, or been in possession of his office for the space of three years or upwards	8	0	0
“ Or if he shall not have been admitted, or been in possession so long	4	0	0

(1) The Stamp Duty on the Annual Certificate imposed by this Statute is *not* repealed by the Act 6th and 7th Victoria, c. 73. See First Schedule, 2nd part, containing a description of the Acts, and parts of Acts, *not* repealed by that Act.

“ But no one person is to be obliged to take out more than one certificate, although he may act in more than one of the capacities aforesaid, or in several of the Courts aforesaid.”

The annual certificate, after having been issued at the office for stamps, in Somerset-house, is then entered at the Faculty-office, and a memorandum of the entry made upon the certificate, and signed by the Registrar.

As the 7th section of the Act 39th and 40th George 3rd, c. 72, enacts, that a notary not taking out his annual certificate shall be “incapable to do any act, matter, or thing, as a notary publick,” it follows as a necessary consequence that notarial acts, instruments, or protests, cannot be of any legal use, or given in evidence if made and authenticated by a notary presuming to practise without taking out the annual certificate. There is nothing in that clause, or in the clauses in the Act 41st George 3rd, c. 79, or the Act 6th and 7th Victoria, c. 90, which relate to unqualified persons, to permit such instruments prepared by them to be used or given in evidence; they appear to be consequently useless to all legal purposes, and it shows the great risk and loss which bankers, merchants, and others, are exposed to, in relying on documents prepared or solemnized by improper and unqualified persons acting as notaries, or by notaries who have ceased to renew their annual certificates; in fact, the mischief and confusion which such

unqualified practitioners may do is so great, and the means of detection by the officers at Doctors Commons, and at the Stamp-office at Somerset-house, appear to be so easy, that it is only surprising, that for the protection, as well of the public as of the revenue, measures have not, long ere this time, been resorted to by them, so as to put a stop to such abuses.

CHAP. III.

PRESENTMENT, ACCEPTANCE, DISHONOUR, NOTING,
AND PROTESTING OF BILLS OF EXCHANGE.

ONE important branch of the practice of a notary is connected with bills of exchange and promissory notes, the former of which derive their properties in England from the custom of merchants, and the latter, as is said⁽¹⁾, from the Act of Parliament of the 3rd and 4th Anne, c. 9; which puts them upon the same footing with inland bills, as to their being assigned or indorsed over, and also gives the right of bringing actions upon them, as in the case of inland bills of exchange.

Bills of exchange are either foreign or inland, Foreign and
Inland Bills. which, as will be shown afterwards, makes an important difference with respect to the mode of accepting, the noting, and protesting of them; they are called foreign when drawn by a merchant or other person residing abroad upon another in England⁽²⁾, or drawn in, but payable out of Great

(1) The Author, however, cannot altogether admit the correctness of that observation; there is reason to believe that Promissory Notes were in use, and had derived some, though not all, of their properties from mercantile usage long before the passing of the Act 3rd and 4th Anne, c. 9.

(2) 2 Black. Com. 467. Bayley on Bills, 5th edn. p. 26.

Britain⁽¹⁾; and bills drawn in Scotland or Ireland⁽²⁾ upon England, are in most respects considered as foreign bills, but are not exempted from stamp duties; and they are called inland when drawn in, or dated at any place in England, Wales, or the town of Berwick-upon-Tweed⁽³⁾, and also payable here; or when drawn in Scotland or Ireland, upon places within each of them respectively⁽⁴⁾.

A bill drawn in England, payable to the order of the drawer in London upon a merchant abroad, and accepted by him, payable in London, is held to require a stamp, as an inland bill; and Lord Abinger, C. B. in answer to a remark of the plaintiff's counsel that the Stamp Act was silent as to the meaning of the term "inland bill," said, "It defines it by saying what a foreign bill is, and all others are to be taken to be inland bills." And per Bolland, B. "An inland bill is a bill drawn in and payable in Great Britain."⁽⁵⁾

It is clearly ascertained that the use of inland

(1) Stamp Act, 55th George III, c. 184.

(2) *Mahoney v. Ashlin and another*, 2 Barn. and Adol. 478.

(3) See also, as to the particular class of Inland Bills mentioned in the Statute 9th and 10th William III, c. 17, sec. 1.

(4) Per Littledale, J. and per Parke, J. in *Mahoney v. Ashlin and another*, 2 Barn. and Adol. 478.

(5) *Amner v. Clark*, 2 Crompt. Mee. and R. 468.

bills began in this country long after that of foreign ones; and according to Holt, C. J. actions upon such bills began within his memory⁽¹⁾.

If a bill of exchange be drawn, payable on a certain future day, or at a certain period after date, it is not necessary to present it for acceptance⁽²⁾, but payment may be demanded (without a previous presentment for acceptance) when due⁽³⁾; but if the holder choose to present it, and it should be refused, he is bound to give due notice of the dishonour to the drawer and indorsers, without waiting until it falls due, or they will be discharged from liability on the bill⁽⁴⁾, except to a subsequent indorsee, for value, not acquainted with the circumstance⁽⁵⁾; but after due notice of non-acceptance, they may be immediately sued⁽⁶⁾. If, however, such a bill be

Presentment
for Accept-
ance.
Bills Payable
after Date.

(1) *Buller v. Cripps*, 6 Mod. R. 30.

(2) Per Bayley, J. in *Sebag v. Abithol*, 4 Maule and Sel. 462, and see *Philpott v. Bryant*, 3 Carrington and Payne, N.P. 244, before Park, J.

(3) Per Dallas, J. and per Gibbs, C. J. in *O'Keefe v. Dunn*, 6 Taunt. 305.

(4) *Roscow v. Hardy*, 12 East, 434.

(5) *O'Keefe v. Dunn*, 6 Taunt. 305, S. C. (in error) 5 Maule and Sel. 282.

(6) *Ballingalls v. Gloster*, 3 East, 481; per Dallas, J. in *O'Keefe v. Dunn* and another, 6 Taunt. 305, S. C. (in error) 5 Maule and Sel. 282; *Allan v. Mawson*, 4 Camp. 115; *Whitehead and others v. Walker*, 9 Mee. and Wels. 506; Bayley on Bills, 5th edn. 331, 332; Selwyn's *Nisi Prius*, 10th edn. 341.

presented and accepted, the holder obtains the additional security of the drawee, therefore it is obviously the most prudent course to present it for acceptance. It was stated on the trial of *Johnson and others v. Collings*⁽¹⁾, in the year 1800, that at that time it was not the practice at Bristol to accept bills payable after date; it is probable that since that period the practice there may have become assimilated to that of other places.

After Sight.

If a bill be drawn, payable at a certain period after sight, it is necessary that it should be presented for acceptance, in order to fix the day of sight, from which the period is to run, and consequently the time when it will become due. Bills payable at sight are also presented for acceptance. Such bills as are payable on demand, as we shall afterwards see, and promissory notes⁽²⁾, are never presented for acceptance; checks upon bankers, however, are occasionally accepted by bankers,

(1) 1 East, 98.

(2) The above observation is not intended to apply to Promissory Notes made payable *after sight*. They are very rarely made in that form, but when so made it seems to be the practice to present them for acceptance; the general Stamp Act, 55th George III, c. 184, contemplates the making of them payable *after sight*; and the Author has occasionally seen such Notes, and has known instances of their having been presented for acceptance. In *Wray v. Bassett*, cor. V. C. Wigram, Michaelmas Term, 1845, Promissory Notes of that description were read in evidence when the Author happened to be in Court.

when their customers consider that when accepted, they would be more satisfactory to any persons, to whom the checks are intended to be paid away.

The holder of a bill, whether foreign or inland, if payable after sight, may put it into circulation before acceptance⁽¹⁾; but if he do not pay it away, he is bound to present it within a reasonable time, and the jury will have to consider whether, looking at the situation and interests of both the drawer and holder, there has been unreasonable delay on the part of the holder in forwarding the bill for acceptance, or in putting it into circulation⁽²⁾; if any unnecessary delay occur on the part of the holder in presenting it, the drawer and indorsers will be discharged, a circumstance which shows the propriety of causing an immediate presentment to be made.

In *Fry v. Hill*⁽³⁾, a delay until the fourth day to present for acceptance an inland bill on London, payable after sight, and given within twenty miles of it, was held not unreasonable. In *Mellish v. Rawdon*⁽⁴⁾, the plaintiff purchased a bill drawn by

(1) Per Gibbs, C. J. in *Goupy v. Harden*, 7 Taunt. 159; and see *Fry v. Hill*, 7 Taunt. 397; and per Buller, J. in *Muilman v. D'Eguino*, 2 Hen. Black. 565.

(2) *Goupy v. Harden*, 7 Taunt. 162, *Fry v. Hill*, 7 Taunt. 397, *Mellish v. Rawdon*, 9 Bing. 416, *Shute v. Robins*, 1 Moody and Mal. 133, and S.C. 3 *Carrington and Payne*, N.P. 80, *Muilman v. D'Eguino*, 2 Hen. Black. 565.

(3) 7 Taunt. 397.

(4) 9 Bing. 416.

the defendant upon a person at Rio de Janeiro, payable at sixty days after sight, and the exchange falling after the purchase, the plaintiff kept the bill nearly five months, and then sold it again; and the drawee having failed, the plaintiff sued the drawer, and the jury having found a verdict for the plaintiff, the Court refused to disturb it.

In *Shute and others v. Robins and others*⁽¹⁾, which was an action by the indorsees against the indorsers of a bill of exchange drawn by a banker at Plymouth, upon a banker in London, payable after sight, and a delay of four days occurred on the part of the plaintiffs in presenting it for acceptance, which it was contended discharged the defendants, the jury brought in a verdict for the plaintiffs. In *Straker v. Graham and another*⁽²⁾, tried at the Liverpool Autumn Assizes, in 1838, before Mr. Justice Williams, which was an action of *indebitatus assumpsit* by the owner of the brig *Loyalist*, to recover £176 6s 6d for freight, and £36 10s 10d for general average, per the brig *Loyalist*, which had been hired by a memorandum of charter by the defendants, who (though, as it afterwards appeared, they were only agents for Slade Biddle and Company, of Poole) chartered the vessel in their own names, for a voyage to a port in Conception Bay, Newfoundland, and she

(1) 3 Carrington and Payne, Rep. 80, 1 Moody and Mal. N.P. 133.

(2) 4 Mee. and Wels. 721, and 7 Dowling, 223. See also *Tapley v. Martin*, 4 Term Rep. 457.

accordingly performed her voyage to Carboneer, the port agreed on, in Conception Bay, and delivered her cargo there, (except a portion necessarily thrown overboard during bad weather,) to Slade Biddle and Company, of Carboneer; and the captain received for the freight and general average two bills of exchange for the above mentioned sums, on the 12th of August, 1837, drawn there by Slade Biddle and Company, (per procuration of a clerk,) upon Slade Biddle and Company, of Poole, payable to the plaintiff at ninety days after sight. The captain then proceeded with the vessel to Quebec, and remained some time there, and it was not shown, though it was suggested, that he carried the bills with him round by Quebec, and afterwards brought them to England, where he arrived in the month of November. The seconds of the sets of the bills were presented to Slade Biddle and Company, at Poole, for acceptance on the 16th of November, and were then accepted, (no proof was given what had become of the firsts of exchange;) the acceptors failed on the 10th of February, before the bills became due, which was on the 17th of February, 1838, when they were dishonoured. It was proved on the trial that there were frequent opportunities of transmitting them from Carboneer, and other ports in Conception Bay immediately adjacent, by vessels to England, or by packets from Carboneer every day, except Sunday, to St. John's, where there is a regular

post-office establishment, by which they might have been transmitted to England, and that the average passage was about eighteen days, and that if that mode of sending them had been adopted, they would have arrived in due course in England in the first week of September ; or even if sent on from Quebec, by any of the vessels which sailed from thence soon after the arrival there of the Loyalist, they might have arrived here in the month of October ; in either of those cases, if the bills had been then presented for acceptance on arrival, they would have become due before the time of Slade Biddle and Company's failure ; and the question to be tried was, whether there had been neglect in forwarding the bills for acceptance so as to discharge the defendants, and the jury, after being locked up above twenty-four hours, found a verdict for the defendants : held afterwards by the Court, on argument, that the jury had properly found that the bills⁽¹⁾ were not presented for acceptance within a reasonable time, no circumstances being proved in explanation of the delay.

Presentment
of Foreign
Bills for
Acceptance.

The form and mode of presenting, demanding acceptance, and noting and protesting of foreign bills in England on non-acceptance, is almost exclusively regulated by the custom of merchants, and in accordance with the practice

(1) There were as above mentioned two bills, though only one is alluded to in the Report in 4 Mee. and Wels. 721.

of notaries ; there is scarcely any part of the statute law⁽¹⁾ which relates to such matters, with the exception of the regulations respecting days of public rest ; and it is perhaps a fortunate circumstance, for the mercantile classes, that they have concise and easily understood customs and usages of their own, on such subjects, without legislative enactments, especially when it is borne in mind, that acts of parliament are made session after session, to alter, explain, and amend the errors discovered in former acts. With respect to inland bills, however, there are more than one act of parliament, which will be afterwards noticed, relating to the acceptance and protest of them.

The presentment of bills, whether foreign or inland, for acceptance, should be made during the usual hours of business of the place, and either to the drawee in person, or to his clerks, or persons in his employ at his counting-house, office, shop, or other place of business ; or, in his absence, to his known agent : but where, in an action against the drawer in default of acceptance, to prove the presentment for acceptance, the plaintiff called a witness to prove that he had gone to a house represented to be that of the

Time and Place
of Presentment
for Accept-
ance.

(1) The Act 2nd and 3rd William IV, c. 98, forms no exception to the above observation, as it merely introduces some provisions of minor importance, respecting protests on non-payment in certain cases, as will be afterwards explained ; and a remark of a similar nature may be made upon the Act 6th and 7th William IV, c. 58.

drawee, who was a tanner in Bristol, and had presented it to a person in a tan-yard there, but it did not appear that he had inquired for the drawee, and he could not swear that the person whom he saw was he, or that the person represented himself to be so, and he did not know the drawee's person, Lord Ellenborough held that the plaintiff could not recover, and that the demand of acceptance was insufficient⁽¹⁾.

A bill should be presented for acceptance, at the place of residence or domicile of the drawee, without regard to the place where it is drawn payable⁽²⁾.

Sometimes, from the holder's confidence in the honour and regularity of the drawee, the holder transmits it by post or otherwise, direct to the drawee for acceptance; and if he should decline to accept it, the latter sends his clerk with it to a notary's office to be noted or protested. In such cases it is not considered necessary, nor is it usual to present the bill at the counting-house or place of business of the drawee; but it is generally presented to the clerk, by whom the drawee sends it with his answer, to the notary's office.

(1) *Cheek v. Roper*, Michaelmas Term, 45th George III, 5 Espinasse's Reports, 175.

(2) *Chitty on Bills*, 9th edition, p. 278.

If the drawee be dead, and if there be a known Drawee's Death. executor or administrator to his estate, living in the place, it should be presented to him; if there be no such known representative, it should be presented at the house where the deceased resided; but if the counting-house or place of business of the deceased be still kept open, or if the establishment be continued for the purpose of winding up his affairs, it is usual, and is considered sufficient, to present it there⁽¹⁾. If the drawee cannot be found, then some inquiries Not to be found. should be made after him, as will be explained afterwards. If the drawee have left the country, Left the Country. and have no place of business, it should be presented at his last place of abode. If he have only removed, the holder must endeavour to find Removed. out to what place he has removed, and make the presentment there⁽²⁾. If there be no such per- Absconded, or son as the drawee, or if he have absconded⁽³⁾, if there be no such person, or his place of business be and have no place of business or dwelling-house, and he cannot be found after inquiry⁽⁴⁾ has been made for him, then the bill is to be considered shut up.

(1) See also *Philpott v. Bryant*, 3 Carr. and Payne, N.P. Rep. 244, *Infra*, c. 5, as to the presentment of a bill for payment after the Acceptor's death, at the place at which it is accepted payable.

(2) Bayley on Bills, 5th edition, 219, citing *Collins v. Butler*, Stra. 1087.

(3) Bayley on Bills, 5th edition, 218.

(4) Vide also *Infra* in this Chapter as to the inquiry.

Bankruptcy.

as dishonoured: the same observation applies when his place of business is shut up, and there is not any person found there to give an answer during the hours of business, and the drawee has suspended payment; and it also applies when, after ineffectual applications at his counting-house or place of business, or if he have none then at his residence, he cannot be met with, and his clerk or other person in his employ has not any orders respecting the accepting of the bill. In the case of the drawee's bankruptcy, there is not any usage rendering it necessary to present a bill for acceptance to the assignees of his estate; in fact, it would be inconsistent to do so, because accepting bills forms no part of their duty, though a bankrupt may if he be so imprudent, accept bills, and come under fresh liabilities, before obtaining his certificate of conformity.

Leaving the
Bill for the
Drawee's
consideration.

In order to allow the drawee a reasonable time for deliberation, it is usual to leave the bill on one day, and to call for an answer on the next; the expression sometimes used in the books that the drawee has twenty-four hours for consideration, is not quite accurate, if meant to express that he may require to have it left with him to the full end of that period, for the holder is entitled to a decisive answer within the twenty-four hours. In the case of the bankruptcy, or notorious insolvency of the drawee, it is doubtful whether there is any usage rendering it incumbent on the holder to leave the bill until

the next day; and in practice it appears not to be the custom to leave it in such cases, at least not unless the drawee's place of business is kept open, and the holder is requested to leave it for deliberation, and some good reason is assigned for requesting it to be left, such as a reasonable expectation that it will be honoured, or provided for, in some quarter or other.

In the case of the drawee's being a person little known, or of the holder's not feeling well assured that the bill will be safe with, or taken care of by the drawee, it appears not to be the usage to leave it⁽¹⁾; and indeed there are well informed and experienced bankers and merchants who incline to the opinion, that the whole affair of leaving the bill, in any case, is one of courtesy merely, and that it is not incumbent upon the holder so to leave it. In many cases, such as the drawee's having absconded, or permanently shut up his place of business⁽²⁾, or having no known

(1) In those cases (as the Author is informed) the Holder sometimes leaves a copy merely, and does not part with the original bill.

(2) An instance once occurred within the Author's knowledge, where the Drawees, who were labouring under pecuniary embarrassments, appeared to have some motives of their own, for endeavouring to delay giving an answer, and thereby to retard the sending out a bill, under protest for non-acceptance by the next packet, and the door of their counting-house was found to be locked during the usual hours of business, and a paper was put upon it, stating that it would be opened at a particular hour, which elapsed, and more than

residence, or being dead, without any acting or known personal representatives, it is impossible that the bill can be left; and in those cases the holder proceeds at once to cause it to be noted or protested. Also, if the drawee, on presentment of the bill, or afterwards in the interim, without waiting until the following day, declares his determination not to accept it, or otherwise gives any answer to the effect that it will not be accepted, the holder may, at once, proceed to note or protest it⁽¹⁾; in fact, the period so allowed for consideration is rather for the convenience of the drawee than of any of the other parties, and may be dispensed with by his giving an answer: a longer time is sometimes allowed by the holder, but he ought not to consent to grant any extension of time, if, by so doing, he would lose a convenient or customary mode of conveyance, or opportunity of sending off advices to the drawer or indorsers.

Acceptance.
Partnership
Firm, Drawees.

If there are several drawees, partners, carrying on business under any particular firm, the act of one will bind all; and if one of them accept in

elapsed, without the counting-house being re-opened. Under those circumstances, it was considered as clear a case as if it had been permanently shut up, and the Holders at once had the bill protested for non-acceptance, without waiting until the next day, and the protest was sent abroad, and the amount (£3000) was recovered from one of the parties there.

(1) *Ingram v. Forster*, 2 Smith's Reports, 243.

the name of the firm, or as "for self and partners," it is sufficient, and even an acceptance by one, though without using the name of the firm, when the bill was drawn upon his firm, has been held to bind the partnership⁽¹⁾.

But if a bill be drawn on several persons not connected in partnership, an acceptance by one will bind him, but him only⁽²⁾.

The bill may also be, and frequently is accepted by an agent, cashkeeper, or clerk; but it has been said that the holder may require to see his authority, and that if it be not shown to him, he may treat the bill as dishonoured⁽³⁾; and it is said to be doubtful whether in any case he is bound to receive an acceptance by an agent, because it multiplies the proof to be adduced if it should be dishonoured⁽⁴⁾.

Acceptance,
through an
Agent, Cash-
keeper, Clerk,
&c.

(1) Bayley on Bills, 5th edition, p. 53. *Mason v. Rumsay* and another, 1 Camp. N.P.C. 384. In this case the bill was drawn upon "Messrs. Rumsay and Co." and one of that firm, T. Rumsay, *jun.* wrote upon it, "Accepted, T. Rumsay, *sen.*" held to bind the firm.

(2) Bayley on Bills, 5th edition, 52, citing Buller's N.P. 279.

(3) Chitty on Bills, 9th edition, 283, citing Beawes, 87. And per Bayley, J. :—"A person taking such a bill ought to exercise due caution, for he must take it upon the credit of the party who assumes the authority to accept, and it would be only reasonable prudence to require the production of that authority," in *Attwood v. Munnings*, 7 Barn. and Cress. 283.

(4) Chitty on Bills, 9th edition, 283. The principle is similar to that which has caused it to be held that a purchaser may refuse to accept a conveyance to be executed under a Power of Attorney—*Coore v. Calloway*, 1 Espinasse's Rep. 115.

Acceptance of
an *Inland* Bill
must be in
Writing.

The acceptance of an *inland* bill must be in writing upon the bill; or if there be several parts of such bill, then upon one of such parts⁽¹⁾.

Inland Bills
mentioned in
the Act 9th and
10th Wm. III,
c. 17.

Inland bills of exchange of a particular class are first mentioned in the Act 9th and 10th William 3rd, c. 17⁽²⁾, intituled, "An Act for the better payment of Inland Bills of Exchange," which class is described in the 1st section as being "drawn in or dated at and from any trading city or town, or any other place in the kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, of the sum of £5 sterling, or upwards, upon any person or persons of or in London, or any other trading city, town, or any other place, (in which said bill or bills of exchange shall be acknowledged and expressed the said value to be received,) and is and shall be drawn payable at a certain number of days, weeks, or months, after date thereof;" and it proceeds to enact, that from and after presentation and acceptance, ("which *acceptance* shall be *by the underwriting the same under the party's hand* so accepting,") and after the expiration of three days after the bill shall become due, it may be protested on non-payment.

Act of 3rd and
4th Anne, c. 9,
respecting
Inland Bills,
and Notes.

The Act of 3rd and 4th Anne, c. 9⁽³⁾, intituled, "An Act for giving like remedy upon Promissory

(1) Act 1st and 2nd George IV, c. 78, sec. 2. Vide also Acts 9th and 10th William III, c. 17, and 3rd and 4th Anne, c. 9, sec. 5.

(2) Vide Appendix. (3) Vide Appendix.

Notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange," (and made perpetual by 7th Anne, c. 25, sec. 3,) after reciting the Act 9th and 10th William 3rd, c. 17, enacts by section 4, that if the drawee shall refuse to accept any such bill in writing, it may be protested for non-acceptance, as in case of foreign bills of exchange.

On refusal to accept in Writing, may be protested.

By section 5, no acceptance of "any *such inland bill of exchange*" shall be sufficient, *unless in writing thereon*, and if not so accepted, no drawer shall be liable to damages, costs, or interest, unless such protest be made for non-acceptance, and within fourteen days notice given, &c.; and that if it be accepted, and not paid before the expiration of three days after it shall become due, no drawer shall be compellable to pay costs, damages, or interest, unless a protest be made and sent, or notice thereupon be given, &c. &c. Nevertheless that the drawer shall be liable to make payment of costs, damages, and interest, if any one protest be made of non-acceptance or non-payment thereof, and notice sent, &c. &c. By section 6, no protest shall be necessary unless the bill is expressed to be for value received, and for £20 or upwards. By section 7, if any person shall receive any such bill in satisfaction of a former debt, the same shall be esteemed a complete payment of the debt, if the person receiving the bill does not take his due course to obtain

Acceptance of Inland Bills to be in Writing.

Protest for Non-acceptance.

Protest of Inland Bills (after Acceptance in Writing) on Non-payment.

payment by endeavouring to get it accepted and paid, and make his protest, either for non-acceptance or non-payment. Section 8 enacts, that *nothing in the act shall extend to discharge any remedy that any person may have against the drawer, acceptor, or indorser of such bill*⁽¹⁾.

In case of the omission to protest an inland bill the drawer may possibly not be liable to charges, damages, &c. on the dishonour of it, *under the 5th section of that statute*, but it has been decided that the plaintiff, (the indorsee,) is entitled to recover interest in an action against the drawer of an inland bill, noted for non-acceptance, but not protested⁽²⁾.

Act 1st and 2nd
Geo. IV, c. 78,
sec. 2.

—
Acceptance of
Inland Bills to
be in Writing.

By the Act 1st and 2nd George 4th, c. 78, sec. 2, it is enacted, "That from and after the 1st day of August, (1821) no acceptance of any *inland* bill of exchange shall be sufficient to charge any person, unless such acceptance be in writing on such bill, or if there be more than one part of such bill, on one of the said parts."

It is not necessary that the acceptance of an inland bill should be subscribed; it is sufficient

(1) Vide Act 3rd and 4th Anne, c. 9, in the Appendix. This Act has been properly designated as very darkly penned; per Lord Hardwicke in *Lumley v. Palmer*, M.T. 8th George II.

(2) *Windle v. Andrews*, 2 Starkie, Ni. Pri. Rep. 425. S. C. 2 Barn-wall and Ald. 696. Vide *Infra* in this Chapter.

for the purposes of the act if a drawee merely writes the word "accepted."⁽¹⁾

It has been decided that a bill, drawn by a person in Ireland upon another in England, is not an inland bill within that act, and may be accepted without writing upon it; and also that the act applies to the case of a bill drawn in one part of Scotland or Ireland, upon another part within each⁽²⁾.

That act applies to all inland bills, without any such qualification as is contained in the former Act of 3rd and 4th Anne, c. 9, but it does *not* include *foreign* bills.

The Act does not include Foreign Bills.

The holder of a foreign bill may refuse to take any acceptance, except an absolute and unconditional one, in writing⁽³⁾, upon the bill; and in case the holder is only an agent for another, it is submitted that unless he is expressly authorized

Acceptance of a Foreign Bill may be required to be unconditional, and in Writing.

(1) Per Parke, B. in *Corlett, Public Officer, v. Conway*, 5 Mee. and Wels. 655.

(2) *Mahoney v. Ashlin and another*, 2 Barn. and Adol. 478.

(3) Vide also Selwyn's *Nisi Prius*, 10th edition, v. 1, p. 329; and vide dictum of Buller, J. in *Sproat v. Matthews*, 1 Term. Rep. 182. "This, therefore, was a *conditional* acceptance; and in these cases the Holder may choose whether he will be satisfied with it or not." By the custom of Merchants, the Holder may refuse to take an acceptance, unless in ink. It has, however, been held that an indorsement which the Indorsee *consented* to take, upon a Promissory Note, written in pencil, was valid—*Geary v. Physic*, 5 Barn. and Cress. 234.

to use his discretion, he must require an unconditional written acceptance upon the bill.

As the Act 1st and 2nd George 4th, c. 78, does not include foreign bills, they may still be accepted with the holder's consent, as before the passing of that act, without the acceptance being in writing upon such bills, consequently the cases and decisions upon any of such acceptances are still important as respect foreign bills.

Acceptance of
Foreign Bills
by Letter,
Parol, &c. &c.

A *foreign* bill already drawn, may be accepted either in the usual way upon the bill, or by a letter⁽¹⁾, or collateral writing⁽²⁾, or verbally⁽³⁾, (provided the expressions clearly and unequivocally mean an acceptance of the bill⁽⁴⁾), at any time

Even after the
Bill has been
dishonoured.

even after the bill has been dishonoured on non-acceptance⁽⁵⁾.

(1) *Mahoney v. Ashlin* and another, 2 Barn. and Adol. 478; *Clarke v. Cock*, 4 East, 57; *Wynne v. Raikes*, 5 East, 514,

(2) *Clarke v. Cock*, 4 East, 57.

(3) Bayley on Bills, 5th edition, p. 174, citing *Cox v. Coleman*, M. 6th Geo. II, cited arguendo Ann: 75; *Lumley v. Palmer*, 2 Stra. 1000 Michs. Term, 8th Geo. II, Hardwicke, 74; and see *Johnson v. Collings*, 1 East, 98; *Pillans v. Van Mierop*, 3 Burr. 1663; *Sproat v. Matthews*, 1 Term. Rep. 182; *Fairlee v. Herring*, 3 Bing. 625; *Selwyn's Nisi Prius*, 10th edition, v. 1, 328.

(4) *Selwyn's Nisi Prius*, 10th edition, v. 1, p. 328; *Rees v. Warwick*, 2 Barn. and Ald. 113.

(5) *Wynne v. Raikes*, 5 East, 514; *Billing v. Devaux*, 3 Man. and Grang. 565.

In *Powell v. Monnier*⁽¹⁾, Lord Chancellor Hardwicke decided, that where a bill had been drawn on a person who wrote a letter, stating that the £50 would be duly honoured, and placed to the drawer's debit, it amounted to an acceptance, on which the drawee was liable; and Lord Hardwicke observed, "I think there can be no doubt but an acceptance may be by letter, and has been so determined; there have been questions too, whether a parol acceptance could be good? Lord Chief Justice Eyre held it might; Lord Raymond held the contrary; and there was a like point before me at Nisi Prius in the cause of Lumley and Palmer, and I had a case made of it for the opinion of the Court of King's Bench, where it was several times argued, and at last solemnly determined that such acceptance is good, much more then must an acceptance by letter be good."

Lord Ellenborough, C. J. in *Clarke v. Cock*⁽²⁾, stated, "It has been laid down in so many cases, that a promise that a bill when due shall meet due honour amounts to an acceptance, and that without sending it for a formal acceptance in writing, that it would be wasting words to refer to the books on the subject." Again, in delivering judgment in *Wynne v. Raikes*⁽³⁾, he

(1) 1 Atkyns's Chancery Rep. 611.

(2) *Clarke v. Cock*, 4 East, 69.

(3) 5 East, 520.

said, "a promise to accept an existing bill is an acceptance; a promise to pay it, is also an acceptance; a promise, therefore, to do one or the other, viz. to accept or certainly pay, cannot be less than an acceptance." In that case, a foreign bill was drawn upon the defendants, and presented for acceptance on the 2nd of January; they refused to accept it; on the 13th they wrote a letter to the drawer, saying, "our prospect of security on the Chesapeake is so much improved, that we shall accept or certainly pay all the bills which have hitherto appeared," which letter did not reach the drawer until after the bill had become due and had been protested, and the letter was not previously communicated to the plaintiffs, (the holders,) and the Court held it to be an acceptance in law. And Lord Ellenborough, in *Wynne v. Raikes*⁽¹⁾, also made the following observation upon *Powell v. Monnier*⁽²⁾: "In the case of *Powell v. Monnier*, already mentioned, that which was holden an acceptance, enuring to the benefit of the indorsees (the plaintiffs,) was an acceptance, contained in a letter (from the drawee) to the drawer, one Newburgh, promising that his bill should be duly honoured. The promise being long subsequent to the time when the plaintiffs in that case became possessed of the bill by in-

(1) 5 East, 514.

(2) 1 Atkins's Chancery Rep. 611.

dorsement, could of course have formed no part of their original inducement to take it."

The drawee of a foreign bill is bound by a promise to accept in a letter to the drawer, which was written in ignorance of his death, and after it had become due, and had been refused payment, and protested for non-payment. The death of the drawer took place after the bill had become due, and before the date of the letter⁽¹⁾.

Acceptance in
ignorance of
the Drawer's
Death, and
after Dis-
honour and
Protest.

There are two *Nisi Prius* decisions of Lord Ellenborough, C. J. which have not been mentioned in any former treatise, and it may not be inexpedient to notice them in this place⁽²⁾. B. T. Franche and Company, of Gottenburgh, drew a bill upon Corson, the defendant, for £116 13s 4d, at ninety days after date; the defendant refused to accept it, and the plaintiffs had the bill protested, and returned it as a dishonoured bill; on the following day, however, Corson's house received a letter from Franche and Company, inclosing a draft for £290, upon which the defendant's clerk, by his directions, wrote an answer to Messrs. Franche, advising them of the receipt of their draft, and announcing to them, that they had now the pleasure of saying, that their bills

(1) *Billing v. Devaux* and another, 3 Man. and Grang. 565.

(2) In one of the cases, the Author had access to one of the briefs for Counsel, through the kindness of Mr. Bower, Solicitor, Chancery-lane; and in the other case, the Author was professionally engaged.

(enumerating several bills, amongst which was the bill in question) were accepted. Lord Ellenborough held this to be a good and unqualified acceptance, and the plaintiff had a verdict⁽¹⁾. In the other case, Richard Jackson, trading at Carlisle, under the firm of Richard Jackson and Company, drew a bill for £451 14s 4d, upon Jones, Loyd and Company, bankers, London, payable three months after date, to the order of the plaintiffs; it was presented for acceptance, and on the 13th March, 1817, the defendants refused to accept it; and about the same time they refused to accept several others of R. Jackson's drafts. On his writing to the defendants, calling upon them to assign a reason for not accepting them, the defendants, on the 31st of March, wrote a letter in reply to R. Jackson, commencing thus: "Sir, your drafts are all accepted but four, amounting to £995 18s 7d." The bill for £451 14s 4d did not form one of the four bills mentioned as not accepted in the defendants' letter. The letter of the defendants was communicated on the 2nd of April by R. Jackson, by letter, to the holder; and at the foot of it R. Jackson also sent him a list of the four drafts which were alluded to in the defendants' letter as not being accepted, and forming the amount of £995 18s 7d, as follows, viz :—

(1) *Arfwedson v. Corson*, before Lord Ellenborough, C. J. Sittings after Trinity Term, 1816.

D. and Company.....	£144	12	9
W——e	134	19	6
T——l	378	8	0
R——n	337	18	4
	<hr/>		
	£995	18	7
	<hr/>		

R. Jackson became bankrupt, and the defendants refused to pay the bill at maturity ; and at the trial of the cause, Lord Ellenborough, C. J. held that the letter of the defendants did not amount to an acceptance, and the plaintiffs were non-suited⁽¹⁾.

A third person may avail himself of a parol acceptance, though he was not aware of it when he received the bill⁽²⁾. In *Fairlee v. Herring*⁽²⁾, Best, C. J. stated, “ It has been determined in a great variety of cases, that if a bill comes into a man’s hands with a parol acceptance, though the party who receives the bill does not know of that parol acceptance, he has a right to avail himself of it afterwards. It is impossible for any man to doubt, on principles of common sense, that such ought to be the law, for if I take a bill, I take it with every advantage the holder had before it came into my hands.”

A third person may avail himself of a Parol Acceptance, though not aware of it when he received the Bill.

A promise to accept a bill already drawn, in a letter written by the drawees to a third person

(1) *Bateson and another v. Jones and others*, in K.B. before Lord Ellenborough, C. J. Guildhall Sittings after Trinity Term, 1817.

(2) *Fairlee v. Herring*, 3 Bing. 629.

not a party to the bill, amounts to an acceptance, and enures to the benefit of the drawers, and cannot be cancelled by such third person⁽¹⁾.

Promise to
accept a Non-
existing Bill.

According to the modern doctrine, a promise to accept a foreign bill to be afterwards drawn, is no acceptance of the bill when drawn, although a different impression formerly prevailed; now, however, it is submitted, that no circumstances could occur, where a promise to accept a non-existing bill would be held to be an acceptance of the bill when drawn⁽²⁾. And it has been decided that a promise to accept a non-existing bill does not amount to an acceptance, even if the bill be afterwards discounted for the drawer on the faith of such a promise⁽³⁾.

It has been formerly said, that there were also instances in which an acceptance might be implied, from the unreasonable length of time during which the drawee kept the bill⁽⁴⁾, or where he has destroyed or cancelled it, or has done any

(1) *Grant v. Hunt*, 1 Manning, Gr. and Sc. C. P. 45.

(2) Vide Bayley on Bills, 5th edition, p. 187; *Pierson v. Dunlop*, Hilary Term, 17th Geo. III, Cooper R. 571; *Johnson v. Collings*, 1 East, 98; *Milne v. Prest*, 4 Camp. N.P.C. 393; *Mason v. Hunt*, 20th Geo. III, 1 Douglas R. 297; *Pillans v. Van Mierop*, 3 Burr. 1663. *Bank of Ireland v. Archer & another*, 11 Mee. & Wels. 383.

(3) *Bank of Ireland v. Archer and another*, 11 Mee. and Wels. 383.

(4) *Harvey v. Martin*, 1 Camp. N.P.C. 426; *Trimmer v. Oddie*, cited in *Mason v. Barff*, 2 Barn. and Ald. 26.

act which deceives, or was intended to induce the holder to consider the bill as accepted⁽¹⁾; the drawee is clearly responsible for the loss by Loss of the Bill by the Drawee. any want of care or caution of a bill left with him for acceptance⁽²⁾. The modern doctrine, however, appears to be, that the mere detention Detention of the Bill. of a bill by the drawee, for an unreasonable time, will not amount to an implied or constructive acceptance⁽³⁾, though there can be no reason to doubt that he may be sued for any damage arising from such detention; and the Destruction of the Bill by the Drawee. destruction of the bill by the drawee would render him liable in an action at law in another form, for the full amount⁽⁴⁾, though the action must not be brought against him as acceptor⁽⁵⁾; and so improper an act, as the intentional altering or Alteration by the Drawee. defacing of it, would, doubtless, render him liable to an action specially brought at the suit of the holder, in which the latter would recover for any

(1) See Observations of Lord Ellenborough, C. J. in *Jeune v. Ward*, 1 Barn. and Ald. 658.

(2) *Morrison v. Buchanan*, in 1833, before Littledale, J. 6 Car. and Payne, 22.

(3) *Mason v. Barf*, 2 Barn. and Ald. 26.

(4) Per Bayley, J. in *Jeune v. Ward*, 1 Barn. and Ald. 660.

(5) *Jeune v. Ward*, 1 Barn. and Ald. 653, in which Lord Ellenborough, C. J. differed from the other Judges, and thought that the Defendant, by not having notified his refusal to accept in a reasonable time, and having destroyed the bill, was liable for it as the Acceptor.

damage or injury which might be proved to have been sustained in consequence⁽¹⁾. The holder must not consent to the drawee's altering the bill, and accepting it so altered, or he will discharge the drawers and indorsers⁽²⁾.

Drawee promising, upon an adequate consideration, to accept a Non-existing Bill, may be sued in another form.

A person promising, by letter, to another, upon an adequate consideration, to accept a non-existing foreign bill, and on presentment refusing to accept it, cannot be sued on it as an acceptor; yet it is said that an action at law will lie against him in another form, and he may be sued specially, and damages recovered from him for the breach of his engagement⁽³⁾.

Conditional Acceptance by Parol.

There may be a conditional acceptance by parol, which will be binding on the drawee as soon as the condition has been performed⁽⁴⁾.

Where, after refusing to accept, the drawee said to the holder, that if he would send the bill to the counting-house again, he, the drawee, would accept it, held that he was not liable without proof of its having been sent again⁽⁵⁾.

(1) Per Tindall, C. J. in *Warwick v. Rogers*, 5 Mann. and Grang. 373.

(2) *Paton v. Winter*, 1 Taunt. R. 420, Selwyn's Ni. Pri. 10th edition, v. 1, 319.

(3) *Smith v. Brown*, 6 Taunt. 340. Sed vide *Bank of Ireland v. Archer and another*, 11 Mee. and Wels. 383, Supra.

(4) *Pierson v. Dunlop*, Cowp. R. 571; *Milne v. Prest*, 4 Camp. 393; *Mendizabel v. Machado*, T. T. 1833, before Park, J. 6 Carrington and Payne, 218.

(5) *Anderson v. Hick and others*, 3 Camp. N.P.C. 179.

There are several cases also, where ambiguous, or equivocal expressions, have been decided not to amount to acceptances of the bills⁽¹⁾.

Ambiguous or equivocal expressions.

Whenever the holder receives an acceptance by parol, or by letter, if he intend to treat it as a valid acceptance, he must not cause the bill to be noted or protested, or he will discharge the drawee from all liability as acceptor⁽²⁾. But when the drawee has verbally accepted the bill, and a party receives it who is ignorant of that fact, he has a right to avail himself of it afterwards against the acceptor, and is not estopped by having protested it in ignorance⁽³⁾.

Waiver of Parol Acceptance by noting or protesting.

The drawee, after writing his acceptance on the bill, and before returning it, may change his mind, and release himself from responsibility by striking out, or erasing the acceptance⁽⁴⁾.

Striking out or cancelling the Acceptance.

Lord Mansfield is stated to have said⁽⁵⁾ that it

(1) *Smith v. Missen*, 1 Term R. 269; *Anderson v. Hick*, 3 Camp. N.P.C. 179; *Rees v. Warwick*, 2 B. & Ald. 113; *Anderson & others, v. Heath & others*, 4 Maule & Sel. 303; *Powell v. Jones*, 1 Esp. R. 17.

(2) *Sproat v. Matthews*, 1 Term Rep. 182; *Bentinck v. Dorrien*, 6 East, 198.

(3) *Fairlee v. Herring*, 3 Bing. 625.

(4) *Cox v. Troy*, 5 Barn. and Ald. 474; *Novelli v. Rossi*, 2 Barn. and Adol. 757; *Warwick v. Rogers*, 5 Mann. and Grang. 340.

(5) *Peach v. Kay*, Sittings after Trinity Term, 1781, cited in Bayley on Bills, 5th edition, 6 and 183. There is no reason to believe, that it was ever held, that the writing on a bill an express refusal to accept merely, was to be considered as an acceptance. The old tale about a Drawee being compelled to pay a bill because he had written

had been held by all the judges, that an express refusal to accept written on the bill, when the drawee apprised the party who took it away of what he had written, was no acceptance; but if the drawee had intended it as a surprise upon the party and to make him consider it as an acceptance, they seemed to think that it might have been otherwise.

Usual mode of
Acceptance.

The usual and correct mode of accepting a bill is, by the drawee's writing in ink, the word "accepted," or some words of the same import, across the face of the bill, and subscribing his name under it; but he will be bound as acceptor by merely writing his name upon it, or by writing the word "accepted" only⁽¹⁾, or "presented," or

upon it, in a passion, "I'll be hanged" (or some similar word) "if I accept this bill," does not appear to have had any other origin than in the fertile imagination of some jocose person who invented it. A case before Lord Macclesfield, upon a Promissory Note, which was alluded to in *Peach v. Kay*, by Lord Mansfield, and in 2 Atkyns's Rep. 32, by Lord Hardwicke, C. was under very different circumstances, as it arose in consequence of a palpable fraud, or cheat, the note being to the following effect; "Borrowed of J. S. £50, which I promise never to pay."—It has indeed been *said* that an express refusal to accept, written on a bill is an acceptance, but *this is not the case*, unless it is accompanied with a conduct showing an *intent to create a belief that it is accepted*.—Vide Bayley on Bills, 5th edition, p. 183.

(1) Per Lord Ellenborough in *Mason v. Rumsey* and another, 1 Camp. Ni. Pri. C. 385. Per Parke B. in *Corlett v. Conway*, 5 Mee. and Wels. Ex. Rep. 655.

“seen”⁽¹⁾; and it is recommended as a proper precaution, and in fact it is a frequent practice, to repeat the amount of the bill in the acceptance. If the bill be payable after sight, it is customary for the acceptor also to write the date of his acceptance; and in England the acceptance is commonly dated as of the day on which the bill was left for acceptance, and the period when it falls due is computed from that date; but as respects banking houses, if the bill be not left during the usual banking hours of business, the bankers usually only date it on the day when they actually accept it.

The course to be pursued if the drawee decline accepting for the full amount, but is willing to accept the bill for a part only, will be explained subsequently⁽²⁾.

By the law merchant, if the drawee be willing to accept the bill, the holder may insist upon the drawee's accepting it in writing upon the bill, absolutely, unconditionally, and generally, and in the very terms in which it is drawn, or may treat the bill as dishonoured, and may protest it for non-acceptance⁽³⁾.

Acceptance
in writing
upon the Bill,
and in the
terms of the
Bill, or the
Holder may
Note or
Protest it.

The holder of a bill may treat a qualified ac-

(1) Bayley on Bills, 5th edition, 183; see also *Dufaur v. Oxenden*, before Patteson, J. 1 Moo. and Rob. 90.

(2) Vide Chap. 4. *Infra*.

(3) 1 Camp. N.P. Rep. in notis, 425; *Gammon v. Schmoll*, 5 Taunt. 353, per Chambre, J. “A man is not bound to receive a limited or

Dishonour. — ceptance as a nullity, and protest the bill for non-acceptance⁽¹⁾; and if a conditional or qualified acceptance, or an acceptance varying from the terms of the bill, should be written on it without the holder's consent, he ought to refuse to take it, and immediately to note or protest the bill.

On a refusal to accept the bill, it is of course dishonoured, and the holder proceeds, as will be afterwards more particularly mentioned, to cause it, if it be a foreign bill, to be protested⁽²⁾.

If the holder find that the drawee is an infant fême covert, or incapable of contracting, he may treat the bill as dishonoured⁽³⁾.

Acceptance,
limited,
conditional, or
varying.

If the holder be disposed to take a limited, conditional, or partial acceptance, or one in any way different from the tenor of the bill, he ought to give immediate notice⁽⁴⁾ of the nature of the acceptance offered, and to obtain the consent of the other parties to the bill, in order to avoid any

qualified acceptance; he may refuse it and resort to the Drawer;" and per Dallas, J. "The party need not have received from the Acceptor, living at Bath, a limited contract of acceptance."

(1) Selwyn's *Ni. Pri.* 10th edition, v. 1, p. 329.

(2) The Holder may also treat the bill as dishonoured, if after having left it a customary time for deliberation and acceptance, he cannot get it back on afterwards sending to or applying at the Drawee's place of business. A Form of a Protest, under those circumstances, is given in the *Precedents*.

(3) Chitty on Bills, 9th edition, 283.

(4) Per Bayley, J. in *Sebag v. Abitbol*, 4 Maule and Sel. 466; Chitty on Bills, 9th edition, p. 300, 301.

risk of discharging the drawer and indorsers from their liability on it. In *Boehm v. Garcias* and others⁽¹⁾, which was an action against the drawer of a bill, dishonoured on non-acceptance, an acceptance having been offered varying from the tenor of the bill, Lord Ellenborough, C. J. stated, "The plaintiff had a right to refuse this acceptance. The drawee of a bill has no right to vary the acceptance from the terms of the bill, unless they be unambiguously and unequivocally the same." And in *Sebag v. Abitbol*⁽²⁾, Bayley, J. expressed some doubts whether, if the holder take an acceptance, expressed to be payable at a London banker's, it is not a qualified acceptance, and whether he ought not to have given notice to all the parties to the bill, and whether by omitting to do so he does not discharge them.

The drawee has no right, by the acceptance to make a bill payable at a London banker's, or other place, when the bill was not originally drawn, making it payable at another place, unless he has first obtained the consent of the holder; and if the holder require a general acceptance, and the drawee will not give it, the holder may treat the bill as dishonoured, and cause it to be noted or protested for non-acceptance. It is material to remark, with respect to the cases in which it has been held that the holder of a bill may refuse⁽³⁾

Acceptance payable at a Banking House.

(1) 1 Camp. Ni. Pri. Rep. 425. (2) 4 Maule and Sel. 466.

(3) Per Mr. Justice Lawrence, in *Parker v. Gordon*, 7 East, 385,

Dishonour. — to take an acceptance payable at a London banker's, that the bills which gave rise to those cases, were not drawn expressing in the body of them, that payment was to be made in London.

Acceptance payable at a particular place only, and not otherwise or elsewhere. As will be noticed in a subsequent Chapter, by the Act 1st and 2nd George 4th, c. 78, if the acceptor "shall, in his acceptance, express that he accepts the bill, payable *at a banker's house, or other place only, and not otherwise or elsewhere*, such acceptance shall be deemed and taken to be, to all intents and purposes, a qualified acceptance of such bill;" and if the acceptance do not contain qualifying words adapted to the act, or at least other words to the same effect, the acceptor will be liable upon it as upon a general acceptance, even though expressed, to be payable at any particular place.

Protest on Non-acceptance of Foreign Bills. — In case of the non-acceptance of a foreign

and from Lord Ellenborough's, C. J. expressions in that case he evidently was of the same opinion. See also Gammon and another *v.* Schmoll, 5 Taunt. 344, which was an action against the Acceptor of a bill, drawn upon a person at Bath; the Drawee accepted it, payable at Batson's, London, and the Court held, that the Holder was not bound to take such a qualified acceptance, but that having consented to receive it, he must conform to the terms of it, (this case was before the passing of the Act 1st and 2nd George IV, c. 78); and per Chambre, J. "A man is not bound to receive a limited or qualified acceptance; he may refuse it, and resort to the Drawer;" and per Dallas, J. "The party need not have received from the Acceptor, living at Bath, a limited contract of acceptance."

bill, in England, the holder must cause it to be protested; a protest is by the law merchant absolutely necessary, and the want of it will be fatal to his claim, and will prevent his recovering upon the bill against any of the parties, and it cannot be supplied by proof of noting for non-acceptance, and a subsequent protest for non-payment⁽¹⁾; and before the protest is made, it is the custom in England to cause the bill to be presented, either by a notary or by his clerk, (in general his clerk presents it,) and acceptance to be demanded⁽²⁾; the mode of making the presentment in common cases, and of presenting or attempting to present it in extraordinary cases, has been already explained in this Chapter, and it is not considered necessary in this place to do more than to refer to the observations before made on that subject. It is, however, not necessary or proper to leave the bill a second time for further deliberation; the leaving the bill in the first instance, whenever it is customary to do so, being considered as in the exclusive department of the holder,

Protest
on Non-
Acceptance.
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Presentment.

(1) *Rodgers v. Stevens*, 2 Term Reports, 713. *Gale v. Walsh*, 5 Term Reports, 239. *Orr v. Maginnis*, 7 East, 358. A bill drawn in Ireland, upon England, comes within the above rule, and requires a Protest if dishonoured, *Chaters v. Bell* and another, 4 Espinasse's Rep. 48.

(2) Vide also *Infra*, Chap. 5, "Protest on Non-payment."

Protest
on Non-
Acceptance.
—

and it is of course to be presumed that, before sending it to a notary's office, he has done whatever may be customary or proper on his part, and when that has been once done, it is then in the province of the drawee to leave word with his clerks, or the persons in his employ, what answer is to be given on the subject of the non-acceptance, when the bill is again presented⁽¹⁾.

If the Drawee
have ab-
sconded or
cannot be
found.

If there be no such person as the drawee, or if he have absconded, or cannot be found⁽²⁾, and have no place of business, or dwelling-house, some inquiries should be made after him, and especially at the post-office, and if a general directory be published at the place, then it is considered by some as a prudent course also to have inquiries made at the publishers; and after such inquiries have been made, the bill is to be considered as dishonoured.

The old practice which formerly prevailed of taking it to the public exchange, and presenting it to an indifferent person there, no doubt derived its origin in ancient times, when bill

(1) In *Chesmer v. Noyes*, 4 Camp. N.P. Rep. 129, which was an action on a Foreign Bill, Lord Ellenborough, C. J. held that the presentment of a Foreign Bill in England must be proved in the same manner as if it were an Inland Bill or a Promissory Note.

(2) If the Drawee or Maker cannot be found, it is sufficient to aver generally in the declaration that he was not found, Bayley on Bills, 5th edition, 401, and *Starke v. Cheeseman*, Carthew, 509, there cited.

transactions were conducted through the intervention of money changers, or bankers, frequenting the bourse or exchange; but at present such a ceremony is scarcely ever adopted, and it is not now considered necessary, and the custom of taking the bill there is nearly obsolete⁽¹⁾. In any of the special cases, such as when the drawee is dead, has absconded, or cannot be found, it is usual to state the circumstance in the protest, in order to show why he cannot be met with, so as to have the bill presented to him.

Protest
on Non-
Acceptance.

If, on presentment, it should turn out that the drawee is not met with at his place of business, and has not thought fit to leave any orders with his clerks, or to instruct them what answer is to be given, (of course still taking it for granted that the holder left the bill in the first instance, for acceptance, whenever it is customary to do so,) it is not necessary to send again, but it will suffice to state in the protest, that presentment for acceptance was made to a clerk, at the banking house, counting house, or other place of business of the drawee, and that the clerk

Drawee's absence and neglect to leave orders after having had the Bill left for deliberation.

(1) Mitchell and another v. Baring and others, 10 Barn. and Cress. 4. The Author was in Court on the trial of that cause, and can speak to a slight error in the report, which states that it was proved, that the custom of taking the bill to the Exchange had become obsolete; but, in fact, the respectable individual who gave evidence respecting it, said that it was occasionally done, but that he did not attach importance to it, and that it was almost obsolete.

Protest
on Non-
Acceptance.

Difficulty in
making a
Presentment,
or Protest
of the Bill
on the same
day on which
the Holder re-
ceives it back
dishonoured.

Noting.

answered, that the drawee was not within, and that he had not left any orders to accept the bill.

In case of difficulty in meeting with the drawee, distance of his residence, lateness of the hour, or any other extraordinary case, it does not appear absolutely necessary, for either the presentment or protest of a foreign bill, to be made in the course of the very day on which the holder receives it back dishonoured on non-acceptance; and in practice it sometimes necessarily occurs in such special cases, that neither the presentment for acceptance is made, nor is the protest completed until the day following.

After the presentment, the next step is to note the bill; this is a note or minute made upon the face of the bill; it has been called an "incipient protest,"⁽¹⁾ and it consists of the marking upon it the initials of the notary's name, the true date of dishonour, &c.; and it has been held⁽²⁾ that if a foreign bill be noted at the time, a protest may

(1) Bayley on Bills, 5th edition, in notis, p. 266. "Is there any case where a distinction has been taken between a bill dishonoured for non-acceptance, and where it is for non-payment: it has equally the mark of dishonour on the face of it: the noting for dishonour is always annexed to the bill." Per Bayley, J. in *Crossley v. Ham*, 13 East, 502.

(2) Per Lord Kenyon, in *Chaters v. Bell* and another, 4 Esp. N. P. Cases, 48, (in which opinion Lord Ellenborough afterwards concurred,) and cited in 1 Selwyn's Ni. Pri. 10th edition, 360, and in *Goodman v. Harvey*, 4 Adol. and Ellis, 874.

be drawn up at any time afterwards, provided that in the event of a suit, it be drawn up before the commencement of such suit⁽¹⁾; but it has occurred within the Author's knowledge, that in legal proceedings in a Court in a foreign state, protests have been required, and have been prepared and sent out from this country, and made use of successfully, in the progress of such proceedings, some time after they had been instituted there. In practice, the presentment and noting are occasionally done on one day, and the protest prepared on some subsequent one, and dated as of the true date when the bill was dishonoured or refused acceptance⁽²⁾: although the noting of the bill is generally done on the day on which it is dishonoured, yet the rule is not imperative; and in some cases, such as the lateness of the hour, distance, or other causes, when it is very inconvenient, or attended with great difficulty, to note it on the very day of presentment and dishonour, the practice is to note it at the earliest convenient opportunity afterwards, stating in the noting the true

Protest
on Non-
Acceptance.
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(1) Bayley on Bills, 5th edition, 267; and *Chaters v. Bell*, 4 Espinasse's N. P. Cases, 48, there cited.

(2) That is not antedating the Protest, but inserting the true date of dishonour, namely, the day upon which it was refused acceptance; the Protest is often necessarily prepared on a day subsequent to the dishonour and noting.

Protest
on Non-
Acceptance.
—

date of dishonour: it is considered quite sufficient if the noting forms part of the transaction, and is written upon the bill before it is returned from the notary's office, and is not an after-thought. It is not uncommon amongst merchants to cause the bill to be noted in the first instance, but to suspend the preparing a protest for a time, in order to allow an opportunity for the expected arrival of advices, remittances, or consignments coming from the drawer abroad, to the drawee; a course of proceeding which the mercantile classes consider convenient and regular; but the holder must take care not to let slip an opportunity of sending off the protest, and notice of dishonour, by the first usual conveyance, if he intend to avoid committing himself, and to preserve his remedy against the drawer or indorsers. In like manner a duplicate or a triplicate protest may, by the custom of merchants, be drawn up at the time or afterwards, and it is equally as efficacious as an original.

Duplicate or
Triplicate
Protest.

Nature and
contents of the
Protest on
Non-accept-
ance.

The protest is an instrument in writing, signed by the notary, and passed under his official seal; in fact, it may perhaps be a question whether the latter, like the seals to many other public and official documents, is not the most essential, or the only essential part of the ceremony; it is in general (though, as we have before seen, not always) made on the same day on which the bill is dishonoured on non-acceptance. The protest of a bill by a notary in England does not require

any attesting witness, though formerly witnesses to protests were not uncommon.

Nature and
contents of the
Protest on
Non-accept-
ance.

It must state correctly the date of the dishonour, and a bill cannot be legally noted or protested as of a previous date, (indeed, the noting or protesting it as of a previous date, would be a nullity, and any notary inserting a false date of the presentment and dishonour, would be liable to be struck off the rolls⁽¹⁾;) and it also concisely gives an account of the refusal to accept, or other circumstances incident to the non-acceptance; and it generally states at whose request (naming the principal or agent) the bill is protested; that, however, does not appear to be necessary; indeed, in many cases, the persons desiring bills to be protested, (as in the instance of commission merchants receiving bills from a distant place,) are mere agents, and do not always know who the real holders are; and in any of such cases it is commonly stated in the protest, to be done at the request of "the holders," or "the bearer." The bill should be copied on the back of the protest, or a copy of the bill should be prefixed to it; there is no particular form of protest which it is incumbent to use; that generally adopted is antiquated, and seems very susceptible of improvement. If the drawee, in consequence of the arrival of funds,

(1) Vide Supra, Chap. 1, p. 20, respecting the serious consequences to a Notary of the offence of improperly antedating a Notarial Instrument.

Nature and
contents of the
Protest on
Non-accept-
ance.

Protest Book.

or other circumstances, should, after the noting or protest of the bill, determine to honour it, he reimburses to the holder, the expense of the noting or protest.

A notarial register, usually called a Protest Book, of the noting and protesting of bills and notes, with copies of them, is always kept in a notary's office, which furnishes the means of preparing duplicate or triplicate protests, if they should be wanted at any time afterwards; and as it is usual for the person who presents each bill, to mark the register with his initials, it enables the holder to prove the presentment without difficulty, in case it should ever become necessary.

An entry in the book of the dishonour of a bill of exchange, made at the time of the dishonour in the usual course of business by the notary's clerk who presented the bill, may be given in evidence in an action on the bill, upon proof of the death of the clerk⁽¹⁾.

The emoluments of a notary arising from the noting and protesting of bills are very trivial, and are not an adequate compensation for the responsibility, labour, and loss of time incident to it. In fact, the English notaries are but ill requited, for the general business of their profession, (their fees and charges being on a very moderate scale); and as one proof amongst others which might be

(1) *Poole v. Dicas*, 1 Bing. N.C. C.P. 649.

adduced of the trifling extent of profits which it produces, there is not one known instance, of any notary who, without resorting also to some other profession or business, could maintain himself in a respectable sphere of life, by his practice out of London.

Although the ceremony is not absolutely necessary, it is customary to get inland bills noted; and there are advantages in doing so, because as the noting is generally practised, the want of it would tend to render the other parties to the bills suspicious of irregularity, and more reluctant to take them up, and would almost certainly raise a prejudice in the minds of a jury against the holder, if, upon a trial, the due presentment should be disputed; and when once noted, the proof of presentment and dishonour may always be had on reference to the register of the noting and protesting of bills, preserved in the notary's office; and if the bill should be lost, a copy can at any time be obtained and proved from the same quarter.

It has been before observed, that the Act 3rd and 4th Anne, c. 9, sec. 4, gives the right of protesting inland bills in case of a refusal to accept them in writing, (if for the sum of five pounds, or upwards, payable after date, and expressed to be for value received,) as in the case of foreign bills; and in the event of the non-acceptance of an *inland* bill, it may be protested on the day of the dishonour; but in case of non-

Noting *Inland*
Bills.

Noting and
Protest on
Non-accept-
ance of *Inland*
Bills.

Noting and
Protest on
Non-accept-
ance of *Inland*
Bills.

payment, as will be afterwards shown⁽¹⁾, the protest ought not to be made until after the day of refusal. The act gives the protest, in order to entitle the holder to demand of the drawer or indorsers costs, damages, and interest, but as the plaintiff constantly recovers both principal and interest in the English Courts, against a drawer or indorser of an inland bill, on proof of dishonour and notice, without a protest, and as it has been decided⁽²⁾ that a protest of such a bill is not essential to enable the holder to recover interest in this country, it is seldom prepared; and in delivering judgment in the case *Windle v. Andrews*⁽²⁾, Mr. Justice Bayley stated, "the principle is this: the 8th section⁽³⁾ provides that the act shall not take away any remedy which the party had before. Now, before that act, by the common law the defendant was liable for interest; although, therefore, unless in compliance with the 3rd and 4th Anne, the bill was protested, he is not entitled to any remedy under that statute, still the 8th section preserved to him his remedy at the common law, although no protest be made."

(1) Vide *Infra*, C. 5, as to Protests on non-payment of Inland Bills.

(2) *Windle v. Andrews*, 2 Barn. and Ald. 696; 2 Starkie, N.P.C. 425.

(3) Statute 3rd and 4th Anne, c. 9, sec. 8. "This is a very natural proviso, that this should not extend to discharge any remedy that they might have for the principal sum, though there was no Protest."—Per Lord Hardwicke, C. J. in *Lumley v. Palmer*, Cases Temp. Hardwicke, 74.

However, if any of the parties to inland bills should be sued abroad, or their property should be attached in a foreign country, in respect of the amount owing on the bills, then protests of the inland bills would be requisite, and must be sent out⁽¹⁾.

If there be no notary at the place where the drawee carries on business, or resides, then, by the custom of merchants, in the case of foreign bills, and by the Act 9th and 10th William 3rd, c. 17, in the case of inland bills, the protest is to be made by a substantial person, inhabiting the city, town, or place; and in the case of an *inland* bill, the protest must be in the presence of two or more credible witnesses⁽²⁾. It does not appear that there is any usage in the case of a *foreign* bill, to require any witnesses to such a protest; indeed it is not customary to have attesting witnesses to any kind of protest of a foreign bill.

If there be no Notary at the place, Foreign and Inland Bills may be protested by an Inhabitant of the place.

(1) An instance of this once occurred within the Author's knowledge, in a case where an attachment had been laid in the United States of America, on property of the Acceptor of several *Inland* Bills of Exchange, upon which judgment was obtained in the Foreign Court, previously to which it became necessary to send out Protests of the Bills; and the amount was eventually recovered.

(2) Protests of *Inland* Bills made by substantial persons in places where there is not any Notary appear to be very uncommon; and there are, as before mentioned, very few instances where Protests of *Inland* Bills can be of any use.

It is recommended that when there is not any practising notary at the place, the holder should cause the bill to be noted and protested by a resident housekeeper, who is well known, and of such a profession or occupation as to enable the holder to meet with him afterwards, if necessary, without difficulty, such as a banker, attorney-at-law, merchant, manufacturer, innkeeper, &c. &c. and that he should so describe himself under his signature to the protest; besides the facility afforded in afterwards meeting with a person of that description, it rather tends to carry with it some additional authenticity in foreign countries. It is obvious that whenever such a person is justified in making a protest of a bill, he must also be justified in noting it, otherwise he might not be enabled to identify it afterwards.

Protest Stamps
on Foreign and
Inland Bills.

By the general Stamp Act⁽¹⁾ the duties imposed upon protests are as follows :—

Protest of any bill of exchange, or promissory note, for any sum of money not amounting to £20	£0	2	0
Amounting to £20, and not amount- ing to £100	0	3	0
Amounting to £100, and not amount- ing to £500	0	5	0
Amounting to £500, or upwards....	0	10	0

Protest
Stamps.

The *ad valorem* duty being laid upon the amount of each bill, one protest cannot combine

(1) 55th George III, c. 184.

two bills, unless the holder goes to the expense of having a separate stamp impressed in respect of each ; and then it would perhaps be found objectionable and inconvenient, and not so well adapted to subsequent proceedings, as adhering to the customary plan of having a separate protest for each bill.

Perhaps before quitting the subject of stamps, it may not be amiss to remark, that as respects the protests of bills, the stamp duty is considered to be too heavy, and that it operates in a very harsh and oppressive manner. It is often a tax upon poverty and distress ; and instances are not unfrequent, where a British merchant, in addition to the disappointment and inconvenience arising from the dishonour of bills which he holds, has to expend many pounds in the course of a day in protest stamps, thereby paying a tax for the unenviable distinction of being the holder of bills, which have not produced, and perhaps never may produce one farthing. It would have been thought an odd project to have brought forward a legislative measure, imposing a tax upon a merchant if the bills which he held were paid, yet he is now obliged to pay a tax because the bills happen not to be paid.

It forms no part of the plan of this treatise to detail that branch of the law, or usage, which relates to the notice of dishonour to be given to the drawer and indorsers of a dishonoured bill, because such notice does not come within the

province or duty of a notary ; but any person desirous of making himself acquainted with the law merchant, relating to it, and the special circumstances which may operate to dispense with proof of the protest or notice of dishonour, will find the whole fully and ably detailed, in one of the excellent works published upon bills of exchange⁽¹⁾.

In concluding this chapter, however, it may perhaps not be considered improper to point out a serious defect in the present state of the law respecting the notice of dishonour, and to mention that indorsers of bills are often exposed to great risk, when bills are dishonoured after passing through several hands in different towns, from the impossibility of the indorsers knowing, with certainty, whether the notice of dishonour is in time or not : too often they have merely such information respecting the number of hands and towns through which the bills are supposed to have travelled, and how long they were kept in each, as the holder chooses to give, and he is often unable or unwilling to give any : in such cases, indorsers have only a choice of difficulties ; if they should refuse to take up any such bills without full information and satisfactory proof, which in that stage they cannot insist upon, of the regularity of the notice of dishonour, they

(1) See Chitty on Bills. Bayley on Bills. J. Chitty, jun. on Bills. Byles on Bills.

would expose themselves to being obliged to pay the amount, with the additional expense and annoyance of an action at law ; and on the other hand, if they should take them up, and it should afterwards appear that the notice was not regular, they would lose the right to enforce re-payment from the prior indorsers or drawer. This evil can only be remedied by a legislative enactment, and it seems remarkable that it has been allowed to exist so long.

CHAP. IV.

PROTEST FOR BETTER SECURITY.—ACCEPTANCE
SUPRA PROTEST.—PAYMENT SUPRA PROTEST.

Protest for
better security.

IF the person upon whom a bill is drawn should stop payment⁽¹⁾, become bankrupt, or abscond, before it becomes due, the holder has, by the custom of merchants, a right to cause it to be presented immediately to the drawee, although he may have previously accepted it, and on security being required, and not obtained, then to protest it, with a view to having better security for the payment of it; and in the event of the drawee's having absconded, an attempt must be made to make a presentment of the bill, for the purpose of demanding security, in the same mode as before detailed in the common case of an attempt to present a bill for acceptance⁽²⁾: this course is pursued with respect to foreign bills, and the advantage of it appears to be, that by the laws of various foreign countries, the holders may, after such a protest, attach the property of, or sue the parties to them; and it also operates to notify to the drawers and indorsers, the state of the acceptor's circumstances,

(1) Expte. Wackerbarth, 5 Vesey, 574; Beawes, 7, p. 430.

(2) Vide Supra, Chap. 3.

so that they may endeavour to be prepared, and to provide in time for the payment of the bills. Protest for
better security.

This protest requires the same *ad valorem* stamp as a protest of a bill in ordinary cases⁽¹⁾.

As the ceremony is attended with little expense, and as it furnishes so prompt and useful a remedy for the recovery of the amount of the bill, from any of the parties to it, who may be residing in foreign countries, especially in those where the law of attachment prevails, a prudent holder of a bill of that kind ought not to omit causing it to be protested for better security, if the drawee should stop payment, abscond, or become bankrupt. As respects legal proceedings in this country it is, however, not considered incumbent on the holder to make this protest; nor will his neglecting to do so injure his remedy against the drawer or indorsers⁽²⁾.

There is not any necessity for the holder to leave the bill for consideration when security is demanded, nor is it the custom so to leave it.

The holder cannot by mercantile usage, demand better security and protest for want of it, on account of the insolvency or bankruptcy of any party, except the person upon whom the bill is drawn; nor does it appear that for any legal purposes or proceedings in this country, a protest for better security can be of importance to

(1) Stamp Act, 55th George III, c. 184.

(2) Chitty on Bills, 9th edition, p. 344.

Protest for the holder. It is recommended, in order to
 better security. _____ avoid misconception as to the grounds on which
 the holder requires a protest for better security,
 that his instructions to the notary should be in
 writing. When the bill becomes due, if it is not
 paid, another protest must be made for non-
 payment⁽¹⁾.

Acceptance By the law merchant, after a bill has been
 Supra Protest. protested for non-acceptance, or even after ac-
 ceptance, provided in the latter case there has
 been a protest for better security⁽²⁾, any person
 may, without consulting either the drawer or
 indorsers, accept the bill *supra protest*; and a
 stranger so accepting, acquires certain rights, and
 subjects himself to the same obligations as if the
 bill had been directed to him⁽³⁾. It may be also
 done by the drawee, either in favour of the drawer
 or of an indorser of a bill; and the object of an
 acceptance of this nature is to save the credit,
 and prevent the suing of some of the parties to
 it⁽⁴⁾, and to avoid the expense and consequences
 of its going back dishonoured. "A bill must be
 accepted by the drawee, or failing him by some
 one for the honour of the drawer," per Lord

(1) Beawes, 7, p. 430.

(2) Expte. Wackerbarth, 5 Vesey, 574; Bayley on Bills, 5th
 edition, p. 180.

(3) Selwyn's Ni. Pri. 10th edition, v. 1, p. 301.

(4) Bayley on Bills, 5th edition, 176.

Ellenborough, C. J. in *Jackson v. Hudson*⁽¹⁾; (of Acceptance
course he was alluding to a bill without any in- Supra Protest.
dorsers, for whose honour the acceptance might
be made.)

It is said to be for the honour of the party on whose account or behalf it is made, and it may be either for the whole amount of the bill, or for a part, and either for the honour of one, or of more than one of the parties to the bill, but it is essential as its name imports, that it should not be given until after a regular protest of the bill for non-acceptance⁽²⁾, or for want of better security⁽³⁾.

Although the general rule is, that there can be no other acceptor of a bill after a general acceptance by the drawee, it is said that when a bill has been accepted *supra protest*, for the honour of one party, it may, by any individual,

(1) 2 Camp. N.P. Rep. 447, 448. Where a bill is directed in blank it may be accepted by any person; but when directed to a party named it can only be accepted by another for honour—*Davies v. Clarke*, 1 Carr. and Kirwan, (N.P.) 177. A party can only be sued as a general Acceptor when the bill is addressed to him; therefore, where a bill was drawn, payable to the party drawing, or to his own order, and addressed to himself, which the Defendant accepted in his own name, the Plaintiff was nonsuited, and the nonsuit was held to be correct—*Davies v. Clarke*, 7 Ad. and Ell. N.S. (Q.B.) 16.

(2) *Hoare v. Cazenove*, 16 East, 391; *Vandewall and another v. Tyrell*, Moody and Mal. 87; *Williams v. Germaine*, 7 Barn. and Cress. 468.

(3) Bayley on Bills, 5th edition, 180.

Acceptance be accepted *supra protest*, for the honour of
 Supra Protest. another⁽¹⁾.

It is not incumbent upon the holder to consent to take an acceptance *supra protest*; and it seems almost superfluous to add, that after the bill has been dishonoured on non-acceptance, the drawee, or any third person, accepting or paying the bill, is expected to pay all the charges and expenses incident to the dishonour.

Liability of An acceptance *supra protest* is binding on the
 Acceptor acceptor⁽²⁾, and he will be liable upon it to the
 Supra Protest. holder; and if the acceptance be for the honour of the bill, or of the drawer, the acceptor will be liable to all the indorsees, as well as to the holder; if in honour of a particular indorser, then to all subsequent indorsees⁽³⁾.

Remedy of Ac- And if the acceptor for honour pay the bill, he
 ceptor Supra is entitled to have recourse for re-payment to the
 Protest against person for whose honour he made the acceptance,
 other parties. and to all other persons who are liable to that person⁽⁴⁾; but if he accepted it for the honour of the drawer only, he cannot sue any of the indorsers. In expte. Wackerbarth⁽⁵⁾, where Cox and Heisch,

(1) Note subjoined to *Jackson v. Hudson*, 2 Camp. N.P. 448, referring to *Beawes*, Pl. 42.

(2) Per Wilmot, J. in *Pillans v. Van Mierop and another*, 3 Burr, 1672.

(3) *Chitty on Bills*, 9th edition, p. 352.

(4) *Bayley on Bills*, 5th edition, 179; *Beawes*, 47, 49, p. 435, 436.

(5) 5 Vesey, jun. 574.

the acceptors of a bill, became bankrupt, and the holders having protested it for better security, Christian and Brown accepted it for the honour of the drawers, and afterwards paid it, and then claimed to receive dividends under the bankrupts' estate; Lord Chancellor Eldon held that a person accepting for the honour of the drawer, had a right to come upon the *original* acceptors. But if the drawee accepted the bill without effects, and for the accommodation of the drawer, a person taking it up for the honour of the drawer, cannot sue such acceptor⁽¹⁾.

A person who accepts for the honour of an indorser, cannot sue a subsequent indorser; but the indorser for whose honour he accepted, and all the prior parties, the drawer included, are obliged to make satisfaction to such acceptor⁽²⁾; thus, if on the bill being protested for non-acceptance, he accepted it for the honour of the first indorser, such acceptor cannot sue any party except the first indorser and the drawer; but if he accepted it for the honour of a second indorser, both the second indorser, the first or prior indorser, and the drawer, will be liable to him.

It appears to be commonly understood, that if a bill be accepted by any person *supra protest* generally, without declaring it to be done for the honour of any particular party to it, it will be

(1) Expte. Lambert, 13 Vesey, 179.

(2) Chitty on Bills, 9th edition, p. 352, citing Beawes, 35, 44, 49.

Acceptance considered as done for the honour of the drawer.
Supra Protest. Perhaps, however, it would be held, that if in the act of honour, it was declared, that it was accepted for the honour of another party, that would be considered as explaining whatever doubt might arise, from the general wording of such an acceptance on the bill.

The mode of
 Accepting a
 Bill *Supra Pro-*
 test, and the
 form of Act of
 Honour,
 otherwise Act
 for Honour.

When any person intends to accept a bill *supra protest*, it is necessary by the law merchant to have an instrument called an act of honour, or an act for honour as it is sometimes called, prepared by a notary, which is a notarial certificate, under the hand and seal of the notary, declaring, that the bill, of which a copy is written on the back, or prefixed to it, having been protested for non-acceptance, a third person, or the drawee, as the case may be, would accept the bill, either for the whole or a part of the amount, for the honour or on account of any party to it; and it commonly concludes with some general declaration, to the effect, that such party, (and other proper persons,) are held responsible for the amount, and for all costs, damages, interest, &c.; and sometimes with the addition of a few words to the effect, that the notary accordingly grants that act of honour. It is not necessary to have any attesting witness to it.

The form of the act of honour, or act for honour, varies considerably, according to the practice which prevails in the offices of different notaries ;

and, indeed, there is not any precise form of words which it is necessary to adhere to. It must be truly dated, on the day, on which the bill was exhibited and the acceptor for honour undertook to accept it.

By mercantile usage, the intended acceptor for honour, personally, or through the medium of a clerk or agent, (on the bill being exhibited either by a notary or by his clerk,) declares his intention to accept it *supra protest*; after which an act of honour is prepared; in such a case, the usage and practice as to the mode of presenting or exhibiting the bill, and receiving the answer, is precisely similar to the common case of the presentment of a bill for acceptance⁽¹⁾.

It is of no importance how short a time elapses after the protest, before granting the act of honour.

The act of honour, or as it is sometimes called, act for honour, is, by the law merchant, an indispensable ceremony, and it is, in fact, a kind of notarial certificate, explaining the nature and objects of the acceptance *supra protest*: a copy is preserved of the act of honour, and of the bill, in the protest book, or book of registry of the notary, which is usually marked with the initials of the person who presented or exhibited the bill, as in the common case of the presentment, to the drawee for acceptance. The protest is important

Acceptance
Supra Protest.

Necessity of an
Act of Honour,
otherwise Act
for Honour.

(1) See Chapter 3, p. 93, as to the Presentment of a Bill for Acceptance, before the Protest is made.

Acceptance
Supra Protest.

to the holder's security, and should be kept by him, the act of honour or a duplicate should be kept by the acceptor *supra protest*, as he would find it useful and necessary in an action brought to enforce any remedy against any other party, in respect of such acceptance. The acceptor for honour pays the expense of the act of honour, (or reimburses the holder for it,) and if he accept for the whole amount, he also pays or reimburses the expense of the protest.

After the act of honour has been prepared, or simultaneously with it, the acceptor, or some person authorised by him, writes upon the bill an acceptance, which is commonly to the following effect : " Accepted *supra protest* for the honour of the drawer, (or *C. D.* the indorser). 1st of October, 1838, *A. B.*"; or if for part, " Accepted *supra protest* for £ sterling, being part of the amount of this bill for the honour of the drawer, (or of *C. D.* the indorser). 1st of October, 1838, *A. B.*"⁽¹⁾

(1) It has been stated in one of the Treatises, that the Acceptor *Supra Protest* must personally appear before a Notary, with witnesses, and subscribe the acceptance with his own hand ; at present, by the custom of merchants, there is no foundation for that assertion, even if it were always possible to act upon it ; and the bankers and merchants of England do not in practice adopt a mode so useless and inconvenient. In very many instances, owing to the extended commerce of this country, it is not possible for the intended Acceptor *Supra Protest* to attend to it in person ; as for example in the case of

As a notarial act, the act of honour requires Stamp Duty on a 5s stamp⁽¹⁾, and if there are several bills to be Act of Honour. copied on the act of honour, one stamp of 5s may, and occasionally does include all of them, if they can be conveniently written on the same sheet, provided there are the same parties to each, and they are accepted or paid *supra protest* by the same person, at the same time, and for the honour of the same party; but if not, it should appear that the safe and usual course is to take them on separate stamps. For every additional sheet used beyond the first, a progressive duty of 5s is necessary. It will be remarked, that the stamp act does not impose an additional duty, as in the case of deeds, conveyances, &c. &c. upon any matter annexed to notarial acts; in fact, from the nature and variety of instruments and papers annexed to, and authenticated by them, an enactment imposing any such additional duty would in general be nugatory, and a

sickness, domestic affliction, absence from home, pressure of other business, or where, as in the case of many of the foreign or other houses established in different towns, there is not a principal or partner upon the spot, and the business is entirely conducted by clerks or agents, yet it is considered quite as competent for such a person to do all that is needful for him, as to his giving an acceptance *Supra Protest* through the intervention of clerks or agents, as it is for a Drawee to return an answer on presentment, or to give a common acceptance through his clerks or agents, which is done every day.

(1) General Stamp Act 55th George III, c. 184.

Stamp Duty on dead letter, as it would be impracticable, in most cases, to comply with it.

Act of Honour.

As the stamp act imposes a distinct duty on protests, and on notarial acts not otherwise charged, it appears to prohibit the making the act of honour on the fly sheet of the protest, unless it has a stamp of 5s, in addition to the *ad valorem* protest stamp⁽¹⁾; and it is in general made on a separate stamp, which seems to be the regular and safest mode.

Course to be pursued when the Drawee is willing to accept for part.

It occasionally happens that the drawee has not sufficient funds of the drawer on hand to provide for the payment of the full amount of the bill, and is willing to accept for a part of the amount only; formerly in that case it was occa-

(1) General Stamp Act 55th Geo. III, c. 184. The following is a copy of the opinion of JOSEPH TIMM, Esq. the Solicitor for Stamps and Taxes, to the Author, as to an additional or separate Stamp being requisite for the Act of Honour:

*Stamps and Taxes, London,
19th January, 1839.*

SIR,—I have before me your letter of the 17th instant, with the several forms of Protest and Act of Honour which were inclosed therein, and referring to your letter of the 15th instant, requesting my opinion as to the Stamp Duty chargeable on instruments of these descriptions, I beg to state, that, after much consideration, I have come to the conclusion that whether the Protest and Act of Honour be written in the form of one instrument, or as distinct acts, they are chargeable, each of them, with a separate and distinct Stamp Duty, viz. the Protest with the *ad valorem* duty under that head, and the Act of Honour as a “notarial act, not otherwise charged” in the Schedule of Stamp Duties annexed to the Act 55th George 3rd, c. 184.

I remain, Sir, your most obedient Servant,

J. TIMM,

R. BROOKE, Esq.

Solicitor for Stamps and Taxes.

sionally stated in the protest, that the drawee declared that he accepted for part, and refused to accept for the remainder, and the protest then concluded with protesting for want of acceptance of the remainder, but the general opinion now is that such a mode is irregular and objectionable; and it is now considered that the proper and regular course is to cause the bill to be absolutely protested, and to state in the protest that the drawee had refused to accept it, *according to the tenor of the bill*; and then for an act of honour to be prepared on a separate or an additional stamp⁽¹⁾, and granted by a notary, certifying that the drawee would accept the bill *supra protest* for part of the amount, for the honour of the drawer; and for an acceptance *supra protest* for such part, to be made upon the bill by the drawee. In practice this is the course which is now generally adopted; it is a safe one, as avoiding any awkward point respecting the stamp duty, and it is submitted that it is the proper and regular one for the holder to pursue, if he intends not to commit himself, and does not choose to raise any question, whether by neglecting to adopt it, he may discharge the drawer and indorsers from their liability⁽²⁾.

Acceptance
Supra Protest.
Course to be
pursued when
the Drawee is
willing to ac-
cept for part.

(1) Vide Supra in this Chapter, p. 118, as to the requisite stamp; and the opinion of JOSEPH TIMM, Esq. Solicitor for Stamps and Taxes, upon that point.

(2) Vide Chap. 3, as to conditional, partial, or varying acceptances.

Notice of Dis-
honour, on
Acceptance
Supra Protest.

Whether a bill is accepted *supra protest*, for all, or for a part of the amount, either by a third person, or by the drawee, it is necessary that the holder should give notice of the dishonour to the other parties to the bill, with the same diligence, and in the same manner, as is requisite, in any common case, of the dishonour, and protest of a bill.

Protest neces-
sary before
Acceptance, or
Payment, for
Honour.

By mercantile usage a protest must always be made, before any person accepts, or pays a bill *supra protest*; and this ceremony is necessary, for the security of the person who so accepts or pays; and in case of such an acceptance it is also necessary, for the security of the holder to present it when due to the drawee⁽¹⁾, and to protest it on non-payment.

In *Vandewall and another v. Tyrrell*⁽²⁾, the defendant, who resided at Jamaica, drew four bills for £1500 on Willis and Co. in London, at nine months after sight. The bills were duly accepted, but were dishonoured, and noted for non-payment, at the time when they became due, which was on the 30th of July. The plaintiffs paid the bills for the honour of the defendant, the drawer, and sent notice of it to the defendant, by the first

(1) *Hoare v. Cazenove*, 16 East, 391: *Vandewall and another v. Tyrrell*, before Lord Tenterden, C. J. Trinity Term, 8th George IV, 1827, Moo. and Malk. 87. See *Infra* in this Chapter, as to the exception and change made in some respects by the Act 2nd and 3rd William IV, c. 98.

(2) Moo. and Malk. 87.

foreign post, to Jamaica. No protest was made for non-payment, until May in the following year, when a protest was drawn up, and purported to have been made, before the payment by the plaintiffs; and an action for money paid, having been brought by the plaintiffs against the defendant, the drawer, it was decided by Lord Tenterden, C. J. that such a payment could not bind the defendant, or subject him to liability to refund; for that the custom of merchants clearly was, that a formal protest for non-payment should be made, before the payment *supra protest*, for the honour of any party to the bill; and the plaintiff was accordingly nonsuited.

In *Hoare v. Cazenove*⁽¹⁾, the defendant was the acceptor *supra protest*, for the honour of the first indorsers of a foreign bill, drawn payable 130 days after date, having been first duly presented for acceptance, and refused, and protested for non-acceptance; but when the bill became due, it was not presented to the drawees for payment, nor protested for non-payment; and the Court held, that the holder could not recover against the defendant, and treated an acceptance *supra protest*, as a conditional engagement, which only rendered the acceptor liable, if the bill was duly presented again to the drawee, and (if refused) protested for non-payment; and Lord Ellenborough said, "And indeed the reason

(1) 16 East, 391.

Acceptance of the thing, as well as the strict law of the case, seems to render a second resort to the drawee proper, when the unaccepted bill still remains with the holder ; for effects often reach the drawee, who has refused acceptance in the first instance, out of which the bill may, and would be satisfied, if presented to him again, when the period of payment had arrived. And the drawer is entitled to the chance of benefit, to arise from such second demand, or, at any rate, to the benefit of that evidence, which the protest affords, that the demand has been made duly, without effect, as far as such evidence may be available to him, for purposes of ulterior resort."

Time of Presentment for Payment when payable after date.

If a bill drawn payable *after date* be accepted *supra protest*, it must be presented for payment to the original drawee on the day when it falls due, calculated from the date⁽¹⁾.

Time of Presentment for Payment when payable after sight.

The presentment for payment of a bill drawn payable *after sight*, should be made to the original drawee, on the day when, according to the acceptance *supra protest*, the bill falls due, and not calculated from the day of presentment for acceptance to, and dishonour by the drawee⁽²⁾.

But with respect to all bills, in which the drawers

(1) Hoare *v.* Cazenove, 16 East, 391; and from what fell from Lord Tenterden, C. J. in Williams *v.* Germaine, 7 Barn. and Cress. 468, he also evidently appears to have taken it for granted, that the presentment must be at the period above mentioned.

(2) Williams *v.* Germaine, 7 Barn. and Cress. 468.

have expressed, that they are to be *payable in any* ^{Acceptance}
place other than the place of residence of the ^{Supra Protest.}
drawees, and which have been refused acceptance
 by the latter, it is considered that the necessity
 of presenting them to the drawees for payment
 is dispensed with, by the Act (though unskilfully
 worded) of the 2nd and 3rd William 4th, c. 98 ;
 which will be afterwards noticed in this chapter.

In *Williams v. Germaine*, the elder, and *Same v. Germaine*, the younger⁽¹⁾, a foreign bill was drawn by Germaine, the younger, payable thirty days after sight, and presented for acceptance on the 12th of July, and protested for non-acceptance, and *eight days afterwards*, on the 20th

(1) 7 Barn. and Cress. 468. The Act 2nd and 3rd William IV, c. 98, which will be referred to afterwards in this Chapter, enacts, that all Bills of Exchange wherein the Drawers shall have expressed that the bills are to be *payable in any place other* than the place by them therein mentioned to be the residence of the Drawees, “and which shall not on the presentment for acceptance thereof be accepted, shall or may be, *without further presentment to the Drawee* or Drawees, *proteted for non-payment* in the place in which such Bills of Exchange shall have been by the Drawer or Drawers expressed to be payable.” That Act is ambiguously worded ; but if a bill be drawn in the form mentioned in it, payable in a place other than the residence of the Drawee, and refused acceptance, and afterwards protested for non-payment when due in such place, it is submitted that there is not any occasion to aver (as was held necessary in *Williams v. Germaine*) in the declaration against an Acceptor for honour a presentment for payment to the Drawee, and a protest for non-payment by him.

Acceptance
Supra Protest.
—

of that month, it was accepted by Germaine, the elder, for the honour of the drawer. On the 22nd of August, when, according to the acceptance, (and including the days of grace,) the bill became due; it was presented for payment to the drawees, and also to the acceptor for honour, and dishonoured and protested for non-payment; after a verdict in each case for the plaintiff, it was objected on a motion to enter a nonsuit, that it was incumbent on the plaintiff to prove a due presentment for payment to the drawees, and a protest for non-payment by them before the acceptor for honour could be called upon to pay, and that the presentment to the drawees was not at the right time, for that the bill being made payable at a certain time after sight, was at maturity as against the drawees on the 14th August, but was not presented to them for payment until the 22nd; the Court held on argument in the former action against the acceptor for honour, and in the latter against the drawer, that the presentments for payment were made at a proper time⁽¹⁾. On a motion afterwards in arrest of judgment in each case, on the ground that the declaration omitted to aver a presentment for payment to the drawees, and protest for non-payment, but only to the

(1) Lord Tenterden, C. J. in *Williams v. Germaine*, 7 Barn. and Cress. p. 471, said, “ I think that sufficed ;” from which it may be inferred that he did not mean to decide that it would not have been valid if the presentment had been made on the 14th August.

acceptor for honour, judgment was on argument arrested, in consequence of that omission⁽¹⁾.

It occasionally happens, that a bill drawn payable after sight, is accepted for honour some days after being dishonoured and protested for non-acceptance, and the acceptor for honour declares, that he will accept it *supra protest*, as from the day when it was so dishonoured and protested, and the act of honour⁽²⁾ and the acceptance *supra protest*, mention that circumstance accordingly, and the act of honour bears the true date on which he made such declaration ; this mode of accepting is considered convenient and regular, and the acceptance in that case is to the following effect : “ Accepted *supra protest*, as from the of last, for the honour of *A. B.* the drawer, (or *C. D.* the indorser,) Liverpool, the of 1838, *E. F. & Co.* ; ”⁽³⁾ or if accepted for part only, the acceptance must be worded accordingly.

Acceptance
Supra Protest,
as from a prior
date.

(1) *Williams v. Germaine*, the elder, *Same v. Germaine*, the younger, 7 Barn. and Cress. 468 and 477; and Lord Tenterden, C. J. stated, “ Whatever is requisite to enable a person who has accepted a bill for the honour of another, to call upon that person to repay him, and to enable him to recover over against such person, may also be reasonably held necessary to enable another party to recover against such an Acceptor for honour.”

(2) A Form is given in the Precedents.

(3) The foregoing Form of Acceptance is recommended, as being the most free from doubt, but it is sufficient for the acceptance for honour to be merely dated as of the true date of dishonour ; and in that case the period when it becomes due is computed from that date.

Acceptance for
Honour condi-
tional only, and
the Acceptor
not liable
unless the Bill
is presented
for Payment to
the Drawee,
and protested.

The acceptance *supra protest* is only in the nature of *a condition*, and to render the acceptor liable upon it, the bill must be duly presented for payment to the drawee, *whenever the presentment is not dispensed with by the Act 2nd and 3rd William 4th, c. 98*, and must be refused or not be paid by him. In *Williams v. Germaine*⁽¹⁾, Lord Tenterden, C. J. said, "It seems to me, therefore, that the same rule as to proof, which prevails in the case of an acceptor for honour, in suing a party for whose honour he accepts, must also be observed, when the holder of a bill, sues the person so accepting. The result, as it seems to me, of the decision⁽²⁾ to which I have alluded is, that an acceptance for honour is to be considered, not as absolutely such, but in the nature of a *conditional acceptance*. It is equivalent to saying to the holder of the bill, keep this bill; don't return it; and *when the time arrives at which it ought to be paid, if it be not paid by the party, on whom it was originally drawn, come to me, and you shall have the money.*"

An acceptance *supra protest* is in effect only a *conditional* engagement, and to render such acceptance absolutely binding, the performance of several acts, as conditions precedent are essential. In order, therefore, to complete the liability of the acceptor *supra protest*, the bill

(1) 7 Barn. and Cress. 477.

(2) Referring to *Hoare v. Cazenove*, 16 East, 391.

must be *duly presented* for payment at the time it falls due, to the original drawee, notwithstanding his prior refusal; because between the time of such refusal and the time when the bill would fall due, effects may have reached the drawee, out of which he might, if the bill were presented again, pay the bill; and the drawer and other parties are entitled to the chance of the benefit, to arise from such second demand, or at any rate to the benefit of that evidence which the protest affords, that the demand had been made duly without effect, as far as such evidence may be available to him for the purposes of ulterior resort⁽¹⁾. If such second presentment be not regularly made (*except* in the case presently noticed, of *a bill made payable at a place not being the residence of the drawee*), the drawer and indorsers may be discharged of liability, and the acceptor *supra protest* would have no recourse against them if he paid the bill, and consequently he also would be discharged for want of such protest⁽²⁾.

Acceptance for Honour conditional only, and the Acceptor not liable unless the Bill is presented for Payment to the Drawee, and protested.

The Act 1st and 2nd George 4th, c. 78, before mentioned⁽³⁾, uses the words, if “*any person*” shall accept, and is not confined to drawees, so that it should appear, that it extends to acceptors for honour, but there does not yet seem to have

General wording of the Act 1st and 2nd George IV, c. 78.

(1) Per Lord Ellenborough, in *Hoare v. Cazenove*, 16 East, 391.

(2) Chitty on Bills, 9th edition, p. 347 and 348.

(3) *Supra*, Chap. 3, p. 92.

Acceptance
Supra Protest.
—

been a case, before any of the Courts, upon an acceptance *supra protest*, where such an acceptor has qualified his acceptance, by making it payable at a banker's house, or other place only, and not otherwise, or elsewhere, within the act.

Acceptance
Supra Protest
specially
worded.

Where a foreign bill was drawn at sixty days after sight, upon a house at Liverpool, and in the body expressed to be payable in London, which the drawees on the 30th of August, 1825, refused to accept, it was then accepted by a house in London, for the honour of the payee, adding in that acceptance, that it would be paid for the payee's account, "if regularly protested and refused when due." The bill became due on the 1st of November, (computing the sixty days and the three days of grace from and exclusive of the 30th of August, on which it had been refused acceptance⁽¹⁾), and was then presented for payment, by the plaintiffs, the holders, to the drawees' house at Liverpool, (they had not any establishment, or place of business

(1) The bill was protested for non-acceptance on the 30th of August, and the 63 days were reckoned from and exclusive of that day, as follows, viz —

In August.....	1 day
September	30 days
October	29 days
	—
	60
Three days of grace, viz. 30th and 31st October, and 1st November, on which day it was presented for payment	3 days
	—
	63

in London,) and on its being refused payment, ^{Acceptance} it was again presented for payment to the de- ^{Supra Protest.} fendants, the acceptors for honour, in London, on the 3rd of November, when the latter refused to pay it, on the ground, that it had not been presented to them for payment, on the 1st of November, the day when it became due, and that it ought to have been protested for non-payment, in London. At the trial before Lord Tenterden, C.J. after hearing several witnesses, notaries as well as merchants, on the subject of usage, he summed up in favour of the plaintiffs, and held that the presentment in Liverpool was regular and proper, and a verdict was found accordingly for the plaintiffs; and on a motion afterwards for a new trial, the Court after argument, held that the bill had been properly presented, and that the verdict was correct⁽¹⁾. It will of course be observed, that the case turned in a considerable degree upon the peculiar wording of the acceptance.

By the Act 2nd and 3rd William 4th, c. 98, ^{Act 2nd & 3rd} (passed in 1832,) it is enacted, that “from ^{William IV,} and after the passing of this act, all bills of ^{c. 98.} exchange, wherein the drawer or drawers thereof shall have expressed that such bills of exchange ^{Bills expressed} are to be *payable in any place other than the* ^{to be payable} *place by him or them therein mentioned, to be* ^{in any place} *the residence of the drawee or drawees thereof,* ^{other than the} *residence of* ^{the Drawee, if}

(1) Mitchell and another v. Baring and others, 10 Barn. and Cress. 4.

not accepted, and which shall not, on the presentment for
 may be pro- acceptance thereof, be accepted, shall or may
 tested for non- be, without further presentment to the drawee
 payment when or drawees, protested for non-payment in the
 due in that place. place in which such bills of exchange shall have
 been by the drawer or drawers expressed to be
 payable, unless the amount owing upon such
 bills of exchange shall have been paid to the
 holder or holders thereof on the day on which
 such bills of exchange would have become pay-
 able had the same been duly accepted." The
 object of the legislature in passing it is not
 very clear, because the drawer and indorsers are
 liable to be sued immediately after a bill has been
 dishonoured on non-acceptance⁽¹⁾: the act fol-
 lowed not long after the before-mentioned decision
 in *Mitchell and another v. Baring and others*,
 which, as it cast a doubt upon the validity of the

(1) *Ballinghalls v. Gloster*, 3 East, 482, and *Bright v. Purrier*, 3 Burrows, 1687, cited in it by Lord Ellenborough, C. J.; *Macartney v. Barrow*, E. 6th George II, B. R. cited in *Starey v. Barns*, 7 East, 436; *Allan v. Mawson*, 4 Camp. 115; *Cheek v. Roper*, 5 Espinasse's Rep. 175; *Dunn and another v. O'Keeffe*, (in error,) 5 Maule and Sel. 282; *Milford v. Mayer*, Hilary Term, 19th George III, 1 Douglas Rep. 55; *Bayley on Bills*, 5th edition, 331. See also *Selwyn's Ni. Pri.* 9th edition, 339. The Holder of a Bill of Exchange has, on non-acceptance, an immediate right of action against the Drawer, and does not acquire a fresh right of action on the non-payment; the Statute of Limitations, therefore, runs against him from the former period. *Whitehead and others, Assignees of Benbow v. Walker*, 9 Mee. and Wels. Ex. 506.

previous practice, which had prevailed in London, as to the place of presentment, was considered to require the interference of the legislature.

The Act 2nd and 3rd William 4th, c. 98, is Payment
strangely and unskilfully worded, and it is an Supra Protest.
undecided point whether since the passing of it, Effect of the
a third person will be safe, in paying a bill for Act 2nd & 3rd
the honour of the drawer or indorser, if expressed William IV,
in the body *to be payable in a place other than* c. 98.
the drawee's residence, and which has been
refused acceptance, unless it has been first pro-
tested in that place for non-payment⁽¹⁾; the
point, which is an important one, does not at

(1) Some years after this Act had been passed, a Foreign Bill, expressed in the body of it to be payable in London, drawn upon a house in Liverpool, was presented there, but was refused acceptance, and protested there for non-acceptance; and at maturity was presented for payment at Liverpool, and also protested there for non-payment: a third person was desirous to pay the bill *supra protest*, for the honour of an Indorser, and a case being laid before Mr. TOMLINSON, of the Northern Circuit, to advise upon that person's safety in paying it *supra protest*, Mr. TOMLINSON gave the following opinion:—

(COPY.)

“ I think that the statute applies to all cases where presentment for payment, and protest for non-payment, are necessary; and that it makes it imperative to protest the bill in the place where it is made payable by the Drawer, and does not give the Holder the supposed option. The recital expresses that the statute was passed to remove the doubts as to the place where it was requisite to protest bills for non-payment; these doubts stood upon the case of *Mitchell v. Baring, Moo. and Mal. 381, and 10 Barn. and Cress. 4.* It seemed to be the result of that case that the Holder had the option. The statute does

Payment present appear to have come before any of the
 Supra Protest. Courts.

Effect of the If in the body of the bill, the drawer have
 Act 2nd & 3rd made it *payable, in any place, other* than the place
 William IV, mentioned in it, as the residence of the drawee,
 c. 98. and if it be refused acceptance, but accepted for
 honour, this act appears to dispense with any
 presentment for payment to the drawee, but it
 does not dispense with a protest for non-payment.

not in terms give any option, and being intended to settle what was requisite to be done, I think it intended to take away the option, and make protest at the place indicated essential. The expressions "shall or may be" were certainly not happily chosen for settling a doubt. Following out the object which the legislature had in view, I apply the word "shall" to the place of protest, and "may" to the words "without further presentment," so as to leave the party at liberty to present if he can, or if not, to make the attempt to present, but to make it necessary to have the bill at the place where made payable, so that there may be no uncertainty as to where it is necessary to remit funds to meet it. I think, therefore, that this bill has not been legally protested for non-payment; and, therefore, that Messrs. A. B. and Co. cannot safely pay it for the honour of the Indorser, so as to retain their remedy against him and the previous parties. There certainly appears to be an inconsistency in this conclusion, inasmuch as these parties will be liable upon the protest for non-acceptance, if regular, as there was no acceptance *supra protest* imposing upon the Holders the necessity of any further formalities against them: but all text writers* are so distinct in stating the necessity of a regular protest for non-payment, as a necessary preliminary to a payment for honour, without making any distinction whether or not the bill has been previously accepted *supra protest*, or otherwise, that I do not think it prudent for persons in the situation of Messrs. A. B. and Co. to risk the question.

" T. TOMLINSON.

" *Temple, 22nd Nov. 1841.*"

* See Forbes on Bills, 149; cited in 9th edition of Chitty on Bills, 346; and Chitty, 508. The case cited in the note there of Vandewall v. Tyrrell, M. and M. 87, is not in point here, as that was the case of an accepted bill.

But as this act applies only to bills made *payable at a place other than the residence of the drawee*, it should seem that in the case of a bill made payable at the *same place as the residence of the drawee*, a second presentment to the drawee, in order to charge an acceptor *supra protest*, will still be necessary. Such presentment, when necessary, should, if the bill be payable *after date*, be made upon the day when the bill according to its date falls due. But if the bill be payable *after sight* then the presentment must be made at the expiration of the time when, with the days of grace, the acceptance *supra protest* would fall due, calculating not from the date of the bill, but from the day of the acceptance, and without regard to the time of the presentment to the drawee for acceptance, or his refusal to accept⁽¹⁾. It will be seen, however, that bills of the description mentioned in the above statute, are to be treated as due on the day on which they would have become payable had they been duly accepted, without any distinction, as to whether payable after date, or after sight⁽¹⁾.

Besides this *presentment* for payment to the original drawee, (*when not dispensed with under the Act 2nd and 3rd William 4th, c. 98,*) there must be also a formal *protest* stating such presentment, and the neglect or refusal of the original drawee to pay, and such presentment

(1) Chitty on Bills, 9th edition, p. 349, 350, and 351.

Payment
Supra Protest.

and protest, must be alleged in the declaration against the acceptor *supra protest*, or the judgment will be arrested⁽¹⁾.

It is also requisite that after presentment to the drawee, and protest for non-payment by him, a presentment should be made in due time to the acceptor *supra protest*, or he will be discharged from liability. It would, when he lives at a different place from the original drawee, be impracticable to make such presentment, and require him to pay *supra protest*, according to his acceptance, on the same day as that on which the presentment for payment to the original drawee is made; and therefore⁽²⁾ the Act 6th and 7th William 4th, c. 58, entitled "An Act for declaring the law as to the day on which it is requisite to present for payment to the Acceptors or Acceptor *Supra Protest* for Honour, or to the Referees or Referee in case of need, Bills of Exchange, which had been dishonoured," was passed to remedy that inconvenience.

Act 6th & 7th
William IV,
c. 58.

Presentment
to Acceptors
for Honour, or
Referees in
case of need.

The Act 6th and 7th William 4th, c. 58, (passed in 1836) which will be more particularly noticed in a subsequent chapter⁽³⁾, enacts, that it shall not be necessary to present bills of exchange to acceptors for honour, or to referees in

(1) Williams v. Germaine, 7 Barn. and Cress. 468; Chitty on Bills, 9th edition, p. 351.

(2) Chitty on Bills, 9th edition, p. 351.

(3) Vide Infra, Chapter 5.

case of need, until the day following the day on which the bill shall become due, and if the place of address on such bills of such acceptors for honour, or of such referees, shall be in any city, town, or place, other than that where such bill shall be therein made payable, then it shall not be necessary to forward such bill for presentment for payment to such acceptor or acceptors for honour, or referee or referees, until the day following that on which such bill shall become due⁽¹⁾; and if the day following that on which it becomes due shall be Sunday, Good Friday, Christmas day, or a day of solemn fast or thanksgiving, then it shall not be necessary that it should be presented for payment, or forwarded to them until the day following⁽²⁾.

Payment
Supra Protest.

Sunday, Good
Friday, &c. &c.

A Bill ac-
cepted Supra
Protest, must
be protested
for Non-pay-
ment when
due.

When a bill accepted for honour becomes due, and has been presented to the drawee and refused or neglected to be paid, it is then protested for non-payment⁽³⁾, and an act of honour is made, and the acceptor for honour pays it, or such part of it as he accepted for; but if he should not pay it, or such part of it, then another protest is made, stating the non-payment by him⁽⁴⁾.

(1) Sec. 1, 6th and 7th William IV, c. 58; vide *Infra*, Chapter 5, and Appendix.

(2) Sec. 2; vide *Infra*, Chapter 5, and Appendix.

(3) See also *Vandewall* and another *v.* *Tyrrell*, *Moody* and *Mal.* 87. See also *Supra*, in this Chapter, p. 120 and 121.

(4) *Quere*, whether there is anything in the general Stamp Act, to

Payment
Supra Protest.

In many cases, although no person chooses to accept the bill *supra protest*, yet when it becomes due, either the drawee, or some third person is willing to pay it either in whole or in part for the honour of a party to it; in that case the bill must be presented or exhibited to the drawee (except when dispensed with by the Act 2nd and 3rd William 4th, c. 98, before noticed) when due, and protested for non-payment, and an act of honour granted, in the same manner as has been already explained with respect to acceptances *supra protest*, the mode of proceeding in the two cases being the same, and such person then pays the bill, or a part of it, as the case may be, which payment is called a payment *supra protest*: it has been before remarked that no person can safely accept or pay a bill for honour, until after a protest for non-acceptance or non-payment, as the case may be⁽¹⁾; and a protest for non-payment by the drawee, when it

Previous
Protest for
Non-payment
necessary.

prohibit the combining of both the presentment to the Drawee, and to the Acceptor for honour, when they reside in the same place, on one Protest Stamp?

(1) Vide Supra, Chap. 4, p. 120 and 121. Payment by a Stranger of an Acceptance at the Banker's house at which it is accepted payable, whereby he obtains possession of it for a collateral purpose of his own, is not a payment by the Acceptor, nor can there be a "payment for the honour of an Indorser until default has been made by the Drawee."—Per Coltman, J. in *Deacon v. Stoddart*, 2 Mann. and Grang. 321.

becomes due, is, after an acceptance *supra protest*, Payment
equally necessary for the security of the holder, Supra Protest.
and of the acceptor *supra protest*⁽¹⁾.

It sometimes happens that after a protest has been made for non-payment by the drawee, either he or some third person declares his intention to pay the bill, in whole or in part, for the honour of one of the parties to it, and cannot conveniently wait until the act of honour can be prepared, but pays the amount at once, and the act of honour is drawn up immediately after such payment; that course is considered by mercantile persons as regular and unobjectionable; but without offering any opinion upon the regularity or otherwise of that course, it may be observed, that it is clearly much better to adhere to the customary mode in all cases, where time and opportunity will admit of it.

It occasionally happens that after a part payment of a bill has been made by one person *supra protest*, a further part, or the balance, is paid by another person; in that case another act of honour must be made and granted for the security of the latter.

On paying a bill *supra protest*, the person receiving the money gives a receipt upon it to the following effect :—

Form of
Receipt on
Payment
Supra Protest.

(1) Hoare v. Cazenove, 16 East, 391; Vandewall and another v. Tyrrell, Moody and Mal. 87; Williams v. Germaine, 7 Barn. and Cress. 477.

Payment

“ London, 1st September, 1838.

Supra Protest.

“ Received from Messrs. G. and Company,
 £ sterling, the amount (*or part of the*
amount, as the case may be) of this bill, paid
 by them *supra protest*, for the honour of *A. B.*
 the drawer, (*or C. D. the indorser, as the case*
may be.) *E. F.*”

Protests and
 Acts of Honour
 of Promissory
 Notes and
 Inland Bills.

If an English promissory note payable here
 should be paid for the honour of the maker or
 indorsers, a protest must be made, and an act of
 honour granted⁽¹⁾, and they are also necessary
 in the case of inland bills paid here for the
 honour of the drawers or indorsers.

(1) The payment for honour of Promissory Notes is not common,
 but the Author has met with instances of it.

CHAP. V.

PRESENTMENT FOR PAYMENT.—DISHONOUR.—NOTING
AND PROTESTING OF BILLS OF EXCHANGE, AND
PROMISSORY NOTES, ON NON-PAYMENT.

By the law merchant it is necessary, that the holder of a bill of exchange should cause it to be presented to the drawee for payment, when it becomes due, otherwise the holder will in general⁽¹⁾, be utterly deprived of all right, of resorting to the drawer, and indorsers, and will not only lose his remedy against them upon the bill, but also upon the original debt, or demand, in respect of which he received the bill. In like manner, the holder of a promissory note will be deprived of his remedy against the indorsers, if he neglect to present it for payment when due. A bill of exchange in which no time of payment is specified, as in the case of a bill payable on demand, must be presented for payment within a reasonable time after it has been received.

Even if the drawee or acceptor of a bill, or maker of a promissory note, should die, abscond, or be excused by the Drawee's or Acceptor's death,

(1) It does not form any part of the plan of this Treatise, to explain what circumstances, or inevitable accidents, (as in *Patience v. Townley*, 2 Smith's Rep. 224,) may furnish an excuse for the non-presentment of a bill by the Holder, when due, or what matters may amount to a waiver of the consequences of not presenting it.

Presentment
for payment.

or not be found, or should be bankrupt, or notoriously insolvent, it will not be any excuse for neglecting⁽¹⁾ to make due presentment, or attempting to do so; and the mode of presenting or making an attempt to present it for payment, in the case of the death, absconding, absence, insolvency, or bankruptcy of the drawee, acceptor, or maker, or of there being no such person to be found, is similar to the mode to be pursued respecting the presentment of bills of exchange for acceptance in any of those special cases, which has been fully explained in a former chapter⁽²⁾, and to which the reader is referred, it being considered as merely travelling over the same ground to go again into detail on that subject.

Presentment of
Bills accepted,
payable at a
particular
place.

Where the acceptor died before the bill became due, and he had previously accepted it payable at a particular place, it was held that it was sufficient in an action against the drawer, to prove presentment at the specified place, and

(1) Bayley on Bills, 5th edition, p. 251; and *Russel v. Langstaffe*, 2 Dougl. 497, 515, there cited to show that Lord Mansfield had frequently ruled, that Bankruptcy of the Drawer of a Note, or Acceptor of a Bill, formed no excuse for neglecting it; referred to also in *Bickerdike v. Bollman*, 1 Term Rep. 408. See also (as to Insolvency) the dictum of Lord Ellenborough, C. J. in *Esdaile v. Sowerby*, 11 East, 117; Selwyn's *Ni. Pri.* 10th edition, p. 357.

(2) Chap. 3, *Supra*, p. 69, 70, 94, and 95.

that it was not necessary to show presentment to the deceased's representative⁽¹⁾.

Presentment
for payment.

When the drawee has, by his acceptance, expressed that a bill is to be payable at a banker's, it is the usage of the mercantile classes in England to cause it to be presented there⁽²⁾; though in general the acceptor remains liable to pay the bill, even if the holder omits to present it there.

It may be taken as a general rule, that, except in the cases where an alteration has been made in the law, respecting the liability of acceptors of

Acceptor of a
Bill and Maker
of a Note in
general remain
liable notwith-
standing omis-
sion to present
it for payment.

(1) *Philpott v. Bryant*, 3 Carr. and Payne, N.P. Rep. 244.

(2) *Harris v. Packer*, Berks Lent Assizes, 1833, before Parke, J. (note) *Tyrwhitt*, Rep. 370; *Assumpsit* by Indorsee against the Drawer of a Bill drawn at Newbury, May 28th, 1831, upon Messrs. Tomkins and Goslin, Malt Factors, Upper Thames-street, London, payable at three months after date, and by them accepted, payable at Messrs. Ladbroke and Co. Bankers; the declaration did not state the acceptance at all, but stated that it was presented to the Drawees for payment, and that they refused to pay. The proof was presentment at the Clearing House, to the Clerk of the London Bankers named in the acceptance, held that as the declaration did not state the acceptance, the presentment at the place fixed by the Acceptors was sufficiently proved, and that the London Bankers were agents to the Acceptors for that purpose. In *Smith v. Thatcher*, 4 Barn. and Ald. 200, which was an action by the Drawer against the Acceptor of a Bill accepted payable at a Bankers, Abbott, C. J. expressed himself in similar terms as to the agency of the Bankers. See also *Parks v. Edge*, 1 Crompt. and Mee. 429; and vide *Infra* in this Chapter.

Presentment
for payment.

bills by the Act 1st and 2nd George 4th, c. 78, and except in the few instances after mentioned respecting promissory notes, the acceptor of a bill, and the maker of a promissory note, remain always liable, and cannot set up as a defence, that no presentment of it had ever been made for payment, before the commencement of an action against him, at the suit of the holders⁽¹⁾.

Promissory
Note expressed
in the body of
it to be payable
at a particular
place.

It has, however, been decided⁽²⁾, that if the maker of a promissory note introduce words in the body of it, making it payable at a particular place, (or in the language of Lord Ellenborough, C. J. in *Sanderson v. Bowes*⁽³⁾, "here words restrictive of payment at the place named, are incorporated in the original form of the instrument, which alone creates the contract, and duty of the party,") and not in the nature of a mere

Memorandum
at the foot of or
in the margin
of the Note.

note or memorandum, at the foot, or in the mar-

(1) *Anderson v. Cleveland*, Sittings Easter T. 1799, 1 Espinasse's Dig. 58; and per Gibbs, C.J. in *Head and another v. Sewell*, 1 Holt, N.P.C. 363; and per Bailey, J. in *Fenton v. Goundry*, 13 East, 472.

(2) *Sanderson v. Bowes*, 14 East, 500; *Dickenson v. Bowes*, 16 East, 110; *Bowes v. Howe*, in the Exchequer Chamber (in error), 5 Taunt. 30; *Roche v. Campbell*, 3 Camp. 247, against an Indorser; also, per C. J. Gibbs, in *Price v. Mitchell*, 4 Camp. 200; *Emblin v. Dartnell*, 12 Mee. and Wels. 830. Vide *Hardy v. Woodrooffe*, 2 Starkie, N.P. 319, where the maker of a note made it payable at "Guildford," where he did not reside, held sufficient to present it at two banking houses there.

(3) 14 East, 507.

gin, the promissory note must be presented at ^{Presentment} that particular place, in order to give the holder ^{for payment.} a right of action, against either the maker or indorsers⁽¹⁾; and the doctrine has been even carried further by Lord Ellenborough, C. J.⁽²⁾, who in an action on a printed promissory note in the usual form, but with the words, “at Barclay, Tritton and Co.” printed also at the bottom of it, held, that it was “necessary to prove a special presentment, since the stipulation for payment at a particular place being printed, was to be considered as part of the note, having been made at the same time.” But if the words referring to the place of payment are a mere memorandum, written at the foot⁽³⁾, or in the margin of the note, it is not necessary for the holder to allege in the declaration, or to prove the presentment for payment at any particular specified place⁽⁴⁾.

(1) 14 East, 500.

(2) *Trecothick v. Edwin*, 1 Starkie, N.P. Rep. 468.

(3) In *Hodge v. Fillis*, 3 Camp. 463, which was an action upon a Bill of Exchange with a similar memorandum at foot, and accepted payable at a London Banker's an averment of presentment for payment in London was held by Lord Ellenborough, C. J. to be material, in an action against the Acceptor. But at that time the law was very unsettled with respect to the liability of Acceptors.

(4) *Saunderson v. Judge*, 2 Henry Black. 509; per Bayley, J. in commenting upon *Wild v. Rennard*, 1 Camp. 425; in *Sanderson v. Bowes*, 14 East, 501; *Price v. Mitchell*, 4 Camp. 200; *Richards v. Lord Milsingtoun*, Holt, Ni. Pri. C. 364; *Exon v. Russell*, 4 M. and Sel. 505; (Sed vide *Pannell v. Woodroffe*, H. T. 1818, cor. Abbott, J. 2 Starkie, N. P. 319;) *Williams v. Waring*, 10 Barn. and Cress. 2.

Presentment
of a Bill made
payable by the
Acceptance at
a particular
place.

There have been many conflicting decisions of the superior Courts at Westminster, upon the point whether in the case of a bill made payable by the acceptance at a particular place, as for example, at a London banker's, the acceptance was so far qualified as to render it necessary for the holder to present it for payment at that place when due, and to allege and prove such a presentment there, in order to entitle himself to maintain an action at law, against *the acceptor*.

The point was at length set at rest, after a full argument, and after hearing the sentiments of the Judges who differed in opinion, by the House of Lords⁽¹⁾; and it was then decided, that if a bill be by the acceptance, made payable in the following manner, viz. "Accepted, payable at Sir John Perring's and Co. bankers, London," it became a qualified acceptance, and the declaration in an action on the bill by the indorsee against the acceptor, must allege that it was presented at that place, and such allegation must be proved; and Mr. Justice Bayley, in delivering his opinion in the case, said, "the effect of such an acceptance is this, that to entitle the holder to sue the drawer or indorser, it casts an obligation upon him to present the bill at Sir John Perring and Co.'s for payment, and to aver in his declaration that the same was so presented."

Presentment
for payment in

This decision being considered to be productive

(1) *Rowe v. Young*, (in the House of Lords,) 2 Bro. and Bing. 165.

of inconvenience, the Act 1st and 2nd George 4th, c. 78, was passed on the subject of the liability of acceptors of bills, and section the 1st enacts, "That from and after the 1st day of August now next ensuing, (1821,) if any person shall accept a bill of exchange, payable at the house of a banker or other place, without further expression in his acceptance, such acceptance shall be deemed and taken to be to all intents and purposes a general acceptance of such bill; but if the acceptor shall in his acceptance express that he accepts the bill payable at a banker's house, or other place *only, and not otherwise or elsewhere*, such acceptance shall be deemed and taken to be to all intents and purposes a qualified acceptance of such bill, and the acceptor shall not be liable to pay the said bill, except in default of payment, when such payment shall have been first duly demanded at such banker's house or other place."⁽¹⁾

the case of
qualified
Acceptances
within the Act
1st and 2nd
George IV,
c. 78.

(1) In *La Science parfaite des Notaires*, par De Ferriere, tome 2, p. 145, is the following passage, for which l'Ordonnance de 1673, pour le Commerce, article 2, titre 5, is cited as an authority :—

“Toutes les Lettres de Change doivant être acceptées par écrit purement & simplement ; toutes autres acceptations sous condition passent pour refus, & les lettres peuvent être valablement Protestées.”

Quere. Supposing that still to be the law of France, how far may the Act 1st and 2nd George 4th, c. 78, affect or interfere with French bills accepted in England, payable at a particular place, with the qualification mentioned in that act ?

Presentment
for payment.

If the acceptance do not contain words adapted to the act, or at least other words to the same effect, it will merely be considered as a general acceptance, consequently, since the passing of it, as far as respects the acceptor, he will still remain liable after giving a general acceptance, even if the bill should not be regularly presented for payment when due; but he will be discharged from liability after giving a qualified acceptance, unless the bill is regularly presented for payment when due, at the particular place mentioned in the acceptance, in case the money should be lost in consequence of the delay or omission to make such presentment: and after giving a qualified acceptance, though a presentment must be made at the place indicated, before the commencement of any action against the acceptor, it appears very doubtful whether the act meant to discharge him from his liability under such a qualified acceptance, if he should sustain no loss or injury from the omission or delay to present the bill there, on the day when it became due⁽¹⁾.

And it has been decided, that where a bill has been accepted payable at a particular place, but not according to the act, as where the acceptance stated it to be payable at a London banker's, but did not make it payable there *only*⁽²⁾, the acceptor

(1) Vide *Rhodes v. Gent*, 5 Barn. and Ald. 244.

(2) Vide *Halstead v. Skelton*, 5 Adol. and El. N. S. 86.

is not discharged by the omission to present the bill for payment, the acceptance being in law a ^{Presentment} for payment. general acceptance⁽¹⁾; and where the acceptance is general for payment at a bankers or other place, "the acceptor may be called on elsewhere, as well as at the place indicated. But though the legislature has provided that the acceptor may be called on elsewhere, it has not made it compulsory on the holder to go elsewhere."⁽²⁾ And even if the bill should be drawn, expressing in the body of it that it was to be payable in London, averment and proof of presentment for payment in London, are not necessary in an action against a general acceptor⁽³⁾.

The act, however, does not mention promissory notes, and it does not make any alteration in the position or liability of the drawer or indorsers of a bill, and to charge them the presentment for payment must be made, at the place

The Act does not affect Promissory Notes, or the liability of the Drawer or Indorsers of Bills.

(1) *Turner v. Hayden*, 4 Barn. and Cress. 1: in this case the Banker failed three weeks after the bill became due, having had in his hands during all that time a balance in the Acceptor's favour exceeding the amount of the bill.

(2) Per Best, C. J. in *De Bergareche v. Pillin*, 3 Bing. R. 477: "Presentation to the Acceptor in person has been dispensed with by his pointing out the Bankers as the place at which payment of the bill might be obtained," per Burrough, J. *ibid*.

(3) *Selby v. Eden*, 3 Bing. 611. See also since the Act, *Lyon v. Walls*, 9 Bing. R. 660, as to the mode of pleading a qualified Acceptance in an action against the Acceptor.

Presentment
for payment.

mentioned in the acceptance. It has been decided in a case in the Court of Exchequer Chamber, that where a bill was drawn at Liverpool, upon a drawee of that town, *expressed in the body of it to be payable in London*, four months after date, and the drawee accepted it without any qualifying words within the act, payable at a bankers in London, in an action by the indorsee, against the drawer, presentment to the acceptor at that place, must be proved⁽¹⁾, and in delivering judgment, Tindal, C. J. stated, “no doubt appears to have existed⁽²⁾ but that a presentment at the place specially designated in the acceptance, was necessary, in order to make the drawer liable, upon the dishonour of the bill by the acceptor;” and he also said, “but it appears to us that the statute neither intended to alter, nor has it in any manner altered, the liability of drawers of bills of exchange, but that it is confined in its operation to the case of acceptors alone; and he afterwards added, “Again, the enactment comprehends in terms the case of acceptors, and acceptors only, and is silent alto-

(1) *Gibb v. Mather and others*, in the Exchequer Chamber, 8 Bing. 215; and 2 Crompt. and Jer. 254, S. C. See also what fell from Mr. Justice Bayley, in *Rowe v. Young*, (in the House of Lords) 2 Bro. and Bing. 231, as to the necessary averment and proof in suing the Drawer or Indorser.

(2) Meaning prior to the decision in *Rowe v. Young*, 2 Bro. and Bing. 165.

gether upon the subject of the liability of drawers and indorsers.”

Presentment
for payment.

In that case the bill was drawn expressed in the body of it, to be payable in London: however, in a subsequent case, *Parks v. Edge*⁽¹⁾, upon a bill not so expressed, (but it does not appear that the drawee resided out of London, where the bill was drawn) where the declaration was by the indorsee against the indorser, upon a bill of exchange, payable after date, and accepted by the drawee, payable at a particular place in London, “Accepted payable at 8, Cloak-lane, Cheapside,” the Court of Exchequer decided, that it is not necessary, to allege a special acceptance at a particular place, or a presentment when due at such place; and that it is sufficient to state a general presentment to the drawee, without stating any acceptance, and to prove the presentment, at the particular place pointed out by the acceptance⁽²⁾.

(1) 1 Crom. and Mee. 429.

(2) *Parks v. Edge*, 1 Crom. and Mee. 429. See also *Hawkey v. Borwick*, 4 Bing. 135, and *De Bergareche v. Pillin*, 3 Bing. 476, in which cases the Acceptors made the bills payable at a London Banker's, or at some other specified place; and *it does not appear, that in any of those cases the Acceptors resided out of London*; also, *Harris and another v. Packer*, before Parke, J. Berks Lent Assizes, 1833, (note) 3 Tyrwhitt, R. 370, in which the Drawer resided at Newbury, but the Drawees lived in London, and accepted the bill payable at a London Banker's. In all those cases the Defendants were *Drawers or Indorsers*.

Presentment
at the House
or place named
in the Accept-
ance.

In an action against a drawer or an indorser of a bill, accepted payable at a London banker's, it has been decided that it is sufficient to aver and prove presentment for payment at the banker's, and that it is not necessary to aver a presentment to the acceptor in person⁽¹⁾; and it has been held at *Nisi Prius*, by Mr. Justice Parke, (since the Statute of 1st and 2nd George 4th, c. 78,) where a bill payable after date was accepted for payment at a London banker's, and the declaration did not state the acceptance at all, that proof of presentment at the place named in the acceptance was sufficient to charge the drawer⁽²⁾.

Where *A*, the drawee of a bill, accepted it payable at a particular place, as "payable at Messrs. C. and Co.'s, bankers, London," but not introducing any restrictive words, according to the Act 1st and 2nd George 4th, c. 78, such bill *may*, in an action by the indorsee against *A*, the acceptor, be declared upon, as made payable at that place, although, since that act, such an acceptance amounts to a general acceptance. By such an acceptance he undertakes to pay it at maturity, when presented either at that

(1) *De Bergareche v. Pillin*, 3 Bing. R. 477; *Hawkey v. Borwick*, 4 Bing. R. 135; and see *Bush v. Kinnear*, 6 Maule and Sel. 210; and per Lord Ellenborough, C. J. in *Brown v. M'Dermott*, M. Term, 1805, 5 Esp. 265.

(2) *Harris v. Packer*, Berks Lent Assizes, 1833, before Parke, J. (note) 3 Tyrwhitt, R. 370.

place or to himself. The declaration did not aver ^{Presentment} any presentment at the house of the banker, ^{for payment.} but it was held that the omission did not make the declaration bad, no presentment there being necessary as against the acceptor⁽¹⁾; and Tindal, C.J. stated, "If he accepts, payable at a banker's, he undertakes, since the statute, to pay the bill at maturity, when presented for payment either to himself or at the banker's."⁽²⁾

Where the declaration by the indorsee against the drawer of a bill stated it to have been accepted, payable at a banker's in London, and averred a presentment there to the acceptor, held, no variance, as whether the acceptor was there or not, he was bound to be prepared to pay the bill there⁽³⁾.

It has been held by Lord Ellenborough, C. J. ^{Presentment} in an action against the acceptor, and also ^{to a Clerk at a Banker's Clearing House.}

(1) *Skelton v. Halstead*, 2 Dowl. P. C. N. S. 69. *Halstead v. Skelton*, (in Exchequer Chamber in error, from Q.B.) 5 Adol. and Ell. N.S. 86.

(2) *Ibid*, 93.

(3) *Wilmot v. Williams*, 8 Scott, N.S. (C.P.) 713. Where the bill was accepted, payable at the banking house of the Plaintiffs, who being Bankers, and also the Holders of it, on the day of its falling due, on examination of the Acceptor's account, found that they had no assets, and by letter to the Defendant the Indorser, informed him, that the acceptance of *J. C.* due that day, was unpaid, and requested his immediate attention to it; held that no presentment of the bill to the Acceptor was necessary, and that the notice of dishonour was sufficient—*Bailey v. Porter*, 14 Mee. and Wels. (Ex.) 44.

Presentment
for payment.

subsequently by Mr. Justice Parke, in an action against the drawer, that a presentment of a bill accepted payable at a London banker's, to their clerk at the clearing house, was a good presentment at that banker's, who must be considered as the agents of the acceptors for that purpose⁽¹⁾.

If the Ac-
ceptor's or
Drawee's
Place of Busi-
ness or Re-
sidence, or the
House or
place named
in the Accept-
ance be shut
up.

If the place of business or the residence of the acceptor, (or of the drawee if not accepted, as the case may be,) or the house, or place where the bill is made payable by the acceptance, be shut up, the bill must be taken there, and an attempt made to present it for payment; and if the door be found locked or fastened, and no person there to give an answer, the bill is considered as dishonoured; however, if there be any neighbour or person on the spot likely to afford information, inquiries are sometimes made of him respecting the party whose place is so shut up, but if made, they seem generally considered as in the nature of acts of courtesy, or abundant caution, not as being necessary.

In an action by the indorsee against the drawer of a bill, accepted by one Townsend, payable at No. 15, Godliman-street, Doctors Commons, it was proved that the house No. 15, Godliman-street, Doctors Commons, at which the bill was made payable by the acceptance, was shut up, and that the bill was taken there by a notary's

(1) *Reynolds v. Chettle*, 2 Camp. Ni. Pri. 596; *Harris and another v. Packer*, Berks Lent Assizes, 1833, before Parke, J. (note) 3 Tyrwhitt, R. 370.

clerk, and on his so taking it there and finding the door of the house shut, he attempted to present it by knocking or ringing at the door, and no person was found within to give an answer, it was decided that it was a sufficient presentment⁽¹⁾.

Where a bill was drawn upon a man named Perry, directed to "Mr. Peter Perry, No. 6, Budge-row, Watling-street," and accepted by him, and on its being taken to No. 6, Budge-row, where the defendant had resided, for the purpose of presenting it for payment, the house was found to be shut up, and the acceptor could not, on inquiry, be heard of in the neighbourhood, it was decided in an action by the indorsee against the drawers, that the bill was dishonoured⁽²⁾; and that an averment in the declaration, that the bill, when due, was presented and shown to Peter Perry for payment, was supported by proof that the holder went to No. 6, Budge-row, to present it, but found the house shut up and no one there: and notice may be given to the drawers on the day of such dishonour, as in the case of an actual refusal to pay⁽³⁾. And also, where in an action against the drawer of

Presentment
for payment.

Presentment
at the place
indicated on
the face of the
Bill as the
Acceptor's
residence.

(1) *Wilkins v. Jadis*, 2 Barn. and Adol. 188. See also *Philpott v. Bryant*, 3 Carrington and Payne, p. 244, before Parke, J.

(2) *Hine v. Allely and another*, 1 Nev. and Man. K. B. 1833, p. 433, and 4 Barn. and Adol. 624. Vide also *Buxton v. Jones*, 1 Mann. and Grang. 83.

(3) *Hine v. Allely*, 4 Barn. and Adol. 624.

Presentment
for payment.

a bill, accepted by one Hardy, the drawee, it was presented at the house mentioned on the face of it, as the drawee's place of residence, and a person, apparently a stranger, who came to the door, answered that Mr. Hardy had become bankrupt, and had removed into another quarter of the town, it was held to be a sufficient presentment⁽¹⁾.

A bill was drawn, addressed to the drawee by the description of "Mr. Frederick Epworth, No. 38, Nunto-street, Baalzephon-street, Bermondsey," and was accepted generally; held in an action against an indorser that the acceptor thereby adopted the description of his residence as stated at the foot of the bill, and that a presentment there for payment after he had removed was sufficient: and per Tindal, C. J. "If he chose to remove from the house pointed out by the bill as his place of residence, he was bound to leave sufficient funds on the premises."⁽²⁾

Presentment
to the
Acceptor,
Drawee, or
Maker, or at
his place of
business.

By mercantile usage, the presentment for payment of a bill of exchange or promissory note, unless, as before mentioned, the bill is accepted payable, or the note is made payable at another place, ought to be made to the acceptor, or if not accepted, to the drawee in person,

(1) *Barclay v. Bayley*, 2 Camp. Ni. Pri. C. 527.

(2) *Buxton v. Jones*, 1 Mann. and Grang. 86.

or at the counting house or place of business of the acceptor or drawee of the bill, or maker of the note, or if he have not any known place of business, then at his residence; and although his place of business may be shut up, it is customary to take the bill or note there, to attempt to present it for payment, and the bill is sometimes also presented at his residence, or last known place of residence, if not distant: it is not, however, considered necessary, to make such presentment for payment also at his residence, or last residence, though it is occasionally done, and it seems to be then done rather out of abundant caution, or from motives of courtesy, than as being essential; the counting house, or other place of carrying on his trade or occupation, being the natural and usual place of paying money, and transacting his business; and of course, whenever the drawees or acceptors of a bill, or the makers of a note, constitute a firm, the above remarks will apply with additional force.

Presentment
for payment.

If place of
business be
shut up.

If, on making an attempt, to present it for payment, the place of business or residence of the acceptor, or of the drawee if not accepted, or the place at which it is accepted payable, be shut up, and no person be within, to give an answer, it is customary and proper to state that fact in the protest, if the bill should be afterwards protested; and sometimes in case of the drawee's or acceptor's bankruptcy, or insolvency,

Stating in the
Protest that
the Drawee's
place of busi-
ness was shut
up, and no per-
son there to
give an answer.

Presentment
for payment.

that fact is also stated in it, because it may tend to account for the former circumstance.

Death,
absconding,
absence, &c. of
the Drawee or
Acceptor of a
Bill, or Maker
of a Note.

The observations before made, and the rules explained in another place⁽¹⁾, respecting the mode of presenting, or attempting to present a bill for acceptance, in case of the death, absconding, or absence of the drawee of a bill, or if no such person can be found, will equally apply to the presenting, or endeavouring to present a bill or note for payment, whenever on its becoming due, any such peculiar events or circumstances occur, with respect to the drawee, or acceptor of the bill, or maker of the note, or the persons at whose house or place of business the bill or note has been accepted or made payable. In an action on a bill at six months' date, drawn by the defendant on his father, John Bryant, and accepted by him, payable at No. 18, Bishopsgate-street, of which the plaintiff was the holder, the declaration stated, that the bill was in due manner presented to the drawee for payment. A notary's clerk proved that he presented the bill for payment at No. 18, Bishopsgate-street, and it appeared that John Bryant, the drawee, died about a fortnight before the bill became due, leaving his widow his executrix; it was held that as the bill was payable after date, it was not necessary to aver and prove presentment for acceptance, and that it

Death of the
Acceptor when
the Bill has
been accepted
payable at a
specified place.

(1) *Supra*, Chap. 3, Presentment for Acceptance, p. 69, 70, 94, and 95.

was sufficient to prove presentment for payment, Presentment at the specified place, and that it was not necessary to show presentment at the house of the deceased's representative⁽¹⁾. Presentment for payment.

It may be correct to add here, that according to the general, and perhaps universal course of mercantile business in this country, the drawee or acceptor of a bill must be considered, as advised or aware, when the bill becomes due, and consequently that less strictness and fewer exertions are necessary, in then trying to meet with him, than in the case of presenting it for acceptance. It is the duty of the acceptor, if not present, to leave provision for the payment, at his usual place of residence⁽²⁾. It has been held, that if a drawee be abroad, and his agent accept a bill by his authority, it is incumbent upon the holder to present it for payment to the agent, if the drawee continues absent⁽³⁾.

Where a promissory note was made payable at two places, Gibbs, C. J. held that, "as it was payable at both places, the plaintiffs had an option to present it at either."⁽⁴⁾ Promissory Note made payable at two places.

By the custom of merchants, whenever a bill Time of Presentment of Bills and Notes.

(1) *Philpott v. J. W. Bryant*, 3 Carrington and Payne, page 244, before Parke, J.

(2) *Brown v. M'Dermot*, 5 Espinasse's Rep. 265. See also what fell from Tindal, C. J. in *Buxton v. Jones*, 1 Man. and Grang. 83.

(3) *Phillips v. Astling*, 2 Taunt. 206.

(4) *Beeching and others v. Gower*, Holt's Nisi Prius Cases, 313.

Presentment for payment. is drawn payable at a certain number of days, months, or other period after sight, or when a bill or note is payable at a certain time after date, or on a particular day mentioned in it⁽¹⁾, the drawer

Days of Grace. or maker cannot be required to pay it, until the third day afterwards, which additional period being originally considered as a boon, or indul-

How reckoned. gence, is called the days of grace; they are reckoned exclusively of the day on which the bill would otherwise fall due.

Bills are occasionally drawn payable at the end of, or on the last day of some particular month; in any such case the bill ought to be presented for payment on the 3rd day of the next month, when the days of grace expire.

After Sight. When a bill is payable at a certain number of days after sight and is accepted, the days are calculated from and exclusively of the date of the acceptance, (and not from the date of the bill, or from the day when it was left for acceptance;) and if it has been refused acceptance, then from and exclusively of the day when it was noted or protested for non-acceptance⁽²⁾; "for the sight must appear in a legal way, which is

(1) Vide also *Brown v. Harraden*, 4 Term Rep. 148, which was an action by the Indorsee, against the Indorser, upon a Promissory Note payable to the Defendant or order "on the 2nd of November," and the Court held that the three days of grace ought to be allowed.

(2) Selwyn's *Nisi Prius*, 10th edition, p. 350, note 10. Chitty on Bills, 9th edition. p. 370.

approved either by the parties underwriting the bill accepting thereof, or by protest made for non-acceptance.”⁽¹⁾

When a bill or note is payable at a certain number of days after date, the day of the date must be excluded in calculating the day on which it must be presented for payment; thus, on a bill or note payable ten days after date, dated the 1st of January, the time does not expire until the 11th⁽²⁾, (the computation being made exclusive of the day of the date⁽³⁾,) and by adding to the 11th of January the three days of grace, it becomes due upon the 14th of January, upon which day, being the last day of grace, the presentment for payment must be made.

Instances occasionally occur where bills are drawn in a country, Russia for example, using the old style, upon England, payable after date; and it is said that upon a bill drawn at a place using one style, and payable at a place using the other, if the time be to be reckoned from the date it shall be computed according to the style of the place at which it was drawn, otherwise according

(1) Per Lord Kenyon, C. J. quoting Marius, in *Campbell v. French*, 6 Term Rep. 212.

(2) Bayley on Bills, 5th edition, p. 250.

(3) See also Chitty on Bills, 9th edition, 370. “Where the time is computed by days, the day on which the event happens, is to be excluded;” Bayley on Bills, 5th edition, p. 250. See also the observations of Parke, B. in *Webb v. Fairmaner*, 3 Mee. and Wels. 477.

Presentment
for payment.

to⁽¹⁾ the style of the place where it is payable, and in the former case the date must be reduced or carried forward to the style of the place where the bill is payable, and the time reckoned from thence: thus, on a bill dated the 1st of May, old style, and payable here two months after date, the time must be computed from the corresponding day of May, new style, viz. May 13th, and on a bill dated the 1st of May, new style, and payable at St. Petersburg two months after date, from the corresponding day of April, old style, viz. April 19th⁽²⁾.

(1) Bayley on Bills, 5th edition, p. 249, (and referring to Mar. 2nd edition, p. 25;) and Beawes, 251, 1st edition, p. 447, there referred to.

(2) Bayley on Bills, 5th edition, p. 249, referring to Mar. 2nd edition, p. 22. The Act 24th George II, c. 23, which directs the adoption of the new, or Gregorian style, throughout the British dominions and countries belonging or subject to Great Britain, enacts, by sec. 1, "that the natural day next immediately following the said second day of September, (1752,) shall be called, reckoned, and accounted to be the fourteenth day of September, omitting for that time only the eleven intermediate nominal days of the common calendar; and that the several natural days which shall follow and succeed next after the said fourteenth day of September shall be respectively called, reckoned, and numbered forwards in numerical order from the said fourteenth day of September, according to the order and succession of days now used in the present calendar;" consequently, in making the computation, eleven clear intermediate days must be excluded, as if a bill were drawn in Russia upon a merchant in England, dated the 1st of June, (without expressing anything respecting either the old or

Where the time after the expiration of which a bill or note imports to be payable, is limited by months, without stating whether they are to be lunar or calendar months, it is to be computed by calendar, not lunar months⁽¹⁾.

Thus, on a bill or note payable one month after date, and dated the 1st of January, the month will not expire till the 1st February, and the bill or note will not become due (allowing for the

new style,) and payable one month after date, the computation is made as if it had been drawn on the corresponding day of June, new style, viz. the 13th of June.

The following is a copy of a memorandum on the subject of the change of style, which was received by the Author after the first edition had been published, from the late FLETCHER RAINCOCK, Esq. the senior of the Northern bar :—

“ The length of a year was, in Julius Cæsar’s time, supposed to be 365 days 6 hours. His astronomers, therefore, added a day in every fourth year. It was afterwards found that the length of the year was less than $365\frac{1}{4}$ days by about 11 minutes.

$$\begin{array}{r}
 400 \text{ years} \\
 11 \text{ minutes} \\
 \hline
 60 \mid 4400 \\
 24 \mid 73 \text{ hours} \\
 \hline
 3 \text{ days}
 \end{array}$$

As the error amounts to about 3 days in 400 years, the act provided that 1800, 1900, &c. &c. which ought to have been leap years, should only have 365 days, but that the fourth centenary should remain a leap year.

“ To make the interval 12 days instead of 11 is to revert to Julius Cæsar’s mistake. The rest of Europe having made 1700, 1800, and 1900 ordinary years of 365 days instead of leap years, made the year 2000 remain a leap year.”

(1) Bayley on Bills, 5th edition, p. 249, referring to Mar. 2nd edition, p. 19.

Presentment for payment. February. three days of grace) until the 4th⁽¹⁾; and consistently with that rule, if such a bill be dated on the 29th, 30th, or 31st of January, payable one month after date, the time will expire on the last day in February, whether it be Leap Year or not, and the days of grace are to be calculated from thence.

At Usances. Bills are occasionally drawn in foreign countries, payable at usances, which term "usance" means the time which by the usage of the country, is appointed for payment of them.

A full list of the usances established between different countries and London, appears in Mr. Chitty's excellent treatise on bills of exchange.

The following usances are given in "The Interpreter,"⁽²⁾ as the most usual between the countries after mentioned and London :—

USANCE

Between France and London is 30 days after the date of the bill.

„ Spain and London is 2 calendar months after the date of the bill.

„ Portugal and London is 2 calendar months after the date of the bill.

(1) Bayley on Bills, 5th edition, p. 250.

(2) The Author begs leave to express his obligations to Mr. FORRESTER, Notary, of the Royal Exchange, London, to whom the authorship of the very useful and complete publication, "The Interpreter," is generally attributed, for his kindness in presenting the Author with a copy.

Between Italy and London is 3 calendar months Presentment
for payment.
after the date of the bill.

„ Germany and London is 1 calendar
month after the date of the bill.

„ Holland and the Netherlands and Lon-
don is 1 calendar month after the
date of the bill.

„ Sweden and London is 75 days after date.

The usances are to be calculated exclusively of the day on which the bill is dated, and the three days of grace are to be added, and on the last or third day of grace, presentment for payment must be made.

When a bill is payable on demand, the three Bills payable
on Demand. days of grace are not allowed; but in practice the days of grace are allowed when a bill is payable At Sight. at sight. The course usually pursued when it is payable at sight is to present such a bill for acceptance, and if refused, and if a foreign bill, to protest it for non-acceptance; after a refusal and protest of the bill for non-acceptance, it is at once according to the laws of this country dishonoured, and there does not appear to be any absolute necessity also to protest such a bill three days afterwards, for non-payment, though in practice it is occasionally done; but as our laws may not be well known in other countries, it is submitted that it may be advisable to add in the protest for non-acceptance, that the drawee declared (if the fact be so) that the bill would neither be accepted nor paid: the course, however, which is recommended,

Presentment
for payment.

in order to obviate all doubt, is to protest it first for non-acceptance, and three days afterwards to present it again and protest it for non-payment.

In some rare instances however, bills are drawn expressly declaring on the face of them, that days of grace are not to be allowed; in those cases, of course the days of grace are not allowed⁽¹⁾.

It is a general rule, that three days of grace are allowed upon foreign and inland bills of exchange, and promissory notes, unless they are payable on demand; and consequently the onus rests upon any holder, who may feel disinclined to allow them in any particular case, of proving that such case does not come within the rule.

When no time
of payment is
expressed.

When no time of payment is expressed, the bill is payable on demand⁽²⁾.

Bills and Notes
must be for
payment of
Money only.

As bills and notes must be for the payment of money only, an order or promise to pay money, and do some other act, is not a bill or note⁽³⁾; it

(1) The Author has seen a Promissory Note made in Ireland and payable in England, which was expressly made payable without days of grace.

(2) *Whitlock v. Underwood*, 2 Barn. and Cress. 157. The Holder of a check on a banker is bound to present it not later than the day following its receipt, whether the presentment is made by himself or through his bankers; but, *semble*, the time for presentment may be extended by the assent of the Drawer, expressed or implied—*Alexander v. Burchfield*, 7 Mann. and Grang. (C.P.) 1061.

(3) Bayley on Bills, 5th edition, p. 10.

is, however, recommended to have such an instrument if not drawn for payment of money, or ^{Presentment} for payment. of money only, and if from a foreign country, presented and protested, in the same manner as a foreign bill, because our own laws may perhaps not receive the same attention in Courts abroad, which is enforced here.

Although the rule is, that a bill or note must ^{Sunday,} be presented for payment, on the third day of ^{ChristmasDay.} grace; yet, if that should happen to fall upon Sunday, or Christmas Day, by the custom of merchants, an exception to that rule occurs, and it then becomes payable on the day before; and by the Act 39th and 40th George 3rd, c. 42, if falling due on Good Friday, and by the Act 7th ^{Good Friday.} and 8th George 4th, c. 15, sec. 2, if falling due upon the day appointed by royal proclamation for any solemn fast or thanksgiving, it shall be ^{Solemn Fast or} payable on the preceding day; and both of those ^{Thanksgiving.} statutes enact, that in case of non-payment, it may be noted and protested on the preceding day. It is remarkable that the framers of those two acts appear to have lost sight, as far as respects the protests of inland bills, of the singular expression in the Act 9th and 10th William 3rd, c. 17, which speaks of inland bills being protested *after* the expiration of the three days of grace.

Section 3rd of the Act 7th and 8th George 4th, c. 15, enacts, "That from and after the 10th day of April, 1827, Good Friday and Christmas Day, and every such day of fast or thanksgiving,

Presentment
for payment.

so appointed by his Majesty, is and shall, for all other purposes whatever, as regards bills of exchange and promissory notes, be treated and considered as the Lord's Day, commonly called Sunday."

Days of Grace
upon Promis-
sory Notes.

Promissory notes, made payable by the maker on a certain day, or at a certain period after date, to any other person, or to his or her order, or to bearer⁽¹⁾, are by mercantile usage entitled to the three days of grace⁽²⁾; and there is not any difference between such promissory notes and bills of exchange with respect to the days of grace, or the time when presentment for payment must be made: and promissory notes made

(1) Statute 3rd and 4th Anne, c. 9, sec. 1.

(2) Vide also *Brown v. Harraden*, 4 Term. Rep. 148, in which the Court had to decide whether the three days of grace were allowable on a Promissory Note, payable "on the 2nd of November," in which Lord Kenyon, C. J. said, that by the Statute 3rd and 4th Anne, c. 9, Notes were wholly to assume the shape of Inland Bills of Exchange; and Buller, J. stated, that it was the object of the Legislature to put Promissory Notes exactly on the same footing with Inland Bills of Exchange; and Grose, J. said, that he had no doubt whatever, but that to this purpose, Notes were put exactly on the same footing with Bills of Exchange; and vide *Carlos v. Fancourt*, 5 Term. Rep. 482, where Lord Kenyon, C. J. held the same language; and vide *Smith v. Kendall*, Exor. of Askew, 6 T. R. 123. Vide also *Stone v. Compton*, 5 Bing. N. C. 142, which was an action against a surety on a note payable on the "22nd day of November;" and *Oridge v. Sherborne*, 11 Mee. and Wels. 381, where *Brown v. Harraden* is recognised.

payable on demand are not entitled to the days of grace. Presentment
for payment.

It is said that a promissory note, may be considered on comparison with a bill, as accepted when it issues, so that the maker of a note, may be looked upon in the same light as the acceptor of a bill⁽¹⁾, and as has been remarked by Mr. Justice Patteson, "Every indorser of a bill may be a new drawer, but the maker of a promissory note is an acceptor."⁽²⁾

A promissory note payable by instalments is assignable within the Statute 3rd and 4th Anne, c. 9, and the maker is entitled to days of grace upon the falling due of each instalment⁽³⁾.

It has been before mentioned, that the time of presentment of a bill, drawn payable after sight, and accepted for honour, should be made on the day when according to the acceptance *supra protest* the bill falls due, in order to make the acceptor for honour liable⁽⁴⁾. Bill payable
after Sight, and
accepted for
Honour.

Where a bill or note is payable at a banker's, If payable at a
Bankers.

(1) 2 Black. Com. 470, and per Lord Mansfield, C. J. in *Heylin v. Adamson*, 2 Burr. 676.

(2) Per Patteson, J. in *Gwinnell v. Herbert*, 5 Adol. and El. 438.

(3) *Oridge v. Sherborne*, 11 Mee. and Wels. Ex. 374.

(4) Vide *Supra*, Chapter 4, p. 122, 123, and 133; and also the exception and change made in some respects by the Act 2nd and 3rd William IV, c. 98, mentioned *Supra*, in Chapter 4, p. 132 and 133; *Williams v. Germaine*, 7 Barn. and Cress. 468; *Hoare v. Cazenove*, 16 East, 391.

Presentment
for payment.

in a place where by the known custom of that place, persons of that description, commence and leave off business at certain hours, it ought to be presented there, within those usual and known hours of business, and before the time of shutting up the banking house, and a presentment there afterwards for the purpose of obtaining payment is irregular⁽¹⁾.

But it has been decided, that provided a person is afterwards met with, stationed at the banking house to give answers, no objection can be supported, on the ground of the presentment having been made after those hours⁽²⁾. In the case *Garnett v. Woodcock*⁽²⁾, the bill was accepted payable at Messrs. Denison and Co.'s, bankers, London, and the presentment for payment was made by a notary's clerk, between the hours of six and seven in the evening, and after the clerks were gone, but a servant was stationed there, who on the bill being presented, returned for answer that

(1) *Parker v. Gordon*, 7 East, 385 ; *Hopley v. Dufresne*, 15 East, 275 ; *Elford v. Teed*, 1 Maule and Sel. 28 ; *Jameson v. Swinton*, 2 Taunt. 224 ; and per Lord Tenterden, C. J. and Parke, J. in *Wilkins and another v. Jadis*, 2 Barn. and Adol. 188 ; *Whittaker v. Bank of England*, 1 Crom. Mee. and Ros. 744, and in the latter case Lord Abinger, C. B. remarked, that " a Presentment after five o'clock for the purpose of charging the Drawer, was a very different thing from a Presentment for the purpose of obtaining payment."

(2) *Garnett v. Woodcock*, 1 Starkie, Ni. Pri. C. 475, and 6 Maule and Sel. 44.

there were no orders, Lord Ellenborough, C. J. ^{Presentment} held at Nisi Prius, that it was a good presentment, ^{for payment.} and observed, "I think it perfectly clear, that if a banker appoint a person to attend in order to give an answer, a presentment would be sufficient, if it were made before twelve at night."⁽¹⁾ On a motion to the Court, in the ensuing term, for a new trial, Lord Ellenborough, C. J. also stated, "If there be a presentment in the evening, and the party is ready to give an answer, he does all that is necessary. The banker returned an answer by the mouth of his servant, and, *non constat*, but that he was stationed there for the express purpose,"⁽²⁾ and the Court decided that the presentment was sufficient⁽³⁾.

But if the acceptor be a merchant, common ^{If the Acceptor} trader, or other person not circumstanced as a ^{be not a} banker, a presentment for payment at a late hour ^{Banker.} in the evening will be sufficient⁽⁴⁾. In *Barclay*

(1) *Garnett v. Woodcock*, 1 Starkie, Ni. Pri. C. 476.

(2) S. C. 1 Starkie, Ni. Pri. C. 477.

(3) S. C. 6 Maule and Sel. 44. There was an earlier case, *Elford v. Teed*, 1 Maule and Sel. 28, which might at first view, seem to establish a different doctrine, but a little consideration tends to reconcile the two decisions, because there the bill was presented between half-past six and seven in the evening, *after the Banking House was shut*, unto a *Female Servant*, at the *private house door* of the Banker, which seems not to be a very usual mode of presentment.

(4) *Barclay v. Bayley*, 2 Camp. Ni. Pri. C. 527; *Morgan v.*

Presentment
for payment.

v. Bayley⁽¹⁾, the presentment was made at the place of residence of the drawee, a merchant, at eight o'clock in the evening; in *Triggs v. Newnham*⁽²⁾, the presentment was made by a notary's clerk, at the house of a solicitor at which it was accepted payable, between eight and nine in the evening; in *Morgan v. Davison*⁽³⁾, the bill was presented at a person's (not a banker's) to a girl left in care of the counting house, between six and seven in the evening, and it was held that the presentment in each case was good: and in *Wilkins* and another *v. Jadis*⁽⁴⁾, which was an action by the indorsees against the drawer of a bill, accepted by one Townsend, payable at No. 15, Godliman-street, Doctors Commons, at the trial before Lord Tenterden, C. J. the evidence as to presentment for payment was, that between seven and eight o'clock in the evening of the day when it became due, a notary's clerk went with it to No. 15, Godliman-street, the door of the

Davison, 1 Starkie, Ni. Pri. C. 114; *Wilkins v. Jadis*, 2 Barn. and Adol. 188; *Triggs v. Newnham*, 1 Carrington and Payne, 631, 10 Moore, (C.P.) 249.

(1) 2 Camp. Ni. Pri. C. 527.

(2) 1 Carrington and Payne, 631, 10 Moore, (C.P.) 249.

(3) 1 Starkie, Ni. Pri. C. 114.

(4) 2 Barn. and Adol. 188. Vide S. C. in 1 Moody and Rob. 41, where Littledale, J. said, that he thought the presentment was at least quite in time up to eight o'clock.

house being shut, he rang the bell, and knocked, ^{Presentment} but no answer was given; Lord Tenterden, C. J. ^{for payment.} held that it was a good presentment, and a verdict was found for the plaintiff; and on a motion for a new trial, the Court decided that the presentment was sufficient, and Lord Tenterden, C. J. stated, "As to bankers, it is established with reference to a well-known rule of trade, that a presentment out of the hours of business is not sufficient; but in other cases the rule of law is, that the bill must be presented at a reasonable hour; a presentment at twelve o'clock at night, when a person has retired to rest, would be unreasonable, but I cannot say that a presentment between seven and eight in the evening is not a presentment at a reasonable time."

Littledale, J. concurred.

Parke J. "A bill or note must be presented for payment at a bankers, in the usual hours of business, but in all other cases it must be presented at a reasonable time; I think eight in the evening was in this case a reasonable hour."

Patteson, J. "The question to be considered is, whether the bill was presented at the place appointed within a reasonable time, not whether any person was there to receive it; I think the bill in this case was presented at a reasonable hour."

There can be no mistake in the language used by the Court in that case. The rule is there clearly laid down; it is well known, and appears to give general satisfaction, and according to that

decision, it is confined to bankers, and admits of no exception in favour of any other trade or business.

Dishonour.

In *Butterworth v. Lord Despencer*⁽¹⁾, Lord Ellenborough, C. J. stated, "A presentment of the note at the house, was a request there to pay the note, and the non-payment of it, is a refusal at the house. A refusal need not be an affirmative act; the not paying which is only a negative act, or shutting the door is a refusal." The Act 9th and 10th William 3rd, c. 17, uses the words "refusal or neglect" of due payment; and the Act 3rd and 4th Anne, c. 9, contains the expression, "and not paid before the expiration of three days," &c. though only as applied to inland bills.

A Refusal may
be by a
Negative Act.

It is a common rule of law that when a person enters into a contract, he has to the last minute of the day, on which he undertook to do or pay it, and by analogy to that, the question has been agitated, whether the acceptor of an inland bill, or maker of a note, has the whole day to pay it in⁽²⁾; but however that may be, it does not appear that any such suggested right is ever claimed by the

Effect of a
Tender by the
Acceptor of the
amount before
twelve o'clock
at night, when
the Bill has
become due.

(1) 3 Maule and Sel. 150.

(2) Lord Kenyon, in *Leftley v. Mills*, 4 Term Rep. 170, appears to have thought, that the Acceptor had until the last moment of the last day of grace, to pay the bill. See also the observation of Parke, B. in *Startup v. Macdonald*, (in error,) 6 Mann. and Grang. 602, "In the case of a Bill of Exchange the Acceptor has the whole of the last day until twelve o'clock at night."

acceptors in this country, and the only difference worth noticing, which it could make to the holder is, that it might oblige him to bear out of his own pocket, the expense of noting, if the acceptor or maker should tender the amount of the bill or note at a later hour, on the same day ; but if he once refuse payment, the holder is then justified, if so disposed, in treating it as dishonoured, and giving notice of dishonour on the same day to the other parties⁽¹⁾ ; yet, if the acceptor subsequently on the same day make payment, the payment is good, and the notice of dishonour is of no avail⁽²⁾.

Dishonour.

If he refuse payment, Notice of Dishonour may be given on the same day.

It is perhaps superfluous to mention, that a bill, whether foreign or inland, is always presented when due for payment in England, on behalf of

(1) *Burbridge v. Manners*, 3 Camp. Ni. Pri. Cases, 193, which was an action brought upon a Promissory Note against an Indorser, in which Lord Ellenborough, C. J. said, "I think the note was dishonoured as soon as the Maker had refused payment on the day when it became due." And see *Hine v. Allely* and another, 4 Barn. and Adol. 625, against the Drawers of a bill, where the Acceptor's house was shut up and no one there, and notice of dishonour was given to the Defendants, the Drawers, on the same day.

(2) See *Hartley v. Case*, 1 Car. and Payne, 555-6, where the refusal was only a qualified one ; per Abbott, C. J. "I think the notice of dishonour given on the day on which the bill is payable will be good or bad, as the Acceptor may or may not afterwards pay the bill. If he does not afterwards pay it, the notice is good ; and if he does, it of course comes to nothing." See S. C. 4 Barn. and Cress. 339.

Dishonour.

the holder, if the drawee, or acceptor (if accepted) can be found, and there is any chance of obtaining payment, prior to its being sent to a notary's office to be noted or protested: such prior presentment, however, though^{*} usual and convenient, is not in fact necessary, because there is not any need of two presentments for payment.

Bill lost, or not
forthcoming.

If a bill or note should be lost, payment must nevertheless be demanded when it becomes due, and a copy⁽¹⁾, or such particulars of it as can be

(1) *Dehers v. Harriott*, Trinity Term, 3rd William and Mary, 1 Shower, 163. See the observations as to notice of dishonour in case the bill is lost or destroyed, per Lord Ellenborough, C. J. in *Thackery v. Blackett*, 3 Camp. Ni. Pri. C. 165.

It has been decided that an action will not lie, against an Acceptor of a bill, lost after being indorsed in blank by the Payee, even after an offer of indemnity; *Pierson v. Hutchinson*, 2 Camp. Ni. Pri. C. 211; *Poole v. Smith*, Holt's N. P. Cases, 144; *Powell v. Roach*, 6 Esp. 76; *Davis v. Dodd*, 4 Taunt. 602; and see *Hansard v. Robinson*, 7 Barn. and Cress. 90, in which the Court held that as an Acceptor could not be required to pay a bill, without having it delivered up to him, "as his voucher and discharge, *pro tanto*, in his account with the Drawer," an action at law on a bill indorsed in blank, and lost after it became due would not lie against him, even after an indemnity was offered; and Lord Tenterden, C. J. observed, that the Plaintiff might enforce payment *in a Court of Equity*; and a similar decision took place in the case of a country Bank Note payable to Bearer, *Mayor and others v. Johnson and others*, 3 Camp. Ni. Pri. C. 324; *Dangerfield v. Wilby*, 4 Esp. Rep. 159. It was, however, formerly held that if it could be proved that the bill or note had been destroyed (per Ellenborough, C. J. in *Pierson v. Hutchinson*, 2

had, should be presented instead of the original, (or the second or third of exchange might reasonably be used in such a case); and it has occasionally occurred, when in consequence of

Dishonour.

Camp. Ni. Pri. C. 211,) or where the bill was not negotiable or only specially indorsed, (Long v. Bailie, Cor. Lord Ellenborough, C. J. 2 Camp. Ni. Pri. C. 214, in which case it was not only specially indorsed, but lost after the action upon it was commenced,) the party who lost it might recover at law against the Acceptor; see also Mossop v. Eadon, 16 Vesey, 430. But in an action against the Indorser of a bill indorsed in blank, and which had been received by the Plaintiff from the Indorser as the price of goods sold, and lost before it became due, it was decided by the Court that the Plaintiff could not recover for the price of the goods or on the lost bill, because by the loss of it, the Defendant, the Indorser, was deprived of all means of recovering over from the prior parties, Champion v. Terry, 3 Brod. and Bing. 295. It has been decided, however, that the Indorsee on giving security has a remedy by a suit in equity against the Acceptor of a lost bill, Davis v. Dodd, 4 Price's Exchequer Reports, 176; Cockell v. Bridgman, 4 Beav. (Ch.) 499. If the bill or note have been indorsed in blank and lost after it became due, it has been suggested that there seems to be no good reason why the party who lost it, might not proceed at law against the Drawer and Indorsers of the bill, or the Indorsers of the note, because any person taking a bill after it has become due, takes it subject to any objection or circumstance which affected it, when it came to the hands of the person, who first became wrongfully possessed of it after the loss, and as the finder could not in that case, give an effectual right of action even to an Indorsee for value, it might be thought that the Acceptor cannot insist upon an indemnity, and that the interference of a Court of Equity would be unnecessary, but as the Plaintiff would make out a *prima facie* case by proving

special or peculiar circumstances⁽¹⁾ a bill did not happen to be in this country when at maturity, and the drawer or indorsers resided abroad, that the second or third of exchange has been presented in lieu of it⁽²⁾.

Protest on
non-payment
of a Foreign
Bill.

If a foreign bill should not be paid at maturity, then by the law merchant, it is necessary to have it protested by a notary, for non-payment; and it is presented either by a notary or by his clerk, (most commonly by his clerk,) and it is then

the acceptance and indorsement, it might be hard to expose the Acceptor, after paying the bill without an indemnity, to the hazard of showing by legal evidence that the bill had been lost after it became due. See Notes to *Pierson v. Hutchinson*, 2 Camp. Ni. Pri. C. 214. Besides which the observation of the Court in *Hansard v. Robinson*, as to the right of the Acceptor to have the bill delivered up to him for his own security and as a voucher, would apply with additional force to an Indorser of a bill or note, who for want of it would be deprived of his remedy over against the prior parties; these difficulties, therefore, appear to present an insurmountable objection, to the Indorsee who has lost the bill proceeding at law.

(1) In the case of a bill accepted, but afterwards protested for better security, it may be necessary, according to the laws and usages of some Foreign Countries, to send the bill abroad with the protest for better security immediately, for the purpose of attachment, or of proceeding against the Drawer or Indorsers residing there.

(2) Instances have occurred within the Author's knowledge of the second of exchange, being protested under peculiar circumstances, for non-payment, when the bill became due, in the absence of the first of exchange, which had originally been in the Holder's hands.

noted, and a protest is prepared, signed by the notary, and passed under his official seal, in the same mode as is before described in the case of non-acceptance⁽¹⁾. Protest on
non-payment.

A bill drawn in Ireland upon England comes within the above rule, and requires a protest if dishonoured⁽²⁾; and on the same principle it is considered necessary, and it is the custom to protest bills drawn in Scotland, or the Isle of Man, upon England, when they are dishonoured on non-acceptance, or on non-payment.

The bill is frequently noted for non-payment on one day, and the protest drawn up on some subsequent one, and dated as of the true date of the dishonour, a mode of proceeding which is considered correct, by the merchants and traders, and is sometimes found very convenient.

The mode of making the presentment for payment, in ordinary cases, and of presenting, or attempting to present bills, in extraordinary or special cases, has been already fully explained⁽³⁾, and it is not considered necessary to repeat it here. Mode of
presenting or
attempting to
present the
Bill.

Instances have occasionally occurred, when owing to neglect or other causes, the bill has not Special Protest
where the
Holder has

(1) Vide Supra, Chapter 3, p. 93, and Appendix.

(2) *Chaters v. Bell* and another, 4 *Espinasse's Rep.* 48.

(3) Vide Supra in this Chapter, p. 139 and 140, and Chapter 3, p. 69, 70, 94 and 95.

omitted to get
the Bill pro-
tested when it
became due.

been sent to the notary's office until some days had elapsed after it had become due, and the holder and drawee have appeared at the notary's office, and the drawee has admitted the fact of presentment, and the want of funds; in that case the notary has certified the facts in the protest, and concluded in the usual form, "Wherefore I, the said notary, at the request aforesaid, have protested," &c. &c. and sometimes such a protest has stated, if the facts warranted it, that the drawee declared, that it would not have been paid, if presented on the day when it became due. Such a protest in a foreign Court, where alone it could be evidence, might probably be received as proof of the facts stated therein; and the effect would depend on such other circumstances, as might be given in evidence, on the trial of any question between contending parties.

The observations before made, respecting the necessity of a protest on non-payment, of a foreign bill, must, however, be taken with this qualification; if a bill have been previously presented for acceptance, and refused, and protested for non-acceptance, it is not obligatory upon the holder to present the bill again when due, or to protest it for non-payment⁽¹⁾, except as before

(1) Per Lord Ellenborough in *De la Torre v. Barclay* and another. 1 Starkie, N. P. Cases, 7; Chitty on Bills, 9th edition, 342, 349, (in notis,) and 359; *Hickling v. Hardey*, 7 Taunt. 312; *Price v. Dardell*, Sittings at Guildhall, London, 11th December, 1794; Cor. Lord Kenyon, cited in Chitty on Bills, 9th edition, 342.

observed⁽¹⁾ in the case of an acceptance *supra* Protest on non-payment.
protest, or to give notice of its not being paid ;
 however, where the bill happens not to have been Protests of Foreign Bills on non-payment when due after being previously protested for non-acceptance.
 sent back upon the parties abroad, on non-
 acceptance, and is still in the hands of a person
 in this country, it is customary, though not es-
 sential, to present it again, and on refusal, to
 protest it for non-payment, and the charges are
 added to the other expenses on the bill as against
 the other parties.

That plan is frequently adopted, and there is this advantage in it, that as it often happens, that funds arrive from the drawer sufficient to satisfy the bill, either in whole or in part, a presentment for payment when due, affords the holder an additional chance, of receiving at least a portion of the amount, without sending abroad ; there is no fixed custom respecting it, for it is considered equally regular, to suspend proceedings, or wait, and keep the bill in this country until it becomes due, and then endeavour to obtain payment⁽²⁾, and protest it for non-payment, or to send it back, and proceed against the parties to it immediately on its being protested for non-acceptance, just as the holder may think most conducive to his interests.

(1) Vide *Supra*, Chapter 4.

(2) See also what fell from the Court in *Whitehead v. Walker*, 9 Mee. and Wels. 516, where that course was stated by the Court to be a prudent and reasonable one.

Promissory
Notes made
abroad, but
payable here.

It is perhaps not of very frequent occurrence for a promissory note to be made abroad, but payable in this country ; in such a case, however, the same ceremony, as to presentment when due, and protest for non-payment, must be observed as in the case of a foreign bill. And if an English promissory note payable here, should be paid for the honour of the maker, or payee, a protest ought to be made, and an act of honour granted, as if it had been a bill of exchange⁽¹⁾.

Promissory
Notes paid for
Honour.

Protests of
Inland Bills
and Notes.

The right of protesting *inland* bills, if for the sum of £5 or upwards, expressed to be for *value received*, and payable *after date*, is given on non-payment, by the Act 9th and 10th William 3rd, c. 17, and on non-acceptance by the Act 3rd and 4th Anne, c. 9, as in the case of foreign bills; and it has been decided that the Act 3rd and 4th Anne, c. 9, has put promissory notes upon the same footing as inland bills⁽²⁾.

The noting and protesting of promissory notes is also recognized, as has been before observed, by the Acts 39th and 40th George 3rd, c. 42, and 7th and 8th Geo. 4th, c. 15, respecting the presentment of bills and notes falling due on days of public rest, and also by the Act 55th Geo. 3rd, c. 184, (the general stamp act)⁽³⁾. But the provisions

(1) The payment of English Promissory Notes for honour is not common, but the Author has known instances of it.

(2) *Brown v. Harraden*, 4 Term Reports, 148.

(3) Although Promissory Notes are mentioned in those Acts, Mr.

of the Act 9th and 10th Wm. 3rd, c. 17, respecting protests of inland bills, do not apply to the non-payment of *inland* bills payable *after sight*, nor unless there has been a written acceptance⁽¹⁾. Protest on non-payment.

A protest of an *inland* bill or note, ought not to be made, unless there is some good reason for making it, such as where it happens that it becomes necessary, to sue any of the parties to it who may happen to be abroad, or to attach property there⁽²⁾; and in any such case a protest is necessary, as in the case of a foreign bill; and mercantile usage requires a protest and an act of honour to be made in the case of an inland bill, when paid for the honour of the drawer or indorser. Acts of honour on Inland Bills.

It has been decided that a protest of an *inland* bill is not essential to enable the holder to sue and recover interest in this country⁽³⁾. Interest may be recovered on an Inland Bill without a Protest.

Baron Parke, in *Armani v. Castrique*, 13 Mee. and Wels. 448, is reported to have expressed himself as if in his opinion the doctrine of protest did not apply to notes.

(1) *Leftly v. Mills*, 4 Term Reports, 170; Act 9th and 10th William III, c. 17, sec. 1.

(2) Vide observations in Chapter 3, p. 103, and note (1) as to suits commenced, or attachments laid, in a Foreign Country, upon the property of parties to Inland Bills.

(3) *Windle v. Andrews*, 2 Barn. and Ald. 696, and 2 Starkie, 425. Vide *Supra*, Chapter 3, p. 102. As to the necessity of a count in the declaration specially stating the expenses of noting and postages of an Inland Bill, see *Kendrick v. Lomax*, 2 Crompt. and Jer. 405; 2 Tyrw.

Noting Inland
Bills and
Notes.

It is customary, however, to get inland bills and promissory notes, noted for non-payment, and though not essential, it is generally recommended; and there is an obvious advantage in doing so, because being a ceremony looked for on non-payment, the circumstance of its not having been done, would tend to render the other parties to the bill or note suspicious of irregularity, and more reluctant to pay it, and would almost certainly tend to raise a prejudice, in the minds of a jury against the plaintiff, if upon a trial the due presentment should be disputed; besides which, from the noting, the presentment and dishonour of the bill may with ease be at any time traced, by reference to the register or protest book, preserved in the notary's office; and there is another obvious advantage in noting it, which is, that a copy can be at any time obtained, from the notary's office, and proved, if the original should be lost.

Protest Stamp.

The protest requires an *ad valorem* stamp, on the amount of each bill or note, and if more than

439. Re-exchange cannot be recovered against the Acceptor of a Foreign Bill, *Napier v. Sneider*, 12 East, 420; and per Lord Ellenborough in *Woolsey v. Crawford*, 2 Camp. 445, "The Acceptor's contract cannot be carried further than to pay the sum specified in the bill and interest." In *Dawson v. Morgan*, 9 Barn. and Cress. 620, which was an action by an Indorsee against the Acceptor, Lord Tenterden, C. J. held that the Acceptor was not liable to pay re-exchange.

one are included in the same protest, the additional duty must be impressed in respect of each ; Protest on non-payment. but as has been before mentioned, that is not considered an eligible or convenient mode of protesting them⁽¹⁾.

If there be not a practising notary⁽²⁾, at or near the place, where the acceptor or the drawee (if not accepted) carries on business or resides, then, by the custom of merchants, in the case of foreign bills, and by the Act 9th and 10th William 3rd, c. 17, in the case of inland bills, the protest is to be made by a substantial person, residing at the place, and if the bill be an *inland* one, such a protest must be in the presence of two or more credible witnesses; it does not appear that there is any usage requiring any witnesses to such a protest, if the bill be a *foreign* one. If there be no Notary at the place, Foreign and Inland Bills may be protested by an Inhabitant of the place.

There is a difference between foreign and inland bills, with respect to the time when the protest for non-payment may be drawn up. In the case of foreign bills the holder may, and commonly does cause them to be protested, on the day when they fall due; but though inland bills are generally noted on the day of dishonour, yet if it should happen that they are afterwards pro- Difference between Foreign and Inland Bills as to the time of drawing up the Protest.

(1) Statute 55th George III, c. 184, and vide Supra, Chapter 3, p. 104 and 105.

(2) Vide Supra, Chapter 3, p. 103.

Protest on
non-payment.

tested, the protests ought, according to the act, to be made after the day⁽¹⁾. They must, however, be dated as of the true date when the bills were refused payment.

It has been before mentioned⁽²⁾, that it does not form any part of the plan of this treatise, to detail the course to be pursued, respecting the notice of dishonour, because that does not come within the province or duty of a notary, and the reader is referred for information on that subject, to one of the works published upon bills of exchange.

Bills made payable by the Drawers in any place other than that of the Drawee's residence, and not accepted, may be protested in such other place.

By the Act 2nd and 3rd William 4th, c. 98, before mentioned⁽³⁾, (passed in 1832) it is enacted, "that from and after the passing of this act, all bills of exchange, wherein the drawer or drawers thereof shall have expressed that such bills of exchange are to be *payable in any place, other than the place* by him or them *therein mentioned, to be the residence of the drawee or drawees* thereof, and which shall not on the presentment for acceptance thereof be accepted, shall or may be without further presentment to the drawee or drawees protested for non-payment, in the place in which such bills of exchange shall have been by the drawer or drawers ex-

(1) Vide Statute 9th and 10th William III, c. 17, sec. 1 ; and also observations on the Acts regulating the presentment of Bills or Notes falling due on a Day of Rest, Chapter 5, p. 165.

(2) Vide Chapter 3, p. 105.

(3) Vide Chapter 4, p. 129, 131, 132, and 133.

pressed to be payable, unless the amount owing upon such bills of exchange shall have been paid to the holder or holders thereof, on the day on which such bills of exchange would have become payable, had the same been duly accepted.”⁽¹⁾

Protest on
non-payment.

By the Act 6th and 7th William 4th, c. 58, sec. 1, (passed in 1836) after reciting that bills of exchange are occasionally accepted *supra protest* for honour, or have a reference thereon in case of need; it is enacted, “That it shall not be necessary to present such bills of exchange to such acceptors or acceptor for honour, or to such referees or referee, until the day following the day on which such bills of exchange shall become due; and that if the place of address on such bill of exchange, of such acceptors or acceptor for honour, or of such referees or referee, shall be in any city, town, or place, other than in the city, town, or place where such bill shall be therein made payable, then it shall not be necessary to forward such bill of exchange for presentment for payment to such acceptors or acceptor for honour, or referees or referee, until the day following the day on which such bill of exchange shall become due.”

Acceptors for
Honour, and
Referees in
case of need.

And it enacts, by sec. 2, “That if the day following the day on which such bill of exchange

Sunday or
other Day of
Rest.

(1) Vide observations upon that Act in Chapter 4, p. 131, 132, and 133.

Protest on
non-payment.

shall become due, shall happen to be a Sunday, Good Friday, or Christmas Day, or a day appointed by his Majesty's proclamation for solemn fast, or of thanksgiving, then it shall not be necessary that such bill of exchange shall be presented for payment, or be forwarded for such presentment for payment, to such acceptors or acceptor for honour, or referees or referee, until the day following such Sunday, Good Friday, Christmas Day, or solemn fast, or day of thanksgiving."

Referees in
case of need.

Before that act was passed, the Court of Exchequer held, that where a bill had a reference to Messrs. Spooner, Attwood and Co. bankers, in case of need, put upon it by an indorser, that the holder was not bound to present it at that house⁽¹⁾; and as the act does not direct that such bills shall be presented to the referees in case of need, but merely enacts, that *it shall not be necessary to present* such bills to the acceptors for honour, or to such referees or referee, *until the day following* the day on which they shall become due, it does not appear that it affects the decision of the Court of Exchequer, or that the holder is bound to present them to the referees in case of need.

Receipts
written upon
Bills or Notes.

The general Stamp Act⁽²⁾ contains an exemp-

(1) Leonard v. Wilson, one of the public officers of the Bank of Liverpool, 2 Crompt. and Mee. Rep. 589.

(2) 55th George III, c. 184, Schedule, title, Receipt.

tion from the stamp duty on receipts, written on bills of exchange and promissory notes, as follows: "Receipts or discharges written upon promissory notes, bills of exchange, drafts or orders for the payment of money, duly stamped according to the laws in force at the date thereof; or upon bills of exchange drawn out of but payable in Great Britain."

Receipts
written upon
Bills or Notes.
—

The above clause of exemption is generally worded, and it is consequently considered to apply, to all cases of the receipt of the amount, or part of the amount, of any bill, or note, and whether paid by a party to it, or paid *supra protest*, by any person for the honour of any party to it⁽¹⁾.

In case of a tender of the amount, it may be necessary to bear in mind, that the Act 7th George 4th, c. 46, sec. 15, which authorizes the Bank of England to establish branch banks at any place or places in England, enacts, that their notes, issued in such places, shall be payable in coin *in such places*, as well as *in London*, and also that by the Act 3rd and 4th William 4th, c. 98, sec. 6, bank notes are declared a legal tender for above £5, so long as the Bank of England shall continue to pay on demand their notes in legal coin; but that no such notes shall be deemed a legal tender of payment by the governor and company of the

Tender.

Bank Notes.

(1) Vide Chapter 4, p. 138, as to the Receipts commonly written upon Bills on payment *Supra Protest*.

Tender.
—

Bank of England, or any of their branch banks: and that the said governor and company are not to be liable to pay at any branch bank, notes not specifically made payable at such branch bank; but the said governor and company shall be liable to pay and satisfy at the Bank of England, in London, all notes of the said governor and company, or of any branch thereof⁽¹⁾.

Silver.

By the Act 56th George 3rd, c. 68, a legal tender cannot be made in silver coin, of any sum exceeding forty shillings.

It has been decided, that in an action upon a bill of exchange, a plea by an *acceptor*, of a tender of the amount, made *after* the day of payment, and before the action was brought, is insufficient⁽²⁾; “The plea must state not only that the defendant was ready to pay on the day of payment, but that he tendered it on that day.”⁽³⁾

(1) The Act 14th George III, c. 92, sec. 4, regulates the weights to be used for determining the weight of the gold (guineas) and silver coin.

(2) *Hume v. Peploe*, 8 East, 168; *Poole v. Tumbridge*, 2 Mee. and Wels. R. 223.

(3) Per Parke, B. in *Poole v. Tumbridge*, 2 Mee. and Wels. R. 223.

CHAP. VI.

SHIP PROTESTS.—CERTIFICATES OF SURVEY.—PROTESTS RELATING TO VARIOUS MERCANTILE SUBJECTS.

ON the arrival of a vessel at her port of destination, it is the custom for the master to cause an entry or note of a protest to be made, which is signed by him at the office of a notary ; it is somewhat in the form of a notice from the master, and if correctly drawn up in that form, it does not require a stamp. It should contain some particulars of the voyage, such as the name of the vessel, and of the master, the port from whence she came, the time of her departure, the nature of her cargo, and the date of her arrival ; the best mode, and one which is becoming general, is to have a printed book of registry, containing the formal parts of such entries, with proper blanks, in which the above-mentioned particulars are to be supplied.

Ship Protests.

Entry or
Noting.

This ceremony is called noting a protest, or entering a note of a protest ; and masters of vessels consider, that by usage it may be regularly done, at any time within forty-eight hours after arrival ; it is however, much more frequently done on the day of arrival, or on the next day. The same ceremony is also usually performed by a master of a vessel after any extraordinary accident or injury, if the vessel should be obliged to put into a port other than that of her destination,

Ship Protests. or to return to the port from whence she sailed.

Noting.

If there should not happen to be a notary, practising at any port, into which she may have put, it is customary, for the master of a British vessel, to note it before some person holding a public situation or office, connected in some degree with the British Government, such as a magistrate, collector or controller of Customs, &c. &c.⁽¹⁾; but it may be proper here to remark, that although the ceremony is an important one, yet the master ought not to leave his post, or neglect his duty in times of urgency, wreck, or danger, in order to note it, but he should do so on the first convenient opportunity afterwards. It is also advisable for the master to keep a copy of the noting, if made before a magistrate, collector, controller, or principal officer of Customs, &c. and to request him to mark or certify it; and if a protest should afterwards be prepared, the master should mention the fact of the noting in the protest⁽²⁾.

Whilst on this subject, it is proper to observe, that a notary cannot delegate his authority, or functions, or empower any stranger or third person to act, or note or make protests, or notarial

(1) Vide Supra, Chap. 1, p. 18, respecting the powers of British Consuls abroad, to perform notarial acts, by Statute 6th Geo. IV, c. 87, sec. 20.

(2) Neither a collector, controller, or other officer of Customs, is entitled to any fee for noting a protest.

instruments in the name of the notary, except in the common case of a clerk or apprentice acting on behalf of, and in the office, or actual employment, of the notary, in the usual way of business. Any notary presuming so to attempt to delegate his powers or duties to a third person, or to permit him to keep a noting book, or to note protests, in the name of the notary, will be liable to be struck off the rolls, under the provisions of the Act 41st George 3rd, c. 79, sec. 10⁽¹⁾.

It has already been explained⁽²⁾ that an unqualified person performing the above, or any other act, matter, or thing appertaining to the office or practice of a notary, is liable to a penalty of fifty pounds for each offence, and that a notarial document solemnized by an unqualified

Ship Protests.
Notarial documents prepared by unqualified persons acting as Notaries utterly inoperative.

(1) It is considered that independently of that act, the Court of Faculties has a summary jurisdiction and authority over the conduct of its own officers, the Notaries, in the same way as the Judges of the Superior Courts of Common Law exercise a summary jurisdiction over Attornies; and that the Master of the Court of Faculties possesses the power of punishing Notaries guilty of conduct so improper in itself, so disrespectful to the Court, and so likely to be injurious to the public, as that just before mentioned; and if the Court did not possess the power of punishing all persons so offending, one great object intended to be compassed, by the appointment of Notaries, would be frustrated, viz. public security, and confidence in the notarial documents, as being duly prepared in the office of an accredited and trustworthy officer.

(2) Vide Supra, Chap. 2, p. 26, 35, and 57.

Ship Protests. — practitioner, pretending to act either for himself or another, is utterly useless, and inoperative to all legal purposes, and consequently that whatever is paid for it is just so much money thrown away.

Noting must be of the true date. The noting must bear the true date, and indeed it is not easy to see how it can be antedated for any honest purpose; and there is no doubt that any notary lending himself, to the collusive insertion, of a false date, would be exposed to serious consequences and punishment by the Master of the Faculties ; and in case of any good reason for the master of the vessel delaying to note it, until after the usual time, it is customary, to add to the entry, or noting, a short statement, giving the reason why the master did not enter a note of his protest sooner, so as to form part of the entry.

Ship protests are most useful and important documents, for various purposes in this country, and especially in matters connected with the adjustment of losses, in marine insurance, and for reference on the calculation of general averages, and ought to be prepared with impartiality, attention, and care ; and from the importance of these instruments, it is highly expedient to avoid the error, which sometimes masters of vessels have been known to fall into, of employing ignorant or unqualified persons, (either not being notaries, or who by reason of not renewing their annual certificates, are not authorised to act as such,) to prepare them. The irregularity, and risk of

getting any notarial act, such as a protest, or Ship Protections.
 other notarial ceremony, made here, before a
 Foreign consul, if wanted to be produced before
 British underwriters, or to be used in this country,
 has been already explained⁽¹⁾.

Whenever it happens, either from the ship or
 cargo being lost or injured, or any other circum-
 stance, that it becomes necessary, to have a
 regular protest made, or extended as it is often Making or ex-
 tending a Ship
 Protest.
 termed, in this country, the course to be pursued,
 is to cause it to be prepared by a notary, from the
 information as to the facts, to be derived from
 one or more of the crew, or from the log book ;
 and for the master and others of the crew,
 (generally the master, mate, and a seaman,) Form of Ship
 Protest.
 within a reasonable time after arrival, to sign and
 declare to it before the notary ; and it is not
 material to have it so extended before the same
 notary in whose office it was noted.

There is not any precise form generally
 adopted for a ship protest, and in fact the mode
 in which it is drawn up, varies exceedingly ; it
 generally consists of two parts, the first is a
 statement or declaration of the facts and circum-
 stances of the voyage, and of the storms or bad
 weather which the vessel may have encountered,
 or any accidents which may have occurred,
 during the course of it ; and the other is the part
 in which the appearers or the notary, or both the
 appearers and the notary, protest, against the

(1) Vide Supra, Chap. 1, p. 19 and 20.

Ship Protests. accidents, or causes of the injury, and against all loss or damage occasioned thereby, and at the end or foot is an attestation or certificate, under the hand and seal of the notary.

Formerly on Oath. The protest was formerly commonly made on oath, the facts being sworn to by the master and mariners before a notary⁽¹⁾, but since the act for abolishing unnecessary oaths⁽²⁾ it is usual and proper to subjoin, or annex to the statement, or narrative of facts, the form of declaration given in the schedule to that act, as follows :—

Now by Declaration. “We, (*names of the appearers,*) do solemnly and sincerely declare, that the foregoing statement (*or hereunto annexed, as the case may be*) is correct, and contains a true account of the facts and circumstances, and we make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed, in the sixth year of the reign of his late Majesty, intituled ‘An Act to repeal an Act of the present session of Parliament, intituled, An Act for the more effectual abolition of oaths and affirmations, taken and made in

(1) See also Lord C. J. Tenterden’s observations on that subject in *The King v. The Scriveners’ Company*, 10 Barn. and Cress. 518 ; and *Supra*, Chapter 1, p. 13, as to the doubts at one time entertained by the London Notaries, respecting the authority of a Notary, to administer oaths.

(2) 5th and 6th William IV, c. 62, sec. 15, and Schedule referred to in it. Vide also *Supra*, Chapter 1, p. 14 and 15 ; and *Infra*, Chapter 8, “Declarations before Notaries.”

various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extrajudicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.'"

The protesting part is too often spun out to an unnecessary and absurd length; it is a mere form, and a few words are sufficient; for example, in a case of damage or injury, by storms or stress of weather, as follows :—

“ The appearers, *A. B. C. D.* and *E. F.* do protest, and I, the undersigned notary, do also protest, against the bad weather, gales, storms, accidents, and occurrences mentioned in the foregoing statement, (*or hereunto annexed, as the case may be,*) and all loss or damage occasioned thereby;” and it concludes with an attestation or short certificate, under the hand and seal of the notary, to the effect that it was declared and protested in due form⁽¹⁾.

According to commercial usage, it is considered, that it is a part of the duty of the master and crew, to give faithful information respecting the circumstances of the voyage, and to join in or make a true and impartial protest, when required to do so, by and at the expense, of the owners of the vessel, or of any of the owners or consignees of the cargo requiring it, and that a master refusing to do so, would so far be guilty

Ship Protests.

The Protesting part.

Duty of the Master and Crew to make Protests.

(1) See Precedents, *Infra*.

Ship Protests. — of a breach of duty, as to render himself liable to an action at law by the shipowners, or the owners or consignees of the goods, for any loss or inconvenience in consequence of his refusal. The expense must be borne by the party requiring it, and cannot be thrown upon the Master. The expense of the protest cannot, however, be thrown upon the captain, by any of them; and if the owners or consignees of goods require a protest, they must pay for it, or reimburse the shipowners or captain, or tender the expense of it to the shipowners or captain; and the owners or consignees of goods may, if so disposed, cause it to be prepared by their own notary.

Stamp Duty. The most common mode is to make the protest by one instrument, and to put the whole upon one sheet of paper, impressed with a stamp duty of 5s.

It is necessary to observe, that although by the Stamp Act⁽¹⁾, a protest requires a stamp of 5s, if upon one sheet of paper, and the like duty is imposed upon each additional sheet; yet the act does not, and in fact could not, without causing great public inconvenience, impose a duty upon any document affixed to it; and the act for abolishing unnecessary oaths⁽²⁾ does not impose any duty, upon a declaration, now substituted in most cases for an oath, and consequently there does not appear to be any objection, to prepare the statement of the facts, and declaration, on plain paper, to be signed by the appearers, and solemnly declared to, provided the protesting

Declaration and Statement annexed.

(1) 55th George III, c. 184.

(2) 5th and 6th William IV, c. 62.

part and attestation, are on a 5s stamp, and the Ship Protests.
former annexed to it. This may be conveniently done, by preparing the statement of facts, and declaration, on the first and second sides of a sheet of unstamped paper, and by introducing and annexing into it bookwise, another sheet on a 5s stamp, and by writing the protesting part and attestation on the stamped paper, which when so annexed will form a third page⁽¹⁾.

That plan may be found useful and convenient, when owing to any peculiar circumstance of time, place, accident, or sickness of any of the crew, it becomes necessary, to prepare the statement of facts and declaration, on the spur of the moment, and a protest stamp cannot be easily or conveniently obtained; and in that case, the protesting part and attestation, on a 5s stamp, must be annexed to it.

There is another mode, which may frequently be found convenient, which is to introduce on the first page of paper impressed with a stamp duty of 5s, a notarial certificate under the notary's hand and seal, declaring it to form part of the declaration, statement of facts, and protest, written on the other side, and certifying that the same were declared and made, on such a day before the notary; and the advantage of that plan is, that if there are any other circumstances, beyond those narrated by the appearers re-

(1) See Precedents, *Infra*.

Ship Protests. specting the vessel⁽¹⁾, which it may be necessary or desirable for the notary to certify, they may be introduced into the certificate; and on the second and following pages the statement of facts, declaration, protesting part, and a short notarial attestation are to be written; and as the above-mentioned certificate is under the notary's hand and seal, it is not considered necessary to affix the seal also to the attestation, at the end of the instrument⁽²⁾.

General Form adapted to the commencement of Ship Protests, Notarial Certificates, &c. &c. Where a notary's practice is so considerable that he finds it expedient to use printed or engraved forms, it will be found very convenient to adopt a form which is given amongst the Precedents⁽³⁾, which serves for the commencement either of a notarial certificate or of an act of honour, or, with a very slight alteration, of a ship protest.

Certificates of Survey. Connected to a certain extent, with ship protests, are the notarial certificates of surveys having been held on the vessel or cargo, they are very useful documents to accompany protests, and a form of one of them, is set out amongst the precedents⁽⁴⁾.

(1) If the Master, from sickness or absence, cannot join in the Protest, the reason which prevented his so joining, may with propriety, be stated in the Certificate, when the above-mentioned mode is adopted.

(2) A Form is given amongst the Precedents, *Infra*.

(3) See No. 36 and No. 37 in the Precedents, *Infra*.

(4) See No. 38 in the Precedents, *Infra*.

Besides ship protests strictly so called, there are many kinds of protests relating to other matters, as well as to the voyages of vessels, such as protests for refusing to sign proper bills of lading, for not providing a cargo, for not delivering goods, for detention, for demurrage, for not signing charterparties, for misconduct or intoxication of the captain, for insufficiency or unseaworthiness of vessels, and for many other things relating to ships, cargoes, and other mercantile matters; those relating to bills of exchange have been already treated upon, and the above-mentioned protests are considered to be of great use in foreign countries, in cases of disputes, or demands, pending with parties residing abroad, and interested in such ships, goods, or matters: a note of any of them may, if desirable, be entered at the notary's office previous to making a formal protest. These kinds of protests are in the nature of a declaration of facts, but, as it was not generally speaking thought necessary, to make them on oath, in the form of affidavits, before the passing of the act for the abolition of unnecessary oaths⁽¹⁾, it is not considered requisite, to add to them, (as in declarations substituted for oaths) the concluding long form, prescribed by that act, and the schedule referred to in it.

Protests of
various other
kinds.

As it is proper, for a notary to keep a registry Registry.

(1) 5th and 6th William IV, c. 62, sec. 15.

Registry.

of protests, the most simple course, and the one least likely to admit of error, is to preserve the drafts of them with care, and at a convenient time, to number and bind them up together ; by that plan, correct and certified copies can, at any time afterwards, be made out.

CHAP. VII.

CHARTERPARTIES.—BOTTOMRY BONDS.—AVERAGE AGREEMENTS.

CHARTERPARTIES, bottomry bonds, and average agreements, as well as some other instruments relating to shipping, and to commercial matters, are prepared as well by notaries, as by solicitors, and attornies; and though not peculiarly in the department of notaries, yet as they are in the habit of preparing them, some notice of them here may not be out of place.

A charterparty is usually defined to be a Charterparties. contract, by which an entire ship, or some principal part thereof, is let to a merchant, for the conveyance of goods, on a voyage to one or more places⁽¹⁾.

It is an instrument in writing, in general under hand only, but when the parties are on the spot, it is occasionally in the form of a deed under seal.

By the Act 5th and 6th Victoria, c. 79, (passed Stamp Duty. in 1842) a stamp duty of 5s⁽²⁾ is imposed upon a

(1) Abbott on Shipping, 4th edition, part 3, c. 1, p. 183; Holt's Law of Shipping and Navigation, vol. 2, c. 1, p. 2.

(2) Statute 5th and 6th Victoria, c. 79, secs. 1 and 2, and "Schedule." The 1st sec. of that Act repeals the several duties of £1 15s and £1 5s imposed upon any Charterparty, Agreement for Charter, &c. &c. by the General Stamp Act, 55th George III, c. c c

Stamp Duty. “charterparty, or any agreement or contract for the charter of any ship or vessel, or any memorandum, letter, or other writing, between the captain, master, or owner of any ship or vessel, and any other person, for or relating to the freight or conveyance of any money, goods, or effects on board of such ship or vessel.”

Section 21 enacts, “That it shall not be lawful for the Commissioners of Stamps and Taxes, or any of their officers, to stamp or mark any vellum, parchment, or paper upon which any bill of lading or any charterparty, or any agreement, contract, memorandum, letter, or other writing by this act chargeable with any duty as a charterparty, shall be engrossed, written or printed, under any pretence whatever, after the same shall be executed or signed by any party except as herein is provided ; and if any person shall make or sign any bill of lading which shall be engrossed, printed, or written, or partly engrossed or written and partly printed, upon vellum, parchment, or paper not duly stamped according to law, every such person shall forfeit the sum of fifty pounds : provided always, that if any *charterparty*, or any such agreement, contract, memorandum, letter, or writing chargeable with any duty as a charterparty, shall be brought to

184. The latter duty of £1 5s was the progressive duty for every *entire* quantity of 15 common law folios (1,080 words) over and above the first 15 folios, which was imposed where the instrument contained 30 folios (2,160 words) or upwards.

the head office of the said commissioners, or to any of their proper officers, to be *stamped*, *within fourteen days*, after the same shall bear date, and shall have been executed or signed by the party thereto who shall have first executed or signed the same, it shall be lawful for the said commissioners, and they are hereby required to cause the same to be stamped, upon payment of the duty chargeable thereon, *without any penalty*; and if the same shall be brought to the said head office to be *stamped* at any time *after the expiration of such fourteen days* and *within one calendar month* after the same shall bear date, and shall have been first executed or signed as aforesaid, it shall be lawful for the said commissioners, and they are hereby required to cause the same to be stamped upon *payment of the duty* chargeable thereon, *and of the further sum of ten pounds* by way of penalty.”

It is usually made between the owner or master of the one part, and the freighter or person hiring the vessel of the other part, and after once setting out the names of the parties and mentioning the capacity in which they join in the instrument, they are generally afterwards, to save repetition, merely called “owner,” “master,” “freighter,” or “charterer,” as the case may be.

It sets out all the terms and conditions, which the parties intend to enter into, and usually contains an exception, or clause, limiting the liability of one or both of the contracting parties;

Stamp Duty.

Parties to them.

Terms and Conditions.

Terms and
Conditions.

in some cases it merely limits the liability of the master or owners, and it is then usually introduced at the end of their covenant or agreement to discharge the cargo, at her place of destination; but in other cases the clause limits the liability, as well of the one party thereto, as of the other, and is introduced at the end of the instrument. There does not appear to be any fixed rule on the subject of that clause, and consequently it is for the parties to determine upon it amongst themselves, and to communicate their wishes, and to give proper instructions accordingly respecting it, to the professional person who is employed to prepare the charterparty if they do not intend to leave it to his discretion.

Penalty not
necessary.

Formerly charterparties frequently concluded with a clause, imposing a penalty on the non-performance of any of the covenants, but at present it appears not to be generally introduced, and it is considered unnecessary, as no practical good is found to accrue from its introduction, sufficient to compensate for the additional length of the instrument.

Lien on Goods
on board for
Freight.

A full dissertation upon the law of lien, on the goods on board, for freight, or upon the law of demurrage, does not come within the object of this treatise, yet a few observations upon those subjects, may be introduced here without impropriety, as a guide to the stipulations, necessary to be inserted in charterparties, respecting them.

The Lien for

The lien on goods, for payment of freight,

has long been recognized in our Courts of law, but the covenant or agreement in a charterparty to pay freight, must be worded, declaring it payable before, or upon, or at, and not after the delivery of the goods, if the right of lien is to be preserved. Unless the owners or master divest themselves, of their right of lien, by their own actions, covenants, or agreements, the Courts of law have always favoured their right, of exercising it⁽¹⁾, and there has not been any case hitherto decided, in which a mere custom has been held by the Courts to divest it; nor is there any well founded reason to suppose, that the Courts would consider any custom a reasonable one, by which it should be pretended, that the owners or consignees could require the delivery of their goods before payment, or tender, of the freight, and could insist upon a period of credit for paying it. If any such custom were to exist, at any particular port, it would often operate as a great hardship, upon owners and masters of vessels, and especially of those which did not belong to the port.

Unless the owner is indiscreet enough, so to contract, by the terms of the charterparty, as

Freight
favourably
considered by
the Courts.

Right of
exercising it
before delivery
of the Goods ;

Unless the
Owner or
Master divests

(1) See *Soldergreen v. Flight* and another, Guildhall Sittings after Trinity Term, 1796, before Lord Kenyon, C. J. cited in *Abbott on Shipping*, part 3, c. 3, sec. 11, p. 258, as to the detention by the Master of a part of the merchandize, for the Freight of all that is consigned to the same person.

himself of the
Lien by the
terms of the
Charterparty.

to part with the absolute possession or control of the vessel, to the freighter, the right of lien will still continue; nor will the introduction into it, of the words of letting to freight, or demising, as they are often called, such as the words "grants, and to freight lets," merely, make any more difference in that respect, than if the words used, were "agrees to grant, and to freight let."⁽¹⁾

Lien for
Freight
on Goods of
third persons,
on board a
chartered
vessel.

And in the case of a chartered ship, the ship-owner may detain the goods of third persons for freight, where the charterer had taken the goods on board the vessel as a general freight ship; but the owner has not a lien on the goods of third persons, mentioned in the bills of lading, for all his freight, due on the charterparty; he is only entitled to a lien upon goods, put on board by the different shippers abroad, to the extent of the freight due upon each of those shipments, and he may receive the freight due from each con-

(1) *Tate v. Meek*, 8 Taunt. 280; *Yates v. Mennell*, 2 B. Moore, 297, S. C. 8 Taunt. 302; *Saville and others, assignees of Gooch, v. Champion*, 2 Barn. and Ald. 503; *Faith v. The East India Company*, 4 Barn. and Ald. 630; *Champion v. Colvin*, 3 Bing. N. C. 17, in none of which, were there any words of demise, or letting to freight; *Yates and others, assignees of Ashton and others, v. Railston*, 8 Taunt. Rep. 293; *Christie and others, assignees of Laing v. Lewis*, 2 Brod. and Bing. Rep. 410, in both of which the Instrument of Charter was by deed under seal, and containing words of demise, or letting to freight. The previous decision in *Hutton v. Bragg*, 7 Taunt. 14, is now overruled by the above cases.

signee, for the conveyance of his goods⁽¹⁾; nor will it prejudice the shipowner's right of lien, against the goods of such third persons, for the freight per bills of lading, if the charterparty should be under seal⁽²⁾.

Lien for
Freight.

But the right of lien, has been held good on cotton, belonging to the charterer, which had been consigned, under peculiar circumstances to the defendant, with notice of the charterparty, not only for the freight of that specific cotton, but for the whole freight under the charterparty⁽³⁾; in this case the return cargo, consisting of cotton, had been purchased by means of advances made by the defendants, upon the security of the outward cargo, which still remained in their hands; and the jury found that the cotton was the property of the charterer.

(1) *Paul v. Birch*, 2 Atkins, 621; *Mitchell v. Scaife*, 4 Camp. N. P. C. 298; *Christie and others v. Lewis*, 2 Brod. and Bing. 410; *Faith v. The East India Company*, 4 Barn. and Ald. 630. See also *Tate v. Meek*, 8 Taunt, 285, in which case the Shipowner received from the different Consignees, the rates of Freight, mentioned in the respective Bills of Lading, of the goods of third persons, which were less than those stipulated for by the Charterparty.

(2) *Christie and others v. Lewis*, 2 Brod. and Bing. Rep. 410. See also *Small and others v. Moates*, 9 Bing. 574, where a Lien on the Loading was expressly reserved by the Charterparty, and it was held to affect goods purchased and put on board by the Charterer, and then transferred to a third person.

(3) *Campion v. Colvin*, 3 Bing. N. C. 17.

When the
delivery of the
Goods and the
payment of the
Freight are
concomitant
acts.

When the delivery of the goods, and the payment of freight by a bill, are concomitant acts, neither party is obliged to perform his part, without the other being ready to perform the correlative act⁽¹⁾: and where, by the charterparty a freighter covenanted, to pay part of the freight in cash, on the day the vessel should be reported inward, and the remainder of the freight and primage, by a good and approved bill, at a given date from the day on which the delivery should be completed, and the shipowner had delivered some goods, to various consignees, and received the respective freights on each of those consignments, but at a less rate than that contracted for by the charterparty, the point raised was, whether the shipowner was justified, in detaining the freighter's goods, until payment of the residue of the freight, which he had covenanted to pay by the charterparty, and it was held that the shipowner was justified; and per Gibbs, C. J. "If the whole cargo had been one bale of goods, there would have been no doubt. But the difficulty is, that the remainder of the freight, is to be paid by bills, to bear date from the day of the delivery, and the delivery may take several days. We think the captain might obviate this, by landing the cargo in his own name, and tendering a bill for the whole amount, dated from that day."⁽¹⁾

Matters in
respect of

The owner of a ship has not a lien for port

(1) Per Gibbs, C. J. in *Tate v. Meek*, 8 Taunt. 292.

charges, where there is no usage on the subject, which the ship-owner has not a Lien. unless it is clear, from the terms of the charterparty that it is intended to be allowed⁽¹⁾; nor has a shipowner a lien for dead freight, beyond the freight of such goods as had been brought home in her⁽²⁾; nor can a right of lien be enforced upon the goods for demurrage, in a case where the charterparty does not contain a clause giving such right⁽³⁾; nor can a lien be sustained for any breach of covenant, of which the damages are unsettled, and which therefore can only be duly rated, either by a jury or by an arbitrator⁽⁴⁾.

Whenever a charterparty is entered into, the Demurrage. number of days allowed for discharging, or loading, as the case may be, and the demurrage to be paid in case of delay, ought to be carefully provided for; and as will be afterwards explained, they should also be inserted in the bills of lading, in the case of a general freight ship. There have been several cases before the Courts, arising out of disputes respecting demurrage, some of which it may be proper to notice in this place, because the decisions of the Courts in those

(1) *Faith v. The East India Company*, 4 Barn. & Ald. 630 & 642.

(2) *Phillips and others, assignees of White v. Rodie and others*, 15 East, 547; *Birley v. Gladstone*, 3 Maule and Sel. 205; *Gladstone v. Birley*, 2 Merivale, 401.

(3) *Phillips and others v. Rodie*, 15 East, 547; *Birley v. Gladstone*, 3 Maule and Sel. 205; *Abbott on Shipping*, 4th edition, part 3, c. 1, sec. 7, p. 191.

(4) *Holt on Shipping*, vol. 2, p. 7.

Demurrage.

If no time for delivery stipulated in the Bill of Lading or Charterparty.

The Master cannot sue upon an implied promise for Demurrage;

Unless the Bill of Lading

cases, are material to show the stipulations, and agreements, which are proper to be introduced into charterparties, respecting demurrage. If by the bill of lading no time be stipulated, within which the goods are to be discharged, the implied contract on the part of the consignee or owner of the goods, is to discharge the ship, in the usual and customary time for unloading; and it has been held, that the consignee is not liable, to an action for a compensation to the shipowner, in the nature of demurrage, for any delay occasioned by the crowded state of the London docks, though the cargo might have been landed sooner, if instead of bonding the goods, the duties had been immediately paid by the consignee⁽¹⁾. The master cannot maintain an action of assumpsit in his own name, as he may for freight on a bill of lading, upon an implied promise to pay demurrage, when there is not a bill of lading expressing it to be so payable⁽²⁾. If, however, a consignee accept goods

(1) *Burmester v. Hodgson*, 2 Camp. Ni. Pri. C. 488. See also *Rodgers v. Forresters*, 2 Camp. N. P. C. 483, which was an action on a Charterparty, containing a covenant to unload the vessel in the usual and customary time, and in which the decision was the same.

(2) *Brouncker v. Scott*, 4 Taunt. 1. In this case it appears also to have been assumed on the part of the Consignee's Counsel, that the Captain had no lien on the goods for the payment of Demurrage, as it would involve this difficulty, that as the amount of the Demurrage, would be continually increasing, by the detention of the

under a bill of lading, at the bottom or margin of which is a memorandum, that the ship is to be cleared in a certain number of days, and at a certain sum per day demurrage, to be paid after that time, the master, upon delivery of the goods, may sue in his own name, and recover demurrage against the consignee⁽¹⁾.

Cases have occasionally arisen upon charterparties, and others upon bills of lading, in which demurrage was expressed to be payable, where the delay in the discharge of the goods, was caused by events, not under the control of the charterer, consignee, or owner of the goods, yet he has been held liable to pay the shipowner demurrage for the period of detention; as for instance, where it arose from the crowded state of the London docks, and the inability of the

goods, the delivery of them would never be demanded. See also *Evans v. Forster* and another, 1 Barn. and Adol. 118. In *Burmester v. Hodgson*, 2 Camp. N. P. C. 488, before referred to, an Action of Assumpsit, on an implied promise for Demurrage, was attempted without success in the name of the Master. Nor can an action be maintained by a Shipowner on an implied promise against a Consignee, who is not the owner of goods, to pay general average, if the Bill of Lading be silent respecting it—*Scaife v. Sir John Tobin*, 3 Barn. and Adol. 523.

(1) *Jesson v. Solly*, 4 Taunt. 52; and see *Harman v. Clarke* and others, 4 Camp. N. P. C. 159; *Harman v. Mant*, *ibid.* 161. Indebitatus Assumpsit will not lie for Demurrage unless there is an express agreement—*Horn v. Bensansan*, 2 Mood. and R. (N. P.) 326.

Demurrage.
 Charterers,
 Consignees, or
 Owners of
 Goods, liable
 to Demurrage
 in certain
 cases, without
 any fault of
 their own.

dock company to discharge the vessel⁽¹⁾; where the loading and departure of the vessel was prevented by the river Thames being frozen over⁽²⁾; where there was a prohibition of a foreign government, against the exportation of the intended articles, and the captain did not know of the prohibition, before entering the port to which he went for the goods⁽³⁾; where the consignee had not notice of the vessel's arrival⁽⁴⁾; where the delay arose, in consequence of the act of the revenue

(1) *Randall v. Lynch*, 2 Camp. N. P. C. 352, and 12 East, 179, which was an Action of Covenant upon a Charterparty. A Charterer is also liable for the non-performance of a covenant to load a cargo, though, in consequence of an infectious disorder at the port of loading, (Gibraltar,) all public intercourse is prohibited by the law of the place; and per Lord Ellenborough, C. J. in the same case: "If indeed the performance of the covenant had been *rendered unlawful* by the *government of this country* the *contract* would have been *dissolved on both sides*, and this Defendant, inasmuch as he had been thus compelled to abandon his contract, would have been excused for the non-performance of it, and not liable to damages."—*Barker v. Hodgson*, 3 Maule and Sel. 267.

(2) *Barret v. Dutton* and another, 4 Camp. N. P. C. 333. But in order to render a Charterer liable in such a case, the detention must have been for the purpose of loading; and if, after it is completed, the ice prevents the vessel's sailing, he is not liable for demurrage—*Pringle v. Mollett*, 6 Mee. and Wels. 82.

(3) *Blight v. Page*, 3 Bos. and Pul. 295, (in notis,) cited by Gibbs, C. J. in *Barret v. Dutton*, 4 Camp. N. P. C. 334.

(4) *Harman v. Clarke*, 4 Camp. N. P. C. 159.

officers, in unlawfully seizing a part of the cargo⁽¹⁾. Demurrage.

In a case which arose upon a general ship, which took brandies on board under bills of lading, which allowed for the delivery in London twenty lay days, and stipulated for £4 per day afterwards, some of the consignees choosing to have their goods bonded, the vessel could not make her delivery in the London docks until forty-six days after the twenty days, some of the goods which were undermost, could not, though demanded, be taken out, until the upper tiers were cleared; it was decided, that each of the consignees of such goods was liable on a general count, for demurrage, in an action brought by the master, to pay £4 per day for the forty-six days; and Sir James Mansfield, C. J. observed, "I was struck very much with the argument, that it was not the fault of the defendant, but the fault of the plaintiff himself, that those goods could not be got out, until the other goods which lay above them were delivered. But it is not, in truth, the fault either of the plaintiff or defendant that the goods could not be taken out. There can be only so many goods at the top of the vessel, as the proper stowage of the goods will allow, therefore all the others must be at the bottom; and as this is a general ship, and the goods do not all belong to the same con-

Charterers,
Consignees, or
Owners of
Goods, liable
to Demurrage
in certain
cases, without
any fault of
their own.

(1) *Bessey v. Evans*, 4 Camp. N. P. C. 131.

Demurrage. signee, the goods of some of the consignees must
 Charterers, be undermost. If this argument would avail,
 Consignees, or therefore, that the captain is not entitled to
 Owners of demurrage, for those goods which were not
 Goods, liable uppermost, it would restrain the contract for
 to Demurrage demurrage to the few persons whose goods were
 in certain at the top, but that construction would be con-
 cases, without trary to the positive contract ; for it is impossible
 any fault of to get out of the words of this bill of lading,
 their own. which though it is a singular species of contract,
 to bind a consignee by an instrument signed not
 by himself, but by the captain, yet as the con-
 signors delivered the goods on board under that
 bill, and the defendants accepted that bill of
 lading, it is binding upon them, and therefore
 this action may be sustained on the general
 count for demurrage.”⁽¹⁾

Where a general ship took some silk on board, to carry from Rotterdam to London, on the defendant's account, and on the margin of the bill of lading was written, “The consignee to clear the goods in fourteen running days after her arrival in port, or to pay £4 per diem for demurrage;” the vessel was ready to deliver on the 3rd of October. The defendant applied for, and was ready to receive his goods within the running days, but being undermost in the vessel, delivery could not be made until the 22nd ; it was held that the

(1) *Leer v. Yates*, 3 Taunt. 387 ; *Leer v. Cowell* ; and *Leer v. Gorst*, *ibid.*

plaintiff was entitled to recover demurrage, although he did not deliver the goods within the time allowed, being prevented by other goods belonging to other consignees which overlaid them; and Gibbs, C. J. stated, "The consignee, by taking to the goods, contracts with the owners of the vessel, to perform the terms upon which they have undertaken to convey and deliver them. Demurrage. Charterers, Consignees, or Owners of Goods, liable to Demurrage in certain cases, without any fault of their own.

Those terms are expressed in the bill of lading, and the defendants by claiming and receiving the silks, have acceded to them. The captain was ready to deliver his cargo on the 3rd of October. If all the consignees had been ready, he might have cleared the vessel within seven days. It appears, however, that she was not cleared till the 24th. The consignees of such goods which are at the bottom of the vessel, cannot receive them till the latter period of delivery. Each consignee undertakes to clear away his goods within a certain time, and although by the default of others he is prevented from so doing, he is liable, notwithstanding, to demurrage, by the terms of the contract, unless the delay be occasioned by the default of the captain or his crew."⁽¹⁾

Those decisions have not been over-ruled, and

(1) *Harman v. Gandolph and others*, 1 Holt, N. P. Cases, 35; and see observations on that and the preceding cases, 2 Holt on Shipping, c. 1, page 17, (in notis.) See, however, the opinion of Lord Tenterden, C. J. at N. P. in *Dobson v. Droop*, 1 Moo. and Mal. 441; and 4 Carr. and Payne, 112.

Demurrage. consequently it is apprehended that they must still
Charterers, be considered as of authority ; but although the
Consignees, or point has not since been argued before the Court,
Owners of yet, in two cases at Nisi Prius, Lord Tenterden,
Goods, liable C. J. has expressed himself dissatisfied with them ;
to Demurrage and in one of those cases, which was an action of
in certain assumpsit, for demurrage, brought by the master
cases, without of a vessel, against a consignee of corn, and the bill
any fault of of lading contained the following clause—" To
their own. be discharged within twelve running days after
the vessel's arrival, or to pay £2 British sterling
demurrage for every day longer detention," he
stated, " I have great difficulty in saying that
when the consignee has had no opportunity of
taking his goods within the time stipulated he
is bound by the contract to pay for not doing so ;
he cannot, I think, in that case, be said to detain
the vessel. On the other hand, I do not agree
to the proposition, on the part of the defendant,
that he has necessarily the stipulated time, to be
computed from the period when the discharge of
his own goods can be commenced ; I think, after
that period he must use reasonable despatch.
The true principle seems to be this : if the goods
of the particular consignee are not ready for dis-
charge at the time of the ship's arrival, he must
have a reasonable time, for removing them, after
they are so ; if in such a case using reasonable
despatch, he cannot clear them, within the stipu-
lated period, from the ship's being ready to dis-
charge her cargo generally, he will not be liable

for demurrage till the expiration of such a reasonable time; but when it is expired, he will be liable, though the stipulated period, if computed from the time when the discharge of his own goods could have commenced, is not at an end."⁽¹⁾

In a subsequent case at *Nisi Prius*, which was also an action of *assumpsit* for demurrage, brought by the owners against a consignee of corn, the bill of lading contained the following memorandum—"The ship to be discharged in fourteen running days after arrival, or else to pay four guineas a day demurrage," Lord Tenterden, C.J. said, "I am certainly of opinion, that if a consignee cannot get his goods, because some other person's goods prevent him, he is not liable for the delay of the vessel."⁽²⁾

It is to be regretted that the point has not been again fully argued before the Court, because, notwithstanding the respect in which the dictum of Lord Tenterden, C. J. may be held, an owner or consignee of goods cannot at present be secure in acting upon it.

The contract of *bottomry* (which originally arose from permitting the master of a ship, in a foreign country, to hypothecate the ship in order to raise money to refit) is in the nature of a mortgage of a ship; when the owner takes up

(1) *Rogers v. Hunter*, 1 Moo. and Mal. N. P. 63.

(2) *Dobson v. Droop*, 1 Moo. and Mal. N. P. 441, and 4 Carr. and Payne, N. P. 112.

Bottomry
Bonds.

money to enable him to carry on his voyage, and pledges the keel or bottom of the ship (*partem pro toto*) as a security for the re-payment. In which case it is understood, that if the ship be lost, the lender loses his whole money; but if it returns in safety, then he shall receive back his principal, and also the premium or interest agreed upon, however it may exceed the legal rate of interest: and this is allowed to be a valid contract, in all trading nations, for the benefit of commerce, and by reason of the extraordinary hazard run by the lender. And in this case the ship and tackle, if brought home, are answerable (as well as the person of the borrower) for the money lent⁽¹⁾.

With regard to a *foreign* country, the rule appears to be, that if the master of a vessel has occasion for money to repair or victual his ship, or for any other purpose *necessary* to enable him *to complete the enterprise in which she is engaged*, whether the occasion arises from any extraordinary peril or misfortune, or from the ordinary course of the adventure, he may, if he cannot otherwise obtain it, borrow money on bottomry, at maritime interest, and pledge the ship and the freight to be earned in the voyage for repayment at the termination of the voyage⁽²⁾.

(1) 2 Blackstone's Com. book 2nd, c. 30, p. 458, 14th edition.

(2) Abbott on Shipping, part 2, c. 3, p. 149, 4th edition; which is the edition which is always referred to in this Treatise, as it was

The custom of all countries, and of our country amongst them, limits this hypothecation by the master to the circumstance of the vessel being in a foreign country, or in the course of her voyage, and not in the place of her owner's residence⁽¹⁾.

Bottomry
Bonds.

Sometimes, also, but inaccurately, money lent in this manner, is said to run at *respondentia*, for that word properly applies to a loan of money, upon merchandize, laden on board a ship, the repayment whereof is made to depend upon the safe arrival of the merchandize, at the destined port⁽²⁾.

Respondentia.

Bottomry bonds are occasionally taken in England from masters of foreign vessels, which in the course of the voyage to, or when in this country, have sustained damage, or incurred expenses, and the master finds it necessary, to pledge or hypothecate the vessel and freight, in order to raise money, for the purpose of discharging the expenses incurred, in the necessary repairs, stores,

Bottomry
Bonds given by
Masters of
Foreign
Vessels when
in this
Country.

published in the lifetime of that learned and talented Lawyer, and under his own superintendence and correction: persons, however, who are desirous to pursue the subject of Bottomry more fully than is contemplated by the plan of this Treatise, will find various additional cases and much useful information in the recent excellent edition of Abbott on Shipping, by Mr. Serjeant SHEE.

(1) 1 Holt on Shipping, part 2, c. 3, p. 398.

(2) Abbott on Shipping, part 2, c. 3, sec. 15, p. 143, 4th edition.

Given by
Masters of
British Vessels
abroad.

and equipments for her⁽¹⁾. They are also given by the masters of British vessels, in foreign countries, under circumstances analogous to those last mentioned.

Not to be
given for debts
incurred prior
to the voyage.

Advances made to the master for the repairs and service of a British ship in the port of Cowes, the owners being resident at Newcastle, cannot be made the subject of a bottomry transaction; and where a bottomry bond was given by the master at Rotterdam, it was pronounced against, upon the ground, that the advances were made for the re-payment of debts incurred by the ship in a former voyage, and also that such advances were not necessary for the immediate exigencies of the ship; and it was stated by the Court, "I know of *no case* which has decided that a vessel *can be validly hypothecated for debts incurred prior to the immediate voyage* in which she is engaged at the time when the bond of bottomry is given."⁽²⁾

A party cannot legally lend money upon bottomry of a vessel, if at the time he be indebted to the owners in respect of the vessel⁽³⁾.

(1) It seems that the Agent of the Shipowner may, under certain circumstances, take a Bottomry Bond, as a security for advances made by him: *The Hero*, 2 Dodson's Adm. Rep. 139; and see form of Bottomry Bond taken by the Agent, set out in the report of that case.

(2) *Lochiel*, 2 Robinson's Adm. Rep. 34, (per Dr. Lushington.)

(3) *Hebe*, 2 Robinson's Adm. Rep. 146.

It is indispensable to the validity of the bottomry bond, that the money should be advanced for the purposes of the vessel, and that the re-payment of the sum lent, and the marine interest, should be put to risk, and contingent, and depend on her safe arrival⁽¹⁾.

The money must be advanced for the purposes of the Vessel, and must be put to risk.

It must be resorted to only when the master is not able to obtain the requisite aid, on the personal credit of himself and the owners⁽²⁾: and as has been stated by Sir John Nicholl, "Hypothecation, therefore, can only be valid if bottomed on necessity, and that necessity must be twofold: first, a necessity of obtaining supplies in order to prosecute the voyage; and secondly, the impossibility of obtaining those supplies in any other way than by an hypothecation of the ship itself: for if they can be procured upon the credit either of the master or of the owners, or by advances on the freight, or by passage money, or upon any other credit than the hypothecation of the ship, the bond of hypothecation is absolutely void: necessity, as was expressed by Lord Stowell in the case of the *Nelson*⁽³⁾, is the vital principle of hypothecation bonds, and the

Only in default of personal credit.

And in case Supplies cannot be obtained in any other way.

(1) Marshall on Insurance, vol. 2, c. 5, p. 759, 3rd edition; *Simonds and another v. Hodgson*, 3 Barn. and Adol. 50.

(2) Abbott on Shipping, part 2, c. 3, sec. 15, p. 143; *The Rhadamanthe*, 1 Dodson's Adm. Rep. 206; *The Augusta*, *ibid.* 286; *The Sydney Cove*, 2 Dodson's Adm. Rep. 7.

(3) 1 Haggard's Adm. Rep. 169.

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Bonds.

absence of that necessity is their undoing; it is the destruction of the bond itself."⁽¹⁾

A bottomry bond executed whilst the master was under arrest was held valid, as it did not appear to have been extorted by duress⁽²⁾: but where the master, on being threatened with arrest for supplies previously furnished on his personal credit, executed a bottomry bond, it was held to be void⁽³⁾.

May pledge
the Freight.

Whenever the master may pledge the ship by a bottomry bond, he may pledge the freight also⁽⁴⁾.

If the advances
are made on
bills or on per-
sonal credit,
a Bottomry
Bond is invalid.

If the advances were made on the credit of bills, drawn by the master upon the owners, or otherwise on personal credit, the additional security of a bottomry bond would not be necessary, and then it would not be valid as a charge against the vessel; and if a further advance be made

But it may be
good for part,
and bad in
part.

on the security only of the ship and freight, the bond will be valid for that part, and it is not necessary, that the bond should be either good or

(1) Per Sir John Nicholl, *The Hersey*, Grinwood, 3 Haggard's Adm. Rep. 408.

(2) *The Heart of Oak*, 1 Robinson's Adm. Rep. 205.

(3) *The Hersey*, Grinwood, 3 Haggard, (Adm.) 404; *Gore v. Gardiner*, (S. C.) 3 Moore, Jud. Committee Privy Council, p. 79, affirming the judgment below, with costs.

(4) Abbott on Shipping, part 2, c. 3, sec. 15, p. 142, and sec. 30, p. 155. *The Gratitude*, 3 Robinson's Adm. Rep. 240. *The Jacob*, 4 Robinson's Adm. Rep. 245.

bad in toto⁽¹⁾. As a bottomry bond may be good in part, though void for the residue, where a bottomry bond was given by the master at New York, as well for advances to obtain his discharge from arrest, at the instance of the consignees, on account of damage done on the voyage to part of the cargo, as for payment of the port duties, and other disbursements, necessary to enable the ship to prosecute her voyage, the Judicial Committee of the Privy Council reversing so much of the decision of the Admiralty Court, as rejected the bond *in toto*, sustained the bond to the extent of the sums advanced, for necessary supplies, and payments of the port duties⁽²⁾. And a bond may be valid, for the money advanced *with a view to the security* by bottomry, although it is altogether void with respect to that which was paid *alio intuitu*⁽³⁾.

Bottomry
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Bond valid for
money ad-
vanced with a
view to
Bottomry.

Bills of exchange may be taken by the lender, as a further or collateral security, and in that case taking them will not prejudice a bottomry bond, originally stipulated for by the lender, and agreed to be given by the master⁽⁴⁾.

Bills of Ex-
change taken
as a collateral
security.

(1) The *Augusta*, 1 Dodson's Adm. Rep. 287, 288. The *Hero*, 2 Dodson's Adm. Rep. 146, 147.

(2) *Smith v. Gould and others*, The *Prince George*, 4 Moore, (Jud. Committee Privy Council,) 21.

(3) Per Sir William Scott, the *Hero*, 2 Dodson's Adm. Rep. 147.

(4) *Samsun v. Bragington*, 1 Vesey 443, cited in Abbott on

Cannot be
given for a
debt of the
Master.

The bond must be given for a debt, to which the owners would be liable, and the master cannot charge the ship, by any instrument of hypothecation, for any debt of his own. The attempt would be a fraud in him, and those who should aid him to do so, would be parties to the fraud; and therefore the fairness of the loan, may be made the subject of inquiry and contest, if justice require it: but provided the ship have been in a state of want, and the money fairly advanced to the master to relieve her, his subsequent misapplication of it, will not deprive the lender of the benefit of his security⁽¹⁾.

But his
subsequent
misapplication
of the money
will not vitiate
the security.

The last Bond
entitled to
priority.

In case of insufficiency in the value of the vessel, to discharge all of such securities, given at different periods of the voyage, the last in point of date, is entitled to priority of payment, because the last loan furnished the means of preserving the ship⁽²⁾.

Bottomry
Bond without
a proper Deed
authorizing it
will not bind
the Owners.

A bottomry bond, although expressed to be executed by the master, for himself and the owner, will not bind the owner personally, unless he had by a previous deed, authorized the master to

Shipping, part 2, c. 3, sec. 23, p. 150. *The Jane*, 1 Dodson's Adm. Rep. 466.

(1) Abbott on Shipping, part 2, c. 3, sec. 27, p. 152; and the *Gratitudine*, 3 Rob. Adm. Rep. 271 and 272.

(2) Abbott on Shipping, part 2, c. 3, sec. 28, p. 153. *The Rhodamanthe*, 1 Dodson's Adm. Rep. 201. *The Betsey*, *ibid.* 289. *The Sydney Cove*, 2 Dodson's Adm. Rep. 1.

execute such a bond for him⁽¹⁾. But the bond professing to bind the owners personally, will not be vitiated altogether, as it will still bind the vessel, for a bottomry bond may be good in part and bad in part⁽²⁾. But it will still bind the Vessel.

To discharge the borrower, there must be not merely a total loss, in the ordinary legal acceptance of the term, such as in the case of an insurance of the ship, might have entitled the assured to abandon, but an absolute and utter destruction of the ship. Nothing short of an actual total loss, will discharge the borrower of money upon bottomry, so nothing less will render the insurer on bottomry liable⁽³⁾. There must be an utter destruction of the Ship to discharge the Borrower.

The loss in case of capture falls upon the lender, but his security will not be affected, by a mere temporary detention of the vessel by the enemy⁽⁴⁾. Capture. Temporary detention.

The lender like an insurer, is only accountable for losses which happen, within the time and place Lender not accountable for deviation

(1) Abbott on Shipping, in Appendix No. 1, (note) 495, and part 3, c. 1, sec. 2.

(2) Case of the Nelson, 1 Haggard's Adm. Rep. 176. See also the Hero, 2 Dodson's Adm. Rep. 147, and the Tartar, 1 Haggard's Adm. Rep. 13, 14; The Augusta, 1 Dodson's Adm. Rep. 288.

(3) Thompson v. Royal Exchange Assurance Co. 1 Maule and Sel. 30.

(4) Holt on Shipping, v. 1, p. 423; Marshall on Insurance, v. 2, p. 760; Joyce v. Williamson, B. R. Michaelmas Term, 23rd George III, there cited.

or misconduct
of the Owner
or Master.

of the risk, as specified in the contract; therefore if the ship, without necessity, deviate from the voyage described in the bond, the lender will not be liable, any more than an insurer to any loss that may afterwards happen⁽¹⁾; and the act or misconduct of the owners of the ship, or of the master, (such as the voyage being changed by the owners, or if a loss happen by the barratry of the master,) is not a peril at the risk of the lender⁽²⁾.

Or change of
voyage.

Unless the usage of a particular trade sanctions a departure from the rule, *respondentia*, and bottomry securities, if insured, must be particularly and specifically mentioned, and insured as such, in the policy⁽³⁾.

Bottomry
must be
specifically in-
sured as such.

Bottomry on
Ships in the
service of
Foreigners and
designed to
trade in the
East Indies.

The Act 7th George 1st, c. 21, amongst other enactments, declares, by section 2, "That all contracts and agreements whatsoever, at any time from and after the 24th of June, 1721, made or entered into by any of his Majesty's subjects, or any person or persons in trust for them, for or upon the loan of any monies by way of bottomry on any ship or ships in the

(1) Holt on Shipping, v. 1, p. 424; Marshall on Insurance, 3rd edition, v. 2, p. 763.

(2) Marshall on Insurance, vol. 2, p. 762.

(3) Glover v. Black, 3 Burrow's Rep. 1394; Marshall on Insurance, v. 1, p. 324; in Simonds v. Hodgson, 3 Barn. and Adol. 50, the Policy was on "Bottomry free from Average, and without benefit of Salvage."

service of foreigners, and bound or designed to trade in the *East Indies*," shall be void.

Bottomry
Bonds.

The Statute 19th George 2nd, c. 37, after prohibiting insurances without interest, enacts by section 5, that after the 1st of August, 1746, "All and every sum or sums of money to be lent on bottomree, or at *respondentia* upon any ship or ships belonging to any of his Majesty's subjects bound to or from the East Indies, shall be *lent only on the ship, or on the merchandize, or effects* laden or to be laden on board of such ship, and shall be so expressed in the condition of the bond ; and the benefit of salvage shall be allowed to the lender, his agent, or assigns, who alone shall have a right to make assurance on the money so lent, and no borrower of money on bottomree, or at *respondentia* as aforesaid, shall recover more on any assurance than the value of his interest on the ship, or in the merchandizes, or effects laden on board of such ship, exclusive of the money so borrowed ; and in case it shall appear that the value of his share in the ship, or in the merchandizes, or effects laden on board, doth not amount to the full sum or sums he hath borrowed as aforesaid, such borrower shall be responsible to the lender for so much of the money borrowed as he hath not laid out on the ship or merchandizes laden thereon, with lawful interest for the same, together with the assurance, and all other charges thereon, in the proportion the money not laid out, shall bear to the whole money

Bottomry and
Respondentia
on Ships of
British
subjects bound
to or from the
East Indies,
and the benefit
of Salvage
allowed the
Lender.

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lent, notwithstanding the ship and merchandizes be totally lost."

Lender not
liable for par-
ticular average.

The lender is not liable for particular average ; and it is extraordinary, that two treatises of celebrity differ on the points, whether or not he is entitled to the benefit of salvage, and liable to general average ; one of them stating, "A lender on bottomry, or respondentia, is to be distinguished in many things from an ordinary insurer.

Whether
entitled to the
benefit of
Salvage, and
liable to
contribute to
general
average.

He is not entitled to the benefit of salvage, nor is he liable to contribute in the case of general average ;"⁽¹⁾ and the other stating, "The lender and insurer are, in general, exposed to the same perils which have the same commencement and end. Both are entitled to the benefit of salvage, and liable to general average."⁽²⁾ It has been said, however, by Lord Mansfield, C. J.⁽³⁾ that by the law of England, upon a bottomry contract, there is neither average nor salvage ; and by Lord Kenyon⁽⁴⁾, that a lender upon *respondentia* is not liable to average losses ; but is entitled to receive the whole sum advanced, provided the ship and cargo arrive at the port of destination.

(1) Holt on Shipping, 3rd edition, v. 1, part 2, c. 3, p. 423.

(2) Marshall on Insurance, 3rd edition, v. 2, b. 2, c. 1, p. 745.

(3) In *Joyce v. Williamson*, B. R. Michaelmas T. 23rd George III, cited in Park on Insurance, 2nd vol. c. 21, p. 563.

(4) *Walpole v. Ewer*, at N. P. after Trinity Term, 1789 ; Park on Insurance, vol. 2, c. 21, p. 565.

It is to be regretted that such important questions should appear at all unsettled: with respect to general average, it may be remarked, that it is to sacrifices voluntarily made, which are the subject of general average, that the lender owes the preservation of his money, which without such sacrifices, would be lost with the ship, it consequently appears consistent with justice, and with the general principles of the law merchant, that the lender ought to be liable for general average. On inquiry, however, the Author has not been able to discover, that it ever was the practice, for lenders to contribute to it.

The Statute 19th George 2nd, c. 37, sec. 5⁽¹⁾, provides that the benefit of salvage, shall be allowed to the lender, on *East India voyages*, but (besides being silent as to voyages to or from any other quarter,) it no where mentions general average.

In general, as soon as the risk ceases, either by the ship's safe arrival, the expiration of time, or any other event, the marine interest ceases, and the debt becomes absolute. From that time if the borrower delay payment, it bears only ordinary interest⁽²⁾.

The lender usually discharges the amount of the stamp duty, and the expense, of preparing the instrument of bottomry, in the first instance,

Whether entitled to the benefit of Salvage, and liable to contribute to general average.

When Marine Interest ceases.

The Lender usually pays for the Bond, and adds the expense, to the principal.

(1) Supra, p. 227.

(2) Marshall on Insurance, 3rd edition, vol. 2, p. 757.

**Bottomry
Bonds.**

and adds it to, and includes it with the principal secured by the instrument.

**Powers and
jurisdiction of
the High Court
of Admiralty
respecting
Bottomry
Bonds.**

If the loan be not repaid within the time prescribed, the High Court of Admiralty, will issue a warrant to arrest the ship, and will cite all persons interested, to appear before the Court, if they think proper to do so, and if necessary, the Court will decree a sale, for the discharge of the bond and charges. The proceeding *in rem*. against the ship itself, is the proper and peculiar province of the Court of Admiralty⁽¹⁾, which has an undoubted jurisdiction over bottomry bonds⁽²⁾.

**The Court of
Admiralty will
allow them to
be put in suit
by an Assignee.**

In practice, these instruments, though choses in action, are not unfrequently assigned, and the High Court of Admiralty of England, will allow them to be put in suit by the assignee⁽³⁾; and Sir William Scott stated, in the case of the *Rebecca*⁽⁴⁾, that "a bottomry bond is a negociable interest, which may be transferred, and put in issue, by the person so acquiring it."

**Not to be given
by the Master
at the place of
the Owners'
residence
without their
consent.**

In the place of the owners' residence, where they may exercise their own judgment, upon the propriety of borrowing money in this manner, the master of the ship is, by the maritime law of all states, precluded from doing it, so as to bind

(1) Abbott on Shipping, part 2, c. 3, p. 151.

(2) The Atlas, 2 Haggard's Adm. Rep. 48.

(3) Holt on Shipping, vol. 1, p. 400.

(4) The Rebecca, Maddick, 5 Robinson's Adm. Rep. 102.

the interest of his owners, without their consent; with us, England is considered for this purpose, as the residence of an Englishman, at least before the commencement of a voyage⁽¹⁾. But it has been held, that Ireland is to be so far considered as a place abroad, and not the residence of the owners, that an English ship may be hypothecated there by the master, in the course of a voyage⁽²⁾.

Bottomry
Bonds.

Bottomry
Bond given in
Ireland on an
English Ship.

In the case of the *Barbara*, a London registered vessel, a warrant was granted, by the High Court of Admiralty to arrest the vessel, where an instrument of hypothecation of her, had been given in Jersey, by the master, who was also the owner, and the Court held that Jersey, for the purpose of sustaining these bonds, might be considered a foreign possession. And on its appearing, that a collusive sale had been made of her, by the owner, to defeat the effect of the bottomry bond, and the purchaser detained the certificate of registry, the Court granted a monition against him, to bring in the ship's register, and upon its

Power of the
Court to com-
pel the delivery
of the Certifi-
cate of
Registry.

(1) Abbott on Shipping, part 2, c. 3, sec. 22, p. 149.

(2) *Menetone v. Gibbons* and another, 3 T. R. 267. See also the case of the *Rhadamanthe*, 1 Dodson's Adm. Rep. 201 and 205, where Bottomry Bonds were given, at Cork, and the Court held, that the ports of Ireland were for the purposes of hypothecation, to be considered as Foreign ports; and the *Trident*, 1 Rob. Adm. Rep. 29, where the Bond was executed by the Master, at Plymouth, and the Owner resided in Scotland.

Hypothecation abroad, when the Master could not communicate with the Owners. issuing, the register was delivered up⁽¹⁾. And it has been held, that the master has a right to hypothecate the ship and cargo abroad, though lying in a port of the same foreign country, in which the owners reside, provided he has no means of communicating with the owners⁽²⁾; the vessel was a foreign one belonging to Spain.

Vessels registered in England never hypothecated here by the Owner. A British vessel registered in England, is never hypothecated by the registered owner, by a bottomry bond given in England, the general opinion being, that a security upon such a vessel, taken here, should be considered rather in the light of a mortgage, and that a compliance with the ship's registry act, would be necessary, in order to make the contract available either in equity or law⁽³⁾. But it has been held, that a bottomry bond given abroad, for the necessities of

Bottomry Bond given abroad by the Owner.

(1) The Barbara, 4 Robinson's Adm. Rep. 1 and 3.

(2) La Ysabel, 1 Dodson's Adm. Rep. 273.

(3) Holt's Law of Shipping, vol. 1, c. 3, p. 419. It is stated in Abbott on Shipping, 4th edition, part 2, c. 3, p. 142, that "as the master of the ship may, under certain circumstances, pledge the ship by a bottomry contract, so also may the owners or part owners in any case, to the extent of their respective interests: and this they not unfrequently do, in order to raise money for the outfit, when prudence dictates the propriety of such a measure, or the want of personal credit compels them to have recourse to it." But whatever may have been the practice at the time when that was written, owners of vessels *registered in this country* never attempt to pledge their vessels *here* by any bottomry contract.

the vessel, by an owner on board, who could not otherwise obtain money, is valid, and supersedes a previous mortgage of the vessel⁽¹⁾.

Bottomry
Bonds.

The instrument of bottomry may be prepared in various forms, but it is usually prepared as a bond, under seal⁽²⁾.

Form of the
Instrument of
Bottomry.

A bottomry bond requires an *ad valorem* stamp duty⁽³⁾; and many notaries are in the habit of subjoining at the foot of it, a notarial certificate, of the due execution, which if confined to that object, and not made a cloak to certify extrinsic matter, is looked upon in the same light as an attestation, and is not considered to require any additional stamp as for a notarial act; such a certificate, though not of any importance in this kingdom, is considered very useful in some foreign countries.

Stamp Duty.

Notarial
Certificate of
due execution.

The stamp duty imposed upon bottomry bonds by the Stamp Act 55th George 3rd, c. 184, is as follows:—

Stamp Duty.

“Bond in England, and personal bond in Scotland, given as a security for the payment of any definitive and certain sum of money, not exceeding £50 £1 0 0

(1) Duke of Bedford, 2 Haggard's Adm. Rep. 294.

(2) See Precedents, *Infra*.

(3) General Stamp Act 55th George III, c. 184, Schedule, part I, title, “Bond;” see also the Schedule, part I, title, “Mortgage,” which imposes the same *ad valorem* Duties on Mortgages.”

Bottomry Bonds.	Exceeding £50, and not exceeding £100	£1 10 0
Stamp Duty.	Exceeding £100, and not exceeding £200	2 0 0
	Exceeding £200, and not exceeding £300	3 0 0
	Exceeding £300, and not exceeding £500	4 0 0
	Exceeding £500, and not exceeding £1,000	5 0 0
	Exceeding £1,000, and not exceeding £2,000	6 0 0
	Exceeding £2,000, and not exceeding £3,000	7 0 0
	Exceeding £3,000, and not exceeding £4,000	8 0 0
	Exceeding £4,000, and not exceeding £5,000	9 0 0
	Exceeding £5,000, and not exceeding £10,000	12 0 0
	Exceeding £10,000, and not exceed- ing £15,000	15 0 0
	Exceeding £15,000, and not exceed- ing £20,000	20 0 0
	Exceeding £20,000	25 0 0
	Bond in England, and personal bond in Scotland, given as a security for the re-payment of any sum or sums of money to be thereafter lent, advanced, or paid, or which may become due upon an account current, together	

with any sum already advanced or due, or without, as the case may be ;

Where the total amount of the money secured, or to be ultimately recoverable thereupon, shall be uncertain, and without any limit.....£25 0 0

And where the money secured, or to be ultimately recoverable thereupon, shall be limited not to exceed a given sum } The same duty as on a bond for such limited sum.

Where any such bond as aforesaid, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words," (30 folios of 72 words each) "or upwards, there shall be charged for every *entire* quantity of 1,080 words" (15 folios) "contained therein, over and above the first 1,080 words, a further *pro-gressive* duty of" 1 5 0

Formerly there could be only one lender or obligee, in a bottomry bond, but since the Act 5th George 4th, c. 114⁽¹⁾, the restrictions against corporations, societies, or partnerships, or persons

Bottomry
Bonds.

Stamp Duty.

Formerly only
one Obligee in
a Bottomry
Bond.

(1) Repealing part of the Act 6th George I, c. 18, sec. 12, which had given exclusive privileges, as to Marine Insurances, and Loans on the security of Bottomry by Corporations or Co-partnerships, to the Royal Exchange Assurance, and the London Assurance Companies.

Bottomry Bonds. acting in any society or partnership, underwriting policies of assurance, or lending money by way of bottomry are repealed.

Average Agreements. Average agreements are instruments (not under seal) in general use, by which the consignees or owners of the cargo, severally engage with the master, or shipowner, to pay their respective proportions, of general average loss and charges, rateably and in fair proportion, and they frequently conclude with appointing some competent person to adjust it, whose decision they engage to abide by.

Stamp Duty, 2s 6d. An average agreement requires a stamp duty of 2s 6d⁽¹⁾; but formerly, by the General Stamp Act⁽²⁾, if it did not contain more than 1,080 words, (being 15 common law folios of 72 words each,) it required a stamp duty of£1 0 0
 “And where the same shall contain
 more than 1080 words” 1 15 0
 “And for every *entire* quantity of
 1,080 words contained therein over
 and above the first 1,080 words, a
 progressive duty of” 1 5 0

Act 7th & 8th Victoria, c. 21. But now, by the Act 7th and 8th Victoria, c. 21, sec. 1st and 2nd, (passed in 1844,) the stamp duties payable by virtue of the acts therein mentioned, (amongst others the Act of 55th George 3rd, c. 184,) “*on the agreements,*” and on certain other instruments “*mentioned and described in*

(1) Statute 7th and 8th Victoria, c. 21.

(2) General Stamp Act, 55th Geo. III, c. 184, Schedule, part 1st.

the schedule" annexed to the act, are repealed, Stamp Duty.
and in lieu of them it imposes the duties mentioned in the schedule to the act, and amongst others the following upon *agreements*; viz :—

<p>“ And for and in respect of every agreement, or minute or memorandum of an agreement, <i>now chargeable</i> with the duty of one pound under the head or title of “ <i>agreement,</i>” in the Schedule to the Act 55th George 3rd, c. 184, annexed.....</p>	}	£0 2 6
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It is remarkable, that the act is silent respecting the before-mentioned duties, of £1 15s 0d, and £1 5s 0d, imposed in cases where the agreements contain more than 1,080 words, (15 folios); it must of course be considered therefore, that they remain unrepealed in those cases.

Section 5 of the act enacts as follows: “ And be it enacted, that if *any agreement*, or minute, or memorandum of an agreement, *chargeable with duty under this act*, shall be engrossed, written, or printed upon vellum, parchment, or paper not duly stamped according to law, and such agreement, minute, or memorandum shall be brought to the Commissioners of Stamps and Taxes, or to any of their officers appointed or authorized to receive the same, to be *stamped*, together with the duty payable thereon, *within fourteen days* after such agreement, minute, or memorandum shall have been made or entered

Stamp Duty. into, it shall be lawful for the said commissioners, and they are hereby required, to cause the same to be stamped without the payment of any penalty : Provided always, that *if such agreement*, minute, or memorandum shall *not* be brought to be *stamped* as aforesaid, *within the time hereinbefore prescribed*, and limited for that purpose, there shall be payable by way of *penalty* on the stamping thereof the sum of *ten pounds over and above the duty* chargeable thereon."

After the consignees or owners of goods have signed such an instrument, it is of common occurrence, to permit them to receive their goods from the vessel, without the goods being detained until payment of the general average, and without waiting for the adjustment of it.

Lien for General Average. The owners, and masters of vessels, claim a right of lien, on the goods on board, for general average contribution; and although that is so generally understood, amongst merchants and shipowners, and the point has been incidentally noticed, it is remarkable, that it has never yet been fully discussed, in any of our Courts.

In one case, in the High Court of Chancery⁽¹⁾, the ship *Ocean* returned to this country, from Buenos Ayres, having met with tempestuous weather, it became necessary, for the safety of the ship, to lighten her, by throwing part of the

(1) *Hallett v. Bousfield*, 18 Vesey, 187.

cargo overboard, and accordingly a quantity of bark, the property of the plaintiff, was, with other goods belonging to other persons, thrown overboard. The plaintiff moved for an injunction, to restrain the master and shipowner from delivering any part of the cargo, and receiving the freight, or parting with any share of the ship, insisting on a lien for contribution, which the Court refused to order; and Lord Chancellor Eldon stated, “It seems to me also, as well as I recollect the text law upon this subject, that in such case *there is a lien upon the goods of each freighter for contribution and average in some sense*: that is, the master is *not bound to part with any of the cargo, until he has security from each*, for his proportion of the loss; but there is no authority, that on the ground, that he has a lien to the extent of entitling him to call on every person, to give security for the amount of their average, when it shall be adjusted, every owner of a part of the cargo can compel the captain to do so.” And he also held that the mode of adjustment, was not confined by usage to arbitration.

Average
Agreements.

Lien for Ge-
neral Average.

In an action⁽¹⁾ by the plaintiffs as surviving owners of the brig Solon, against the defendant, as consignee at Liverpool, of goods shipped on board her at Demerara, upon a voyage from thence to Liverpool, for general average, where

(1) *Scaife & others v. Sir John Tobin*, Knt. 3 Barn. & Adol. 523.

Average
Agreements.
—
Lien for Ge-
neral Average.

the consignee, who was not the owner, of the goods, received them in pursuance of a bill of lading, for delivery, to the consignee by name, or to his assigns, "paying freight for the same with primage and average accustomed," but general average not being mentioned in it, the Court decided that he was not liable in an action on an implied promise, as consignee, for general average; and Lord Tenterden, C. J. stated, "There can be no doubt, that if a person receives goods in pursuance of a bill of lading, in which it is expressed, that the goods are to be delivered to him, he paying freight, he by implication engages to pay freight, and so he would to pay general average, if that were mentioned in the bill of lading. But here general average is not so mentioned." * * * *

"It is true that the master *has a lien* on the goods *for general average*, and if he had exercised that right, and informed the defendant, that if he took the goods he must pay the general average, and the defendant after such notice had taken the goods, there would then have been an implied if not express contract on his part to pay it;" and per Parke, J. "The shipowner is not without his remedy in such a case, for to prevent the inconvenience of resorting to the consignor, he may insert in the bill of lading, an express clause that the goods shall be delivered to the consignee, he paying general average; or he *may insist on his right of lien, and refuse to*

deliver, unless the consignee pays or agrees to pay it. Then on what ground is a contract to be implied? The shipowner's parting with his lien on the goods, may be a good consideration for an express promise by the consignee to pay general average, but does not raise any implied contract to pay it, even though the consignee has notice that a general average has been incurred. The cases in which a mere consignee not the owner of goods, has been held liable to freight or demurrage, proceed on the ground, that his acceptance of the goods in pursuance of a bill of lading, whereby the shipper has expressly made the payment of freight or demurrage a condition precedent to their delivery, is evidence of a contract by the consignee, to pay such demand."

Average
Agreements.

Lien for Ge-
neral Average.

Of course, after the opinions pronounced by judges, so talented and distinguished, and also so perfectly conversant with the law merchant, as those just named, the owners or consignees of goods, will not be very likely to contest the shipowners' or master's right of lien, for general average; but the goods may be perishable or partially injured, or the market may be in a tickle or peculiar state, and it may be very important, to obtain the immediate delivery, without waiting for the getting in, and paying the accounts and disbursements, and for the adjustment of the general average, which may be a work of time. If the owner or consignee want the goods im-

H H

Average
Agreements.

Lien for Ge-
neral Average.

mediately, it is still a matter of doubt, what kind of security the shipowner may require before the delivery: Lord Chancellor Eldon, in the case before cited, merely says generally, that the master is not bound to part with any of the cargo, until he has security from each, for his proportion of the loss. The security might be given, by a formal bond or agreement duly stamped with a surety, by a deposit of money in some approved third person's hands, by pledging a part of the goods with the shipowner or master, by warehousing it in one of their names, or by various other modes; and it is much to be regretted, that it has never yet been decided, what is the exact nature, of the security, which ought to be given or tendered, especially in those cases, where in consequence of the adjustments of general averages being incomplete, some time may elapse, before the proportions of each can be ascertained.

CHAP. VIII.

POWERS OF ATTORNEY.—DEEDS GOING ABROAD.—
DECLARATIONS SUBSTITUTED FOR OATHS.—NO-
TARIAL ATTESTATIONS.—CERTIFICATES.—REGI-
STRATIONS, &c.

THERE are various kinds of powers or letters of attorney, which when executed, require to be authenticated by a notary. A power of attorney for the transfer of American stock in the banks, &c. of the United States, requires to be executed by the party, in the presence of two witnesses, before and attested under a notary's hand and seal, and at the end of it, is a further certificate of attestation under the hands of two other notaries⁽¹⁾, testifying that the former is a notary. These powers of attorney are generally executed with blanks, left for the name of the agent empowered to act for the party.

To save repetition, it may be here remarked, that in the instance of such a certificate as that just mentioned, or others of a similar nature, where a deed, power of attorney, or other document, is duly impressed with a stamp, at least equal in amount to the stamp duty imposed upon a notarial act, any certificate or attestation by a notary, for the mere purpose of authenticating such deed, power, or document, and subjoined to

Powers of
Attorney.

To transfer
American
Stock.

Stamp Duty on
the Certificates
and Attestations of a
Notary sub-
joined to
Deeds, &c.

(1) The latter Certificate of Attestation, is occasionally under the hands of two Merchants, or Inhabitants residing at the place, which is generally considered sufficient, in lieu of two Notaries.

Powers of
Attorney.

it, is considered as forming part of it, and as not requiring an additional stamp duty; and in practice it is not usual, to have any additional stamp, provided the certificate be really confined to attesting or authenticating, the power of attorney or document, and not made use of as a cloak, to verify matters which do not relate to it.

If, however, the certificate or attestation be intended also, to certify or authenticate any different or extrinsic matter, or if it be by a separate instrument annexed to the deed, power of attorney, or other document, then an additional stamp duty of 5s is necessary.

Stamp Duty.

Powers of attorney, with some few exceptions, require a stamp duty of £1 10s⁽¹⁾.

To transfer

French Stock.

Powers of attorney to transfer French stock are signed by the party⁽²⁾, before and attested by a notary, under his hand and seal, and in the presence of two witnesses dwelling in the place, and it is not customary to add their places of residence, or their occupations in attesting it; and in general the fly sheet is not torn off, but remains attached to it.

To act in

Powers of attorney, to act in general mercantile

(1) Act 55th George III, c. 184, which imposes a further duty of £1 for every *entire* 15 folios above the first 15 folios. See as to some of the exceptions the Act 7th and 8th Victoria, c. 21.

(2) Most of the Powers of Attorney to transfer French Stock, which the Author has seen, have been merely signed by the party, without being sealed by him.

or other affairs, in various countries on the continent of Europe, such as France, Holland, Belgium, &c. are commonly executed by the party before a notary, and attested by him under hand and seal; and it is customary to have two attesting witnesses to such a power, who sign their names to it, and there does not appear to be any certain rule, requiring them to add either their places of abode or occupations.

A creditor residing in England, or elsewhere out of Ireland, of a debtor made a bankrupt in Ireland, is authorized to prove his debt by affidavit, sworn before a magistrate, where such creditor shall be residing, and "attested by a notary public;" and any power of attorney which such creditor may send to Ireland, to vote in choice of assignees, may be verified by affidavit sworn before a magistrate, and "duly attested by a notary public," under the provisions of the Act 6th and 7th William 4th, c. 14, entitled, "An Act to amend the laws relating to bankrupts in Ireland;"⁽¹⁾ and by the 116th section, powers of attorney, affidavits, and all other instruments, and writings, relating solely to the estate and effects of the bankrupt, are declared not liable to any stamp duty⁽²⁾.

France,
Holland,
Belgium, &c.

Powers of
Attorney, and
Proofs of Debt
in Bankrupt-
cies in Ireland.

Exempt from
Stamp Duty in
Bankrupt's
affairs.

(1) Act 6th and 7th William IV, c. 14, sections 56 and 72. These provisions are similar to those contained in the English Bankrupt Act, 6th George IV, c. 16, sections 46 and 61.

(2) See also the Act 6th George IV, c. 16, sec. 98, for exemptions

Powers of
Attorney
going to a
Foreign
Country.

In sending out a power of attorney, to act in a foreign country, it is in general customary for the party to execute it in the presence of two attesting witnesses, and to cause it to be verified, by an attesting witness by a declaration of the due execution, made either before a justice of the peace, or a notary, and also to cause a notarial certificate, authenticating it, under the signature and seal of a notary, to accompany the declaration, and power. It is said, that in some foreign countries, it is sufficient if a notarial certificate be annexed, certifying that the power of attorney was duly executed by the party, without requiring any declaration by an attesting witness, of the execution of it. Many notaries are in the habit, of making a note or memorandum of reference, upon, or at the foot of the power of attorney, for the purpose of identifying it, which if confined to a mere note, or memorandum of reference, is not a notarial act, and does not require an additional stamp.

Memorandum
of reference.

Declarations
of Debt, going
abroad.

When a power of attorney is sent out for the purpose of suing a debtor residing in a foreign country, or attaching his property there, it is customary to have a declaration of debt made by

from Stamp Duties upon Deeds, Instruments, &c. relating solely to the estates and effects of Bankrupts, under English Fiats in Bankruptcy. See also the Act 2nd and 3rd Victoria, c. 41, sec. 145, respecting Sequestrations of Bankrupts' Estates in Scotland, and containing similar exemptions from Stamp Duties.

the creditor, or one of his clerks, or by both of them, annexed to the power, and declared either before a notary or a justice of the peace⁽¹⁾, (generally before a notary,) and authenticated by a certificate under the signature and seal of the notary.

Powers of
Attorney.

The execution of any other deed or instrument going to a foreign country, is also usually verified, and accompanied by a declaration of the due execution, in a similar manner to that before mentioned; and in forwarding any declaration of facts, or of the execution of any deed or instrument to a foreign country, a notarial certificate ought to authenticate and accompany it.

Deeds and
Instruments
going to a
Foreign
Country.

Instead of such a declaration of debt, or of facts, or of the execution of any power of attorney or other instrument, an affidavit was formerly made before a magistrate, and certified by a notary; and still if an affidavit should be "required by the laws of any foreign country, to give validity to instruments in writing designed to be used in such foreign countries respectively," the act for the abolition of unnecessary oaths⁽²⁾, allows that mode to be still pursued: the most usual course, however, now is

Affidavits
verifying
Instruments
in writing,
required by the
Laws of
Foreign
Countries.

(1) Vide the Act 5th and 6th William IV, c. 62, secs. 15 and 18, (for the abolition of unnecessary oaths) *Infra* in this Chapter, and in the Appendix.

(2) Act 5th and 6th William IV, c. 62, sec. 13. See Appendix. See also forms of such affidavits in the *Precedents*, *Infra*.

Affidavits
verifying
Instruments
in writing,
required by the
Laws of
Foreign
Countries.

to have a declaration of due execution, made before a justice of the peace, or a notary, in the manner before explained.

The latter part of the proviso, in section 13 of the act⁽¹⁾, permitting oaths, affidavits, or affirmations, which may be required by the laws of any foreign country, to give validity to instruments in writing, designed to be used in such foreign countries respectively, is generally worded, and is not confined to oaths, affidavits, or affirmations, before justices of the peace; indeed the object of it would be frustrated, if it were so confined, for there are constantly instruments and documents sent out to foreign countries, verified here on oath, before foreign consuls, commissioners named in commissions issued from foreign Courts of Judicature, and other officers⁽²⁾, as well as before justices of the peace. Of course, neither a justice nor any other officer in this kingdom, can be ex-

(1) Act 5th and 6th William IV, c. 62, sec. 13.

(2) Instances of the above, have very frequently occurred in England, since the act came into operation; and cases have come within the Author's knowledge, where by the laws of Finland, and of France, affidavits, detailing certain facts, and verifying written documents, were required to be sworn before a Notary, which was accordingly done, and the affidavits were sent out thither. See Chapter 1, p. 13 and 14, as to affidavits sworn before English Notaries to be used in Foreign countries; and see *Infra*, in this Chapter, as to Notaries being named as Commissioners under Commissions from Foreign Courts of Judicature, and taking the depositions of witnesses in England.

pected to know all the laws of foreign countries, and the course which seems to be generally pursued, since the passing of the act, is for him before swearing an affidavit intended to give validity to any instrument in writing, to inquire whether the affidavit is required by the laws or regulations of a foreign country, and whether it is designed to be used there, and if answered in the affirmative, and there is no reason to disbelieve the answer, then for him to swear the deponent to it; and it does not appear, that any justice, or other officer can do more.

Powers of
Attorney.

Affidavits
verifying
Instruments
in writing,
required by the
Laws of
Foreign
Countries.

In the case of a power of attorney or deed, going out to a foreign country, it is in general recommended, to get it also authenticated, when it can be conveniently done, under the seal of the consul of that country.

Certificate
of a Foreign
Consul.

If a power of attorney or other instrument, or a declaration of debt, or of facts, be sent out, to a British colony or possession, it more frequently happens that the declaration of due execution, or of debt, or of facts, as the case may be, is made before, and authenticated under the signature and seal, of the mayor of the place where it is administered, if there be a mayor of the place, and if it can be conveniently done, than before a notary: the act for the abolition of unnecessary oaths, however, treats it as equally valid and effectual when declared before and authenticated under the signature and seal of a notary⁽¹⁾.

Power of
Attorney or
Declaration
going out to a
British Colony.

(1) Sec. 15 of the Act 5th and 6th William IV, c. 62.

Returns
respecting Bail
in the High
Court of
Admiralty.

The commissioners for taking bail, in the High Court of Admiralty of England, being usually also notaries, their certificates or returns that bail has been given, generally designate them, both as commissioners and notaries, and such returns are usually passed, under their notarial seals⁽¹⁾.

Notarial Acts.

A notarial act, may be described to be any written⁽²⁾ instrument, under the signature and official seal of a notary, authenticating or certifying some document or circumstance; and also any certificate or written instrument, authenticating or certifying as a notary, some fact or circumstance, under his signature only. The instances are however, very rare, where a notary makes or issues, in England, any certificate or instrument without affixing his seal to it, and they may be looked upon as exceptions to the rule, for in general the seal is considered, a material part of the ceremony.

Notarial Acts
must be truly
dated.

A date is inserted in almost all notarial acts, and in fact, it is indispensably necessary in most of them, as for example, in protests of bills, acts of honour, and various other instruments.

(1) The Author does not offer any opinion, whether it is requisite to designate them as Notaries, or whether the Notarial Seal is necessary in that particular instance.

(2) It may be, perhaps superfluous to mention, that when the words "written," or "in writing" occur in this Treatise, they are meant, as equally applying to any Instrument or Document, printed, engraved, &c. &c.

The date of a notarial act must be truly and correctly given; it is commonly in words at length, and a false or incorrect date must never be inserted in it, on any pretext whatever. Notarial Acts.

It has been before explained, that a notary lending himself to the insertion, of a false date, would expose himself to punishment, of a serious nature⁽¹⁾.

By the general Stamp Act⁽²⁾, any notarial act, not otherwise charged, (see "protest," &c.) requires a stamp duty of 5s, "and for every sheet or piece of paper, parchment, or vellum, upon which the same shall be written, after the first, a further progressive duty of 5s." Stamp Duty.

A notary is empowered, in certain specified cases, to receive the solemn declarations, now substituted for oaths, under the 14th, 15th, 16th, and 18th sections of the Act, for the Abolition of Unnecessary Oaths, of the 5th and 6th William 4th, c. 62⁽³⁾, but as his powers to do so, are limited and confined, to the particular cases mentioned in the act, he is not justified in exceeding them; and it seems advisable, if he has not caused the declaration to be prepared in his own office, that he should not administer any such declaration, until he has first ascertained

Declarations in lieu of Affidavits before Notaries under the Act 5th and 6th Wm. IV, c. 62.

(1) Supra, Chap. 1, p. 20, Chap. 3, p. 99, and Chap. 6, p. 192.

(2) 55th George III, c. 184.

(3) Vide Appendix.

Declarations. the nature of it, and that it is pursuant to, and in the form required by the act.

Affidavits required by any Statute are not prohibited by the Act. The act does not prohibit affidavits which may be required, by any statute, in force at the time being; consequently they may be sworn as before the act⁽¹⁾.

Declarations before Notaries under the 5th and 6th Wm. IV, c. 62. Sec. 14. The 14th section enacts, "That in any case in which it has been the usual practice of the Bank of England to receive affidavits on oath to prove the death of any proprietor of any stocks or funds transferrable there, or to identify the person of any such proprietor, or to remove any other impediment to the transfer of any such stocks or funds, or relating to the loss, mutilation, or defacement of any bank note or bank post bill, no such oath or affidavit shall, in future, be required to be taken or made, but in lieu thereof the person who might have been required to take or make such oath or affidavit, shall make and subscribe a declaration⁽²⁾ to the same effect as such oath or affidavit."

It will be remarked that the last-mentioned section does not expressly mention notaries, as empowered to administer the declarations, respecting the matters mentioned in it, but the opinion of the bank counsel being, that notaries are authorized to administer them, it is now the constant practice at the Bank of England to re-

(1) Sec. 13 of the Act 5th and 6th William IV, c. 62.

(2) Vide *Infra*, Precedents.

ceive them, when so declared before a notary ; and the declarations made before a notary, under that section, do not require any stamp duty.

Declarations
before Notaries
under the 5th
and 6th Wm.

The 15th section enacts, “ That from and after the commencement of this act, in any action or suit then pending, or thereafter to be brought, or intended to be brought in any Court of law or equity, within any of the territories, plantations, colonies, or dependencies abroad, being within and part of his Majesty’s dominions, for or relating to any debt or account wherein any person residing in Great Britain and Ireland shall be a party, or for or relating to any lands, tenements, or hereditaments or other property situate, lying, and being in the said places respectively, it shall and may be lawful to and for the plaintiff or defendant, and also to and for any witness to be examined or made use of in such action or suit, to verify or prove any matter or thing relating thereto, by solemn declaration or declarations in writing in the form in the schedule hereunto annexed, made before any justice of the peace, notary public, or other officer now by law authorized to administer an oath, and certified and transmitted under the signature and seal of any such justice, notary public duly admitted and practising, or other officer, *which declaration, and every declaration relative to such matter or thing as aforesaid, in any foreign kingdom or state, or to the voyage of any ship or vessel, every such justice of the peace, notary public, or*

IV, c. 62.
Sec. 15.

Declarations
before Notaries
under the 5th
and 6th Wm.
IV, c. 62.

other officer shall be, and he is hereby authorized and empowered to administer or receive; and every declaration so made, certified, and transmitted, shall in all such actions and suits be allowed to be of the same force and effect as if the person or persons making the same had appeared and sworn or affirmed the matters contained in such declaration *vivâ voce* in open Court, or upon a commission issued for the examination of witnesses or of any party in such action or suit respectively; provided that in every such declaration there shall be expressed the addition of the party making such declaration, and the particular place of his or her abode."

Sec. 16.

By the 16th section it is enacted, "That it shall and may be lawful to and for any attesting witness to the execution of any will or codicil, deed or instrument in writing, and to and for any other competent person, to verify and prove the signing, sealing, publication, or delivery of any such will, codicil, deed, or instrument in writing, by such declaration in writing made as aforesaid, and every such justice, notary, or other officer, shall be and is hereby authorized and empowered to administer or receive such declaration."

Sec. 18.

The 18th section, after reciting that, "it may be necessary and proper in many cases not herein specified, to require *confirmation of written instruments or allegations, or proof of debts, or of the execution of deeds or other matters,*" enacts, "That it shall and may be lawful for any justice

of the peace, notary public, or other officer now by law authorized to administer an oath, to take and receive the declaration of any person voluntarily making the same before him in the form in the schedule to this act annexed; and if any declaration so made shall be false or untrue in any material particular, the person wilfully making such false declaration shall be deemed guilty of a misdemeanor.”

A mere declaration, as such, under the Statute 5th and 6th William 4th, c. 62, does not require any stamp duty, if administered by a notary, pursuant to the act, in the form given in the schedule to it, and having subjoined a memorandum of a nature merely analogous to the jurat at the foot of an affidavit, to the effect that it was declared before the notary, and signed by him. But it is much to be regretted that the act does not expressly exempt declarations under the 15th section, from stamp duty as notarial acts. That section, which principally relates to matters pending abroad, and to voyages of vessels, contemplates a declaration certified under the notary's signature and seal, and as has been before mentioned, an instrument under a notary's hand and seal, is considered to be a notarial act⁽¹⁾; it should therefore appear that a notary is not justified, in administering declarations under that section, certified under his signature and

Declarations
before Notaries
under the 5th
and 6th Wm.
IV, c. 62.

The Declara-
tions do not
require any
Stamp Duty,
unless under
seal, or unless
so worded, as
to become
notarial acts.

Peculiarity of
Section 15.

(1) Vide Supra, Chapter 1, p. 11, and in this Chapter, p. 250.

Declarations before Notaries under the 5th and 6th Wm. IV, c. 62. seal, unless on a 5s stamp; and until the point is decided by the Courts, or all doubt removed by a legislative enactment, the party wanting them cannot safely rely upon them, nor can a notary be advised to administer them, and the prudent course is to decline doing so, unless they

Neither Stamp nor Notary's Seal required by sec. 14, 16, or 18. should be stamped with a duty of 5s. However, neither the 14th, the 16th, nor the 18th section requires the use of his seal, nor imposes any stamp duty upon declarations administered by a notary, pursuant to either of them.

The Notary to ascertain the nature of the Declaration before receiving it. It has been before remarked, that the act of parliament empowers a notary to administer a declaration in lieu of an oath, in certain specified cases only, and it is therefore proper, if he have not caused the declaration to be prepared in his own office, that he should inquire respecting the nature and contents of it, so as to ascertain that it is such as he is empowered to administer by the act, otherwise he might be easily made a tool or convenience of, by others, and might unintentionally be assisting, in the preparation, of irregular or improper instruments; he ought also not receive any declaration under the provisions of that act, unless it is prepared in the form, and concludes in the manner, prescribed by the schedule to the act; and if the declaration be not such as the act authorizes, or not prepared in the form contemplated by the act, it is proper to refuse to administer it, and in fact, he would be exceeding his powers if he were to receive it. Attention to

those points on the part of the notary, is clearly a part of his duty, and his neglecting it might expose him to unpleasant consequences, on its transpiring to the Court of Faculties.

Declarations
before Notaries
under the 5th
and 6th Wm.
IV, c. 62.

It is difficult to imagine a form more tedious, slovenly, or ill adapted to the purpose, than the form of the solemn declaration, given in the schedule to the act; it is only wonderful, that it could have been passed by the legislature. The act is professedly intended, to advance the cause of religion and morality, and to diminish the number of unnecessary oaths, which formerly were too often flippantly and carelessly, if not wickedly taken; an intention laudable in itself, and one which all Christians ought to rejoice to see properly carried into effect. But how has so good a measure been attempted? Instead of a short and simple form, stating that the party makes the solemn declaration "according to law," or "according to the act of parliament in that case made and provided," it imposes by a reference to the reign of King William the 4th, a burthen upon the principles of foreigners, many of whom in their ideas of monarchical government, however much we may prefer our own, may very conscientiously differ from Englishmen; and it trifles with the solemnity of the declaration, and with the consciences of the poor and illiterate, by compelling them to take something very like an oath, (for in that light we may consider a solemn declaration) and solemnly to

Objectionable
form of the
Declaration.

Declarations
before Notaries
under the 5th
and 6th Wm.
IV, c. 62.

declare to the very words of the title of the act of parliament, and to the year of the king's reign in which it was passed ; matters which very few of them know any thing about, or ever heard of. Nor is that all, for amongst the subjects and people of foreign states, to which these declarations are constantly sent, an impression of a nature not flattering to the legislature of this country, must naturally be made, when they see that an act of parliament was passed in 1835, the title of which shows, and forces upon the attention the fact, that during the same session, and not three months previously, an act had already been passed on the same subject, which being hastily or slovenly prepared, or otherwise objectionable, it had been found necessary to declare abortive, by repealing it, when only two calendar months and twenty-eight days old.

Attestations of
Deeds or
Instruments.

It frequently happens, that a notary is called upon, to attest or authenticate the signature, or due execution of a deed or document, or the due passing of it before some public officer, or official personage ; in any such case it is clear, if he attest or authenticate it, by a certificate of attestation as a separate instrument, annexed to the deed or document, which is the most usual and is considered the most eligible mode, that the certificate being a distinct notarial act, requires a 5s stamp ; but if he attest it by a certificate of attestation, at the foot of such deed or document, provided the same be duly impressed

with the stamp duty imposed upon it by law, and provided such duty is of the amount of 5s or upwards, then the certificate is generally considered as forming part of the deed or document, and as not requiring an additional stamp.

Some Scotch deeds and instruments, when executed in England by a married woman, require the following ceremonials to be observed on the execution of them⁽¹⁾:—

“The party or parties must subscribe each page in the presence of two male witnesses above fourteen years of age. If there be any marginal notes, the party or parties must sign their christian names on the one side of the note and their surnames on the other.

The witnesses must sign the last page only, opposite the signature of the party or parties, each witness adding the word “witness” after his signature.

Two witnesses are sufficient to the subscription of any number of parties, provided the parties sign the deed at the same time and place ; but if signed at different times or places, two witnesses are requisite to each separate subscription.

At the end of the deed, and annexed to it, is an instrument in the nature of a ratification or declaration, which must be signed by the mar-

Attestations of
Deeds of
Property in
Scotland
executed by a
Married
Woman in
England.

(1) The Instructions for observing the ceremonials above mentioned, have been copied from a Form and Instructions, received from Scotland.

ried woman in the presence of a justice of the peace for the county or place, a notary public, and two witnesses, being males ; she must first sign it, then the justice, adding after his signature the words "justice of the peace for the county of —," (or city or borough of —,) afterwards the notary, adding after his name the words "notary public," and sometimes before his signature he writes the word "veritas ;" then the two witnesses sign opposite those signatures, each witness adding the word "witness" to his name. The signature of the procurator is not requisite.

The husband of the married woman must not be present when she executes the above.

None of the blanks must be supplied, as all the particulars will have to be inserted by the writer of the deed when returned to Scotland, and in order to enable it to be done correctly the following note or memorandum must be prepared and annexed to the deed :"—

"Signed by *W. W.* and his wife *E.* at Liverpool, in the county of Lancaster, on the 14th May, 18 , in the presence of *N. C. P.* and *W. W. E.* both of Liverpool aforesaid, clerks to *R. B.* of Liverpool aforesaid, notary public, and the declaration taken by *P. B.* of Liverpool aforesaid, esquire, justice of the peace for the county of Lancaster, and signed in the presence of the said *P. B.* esquire, justice of the peace, and of the said *R. B.* notary public."

There are also various solemn or formal at-
 testations, certificates, and registrations, which
 arise from the multifarious transactions of this
 commercial country, requiring the authentication
 or verification of a notary; but as each must
 depend upon its own circumstances, it is im-
 possible to do more than merely to allude to
 them; such for example, as making notarial
 certified copies of documents, intended to be
 transmitted abroad; and of entering copies of
 valuable documents in the notarial register, when
 the originals are about to be sent out of this
 country; certificates of the due execution before
 a notary of instruments to be sent abroad; and
 in some cases certificates of the execution of
 commissions, from foreign courts of judicature,
 to take the depositions of persons in this country,
 or of the transmission of the depositions from
 hence. In all these cases, care in making regular
 entries, or extracts or copies of notarial certificates
 and instruments, as the case may seem to require,
 in the book of registry, will be found of great
 service, not only with respect to the interests and
 safety of clients, but as a book of reference,
 lessening the labours of the notary⁽¹⁾.

(1) In Batavia some Instruments are entered in the book of a Notary and then signed by the parties, and the Notary makes copies which he signs and seals, and the principal officer of the government of Java also signs them. Held that in English Courts such copies are not receivable in evidence, either as originals or secondary

Commissions
from Foreign
Courts to take
the depositions
of Witnesses.

Notaries are frequently employed, to execute commissions, issued from foreign courts of judicature, and especially from those of the United States of America, to take the depositions and examinations of witnesses in England, upon interrogatories; when completed, an entry or note is made in the book of registry of the style of the cause, the name and address of the officer of the Court, to whom the commission and examinations are addressed, and the name of the person taking charge of them, or the vessel by which they are transmitted; which, in addition to the rough drafts of the depositions, which are usually preserved by the notary, are considered very important in case of shipwreck, or any accident occasioning the loss of the originals.

The following is a copy of the instructions, to execute such a commission sent to England, in a cause pending, in the Circuit Court, of the United States, for the southern district of New York.

“ INSTRUCTIONS FOR EXECUTING THE
COMMISSION.

Instructions.

1st. The commission may be executed by any two of the commissioners, without the others, but all the commissioners should have notice of the time and place of executing it.

evidence of the contents of such Instruments—Brown, manager of the Australian Company, *v.* Thornton, 6 Adol. and Ellis, 185. The same practice exists in various other countries abroad, but principally in places where the civil law prevails.

2nd. The commissioners will examine the witnesses separately, upon interrogatories annexed to the commission, and will first administer to them the following oath :—

Commissions
from Foreign
Courts.
—

“ You are true answer to make to all such questions as shall be asked you upon these interrogatories, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.”

3rd. This oath being administered, the general style or title of the depositions preparatory to the examination of the witnesses, must be drawn up in the following manner :—

“ Depositions of witnesses produced, sworn, and examined, on the day of , in the year of our Lord one thousand eight hundred and , under and by virtue of a commission issued out of the Circuit Court of the United States, for the southern district of New York, to us the undersigned commissioners directed, for the examination of

witnesses in a certain cause there depending and at issue between *J. W.* and *T. S.* plaintiffs, and *R. R.* and *J. R.* defendants, on the part and behalf of the defendants, as follows :”

“ *A. B.* of , (insert his place of residence and occupation,) aged years and upwards, being produced, sworn, and examined, on behalf of the defendants in the title of these depositions named, doth depose as follows, viz :—

Commissions
from Foreign
Courts.
—

“First.—To the first interrogatory he saith,” &c. (Go on with the witness’s answer.)

“Secondly.—To the second interrogatory he saith,” &c. and so on throughout. If he cannot answer, let him say that he knoweth not.

4th. If there be any cross interrogatories the witness will go on thus:—

“First.—To the first cross interrogatory he saith,” &c. and so on throughout.

5th. When the witness has finished his deposition, let him subscribe it, and the commissioners will certify as follows:—

Examination taken reduced to
writing, and by the witness
subscribed and sworn to,
this day of 183 ,
before us,

} Commissioners.

6th. If the deposition consists of more than one sheet, the commissioners should set their names in the margin, or at the foot of each half sheet; and so on with the next witness.

7th. If any papers are referred to in the deposition, and are annexed thereto, they must be endorsed by those of the commissioners who execute the commission, in this manner:—

“At the execution of a commission, for the examination of witnesses, between *J. W.* and *T. S.* plaintiffs, and *R. R.* and *J. R.* defendants,

this paper writing was produced and shown to Commissions
 [insert the witness's name] and by him deposed from Foreign
 unto at the time of his examination before us, Courts. —

} Commissioners."

8th. When the witnesses are examined, their depositions are to be fairly copied on paper, and subscribed and certified as above mentioned, after which the commission must be endorsed thus :—

"The execution of this commission appears in certain schedules hereunto annexed.

} Commissioners."

9th. The depositions must be annexed to the commission, and then the commission, interrogatories, and depositions, must be folded into a packet and bound with tape. The commissioners set their seals in the several meetings or crossings of the tape, endorse their names on the outside and direct it thus :—

"Circuit Court of the United States for the
 southern district of New York.

<i>R. R. and J. R.</i>	} Commission, interrogatories, and answers.
<i>at the suit of</i>	
<i>J. W. and T. S.</i>	

To the honourable the justices, of the Circuit Court, of the United States, for the southern district of New York."

10th. When the commission is thus executed, made up, and directed, it may be delivered to the Court by one of the commissioners personally,

Commissions
from Foreign
Courts.
—

or it may be forwarded by some person coming to this place, and who must be able, on his arrival, to make oath before one of the judges :

“ That he received the same from the hands of *A. B.* one of the commissioners, and that it hath not been altered or opened since he so received it.”

[Or if no person is coming to this place, who will undertake to deliver the commission in person, the commissioners will forward it by the best conveyance that offers ; by mail, if within the United States.]

* * * The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variation may vitiate the execution of the commission.

Let the bearer of the commission be instructed to call on his arrival at this place, upon A. D. of street, New York, who will inform him how to dispose of it.”

If the instructions accompanying or contained in the commission should direct the commission and depositions to be put into a ship's letter bag for transmission, and if in consequence of the post-office laws and regulations, that cannot be done, the next best plan is to deliver them into the care of a person who is going out to the United States, and at the same time to write a special indorsement upon the back of them, mentioning the reason for forwarding them by that person. The following is a copy of the

directions to the before-mentioned effect, which
 accompanied such a commission :—

Commissions
 from Foreign
 Courts.
 —

“ *S. C. D.* against *A. T.* and *D. S.*

“ This commission, when executed, is to be returned enclosed under cover, directed ‘ To *A. D.* No. 43, Liberty-street, New York,’ and put the same into the letter bag of any packet-ship or steamer that the commissioners may deem advisable.

“ *A. D.* attorney for *D. S.*

J. W. attorney for Plt.”

And the following is a copy of such a special indorsement as that before mentioned, made upon the commission :—

“ By the laws and regulations of England it is not allowed to deposit this in the letter bag of the regular steamer or packet from Liverpool for the United States, and (there not being any more convenient opportunity of transmitting the same) it is considered advisable to transmit the same by a person going from hence to New York.

“ *R. B.* Commissioner.

“ 19th June, 1845.”

In transmitting, in such a case the commission and depositions to the United States, besides writing on the back of them the address of the officer or person there to whom it is to be returned, it is customary also to write upon the back the style of the cause.

The depositions, and examinations of wit-

Commissions
from Foreign
Courts.
—

nesses, under commissions from foreign courts of judicature are never written on stamps; and indeed, being proceedings in foreign courts, and to be made use of in foreign countries in which stamps are not used, there would be some inconsistency or absurdity in preparing them on stamps⁽¹⁾.

Written instructions are usually annexed to or accompany such commissions; but the instructions before copied, will, with some little variation according to circumstances, be found in general adapted to the execution of commissions, from any other American Courts, whenever written instructions do not accompany them. It will be observed, that the instructions contemplate the commission and depositions to be transmitted, if practicable, in the charge of a person going out from England; but the practice of the American Courts is not uniform in that respect, as some of them require the transmission of them by a private hand, others direct them to be put into the letter bag of a vessel bound to the United States, and others allow them to be sent through the English post-office.

(1) The Act 55th George III, c. 184, schedule, part 2, imposing stamp duties on law proceedings, and the Act 5th George IV, c. 41, repealing various stamp duties, do not relate to proceedings in Foreign Courts.

CHAP. IX.

NOTARIAL FEES AND CHARGES.

TABLE OF FEES AND CHARGES.

Noting and protesting bills of exchange and promissory notes :— Notarial Fees and Charges.

Noting each bill of exchange, or promissory note, including the copying of it in the book of registry or protest book, the presentment, the entry in the book, and the attendance to return the bill or note to the client⁽¹⁾....£0 2 6

Noting and protesting⁽²⁾ ditto, for a sum

(1) The noting of a Bill of Exchange, or Promissory Note, is a ceremony quite distinct from and independent of the Protest, though often a prelude to or accompanying the Protest. It is an every day's occurrence in the case of Inland Bills, that the noting remains a distinct and independent ceremony, and there is not any protest made.

If on presentment, the Bill should be accepted, or the Bill or Note should be paid, a fee of 2s 6d is payable by the Client to the Notary, for the copying of the Bill or Note into the Book of Registry, (which is recommended to be always done before sending it for presentment, in order to guard against loss or accident,) and for the presentment, attendances, &c. &c.

(2) The fee of 7s 6d (exclusive of the Stamp) includes the copying of the bill or note into the Book of Registry, the presentment, the drawing up of the Protest, the copying of it into the Book of Registry,

Notarial Fees
and Charges.

under £20, including stamp duty of 2s.....	£0	9	6
Noting and protesting ditto, if £20, and under £100, including stamp duty of 3s.....	0	10	6
Noting and protesting ditto, if £100, and under £500, including stamp duty of 5s.....	0	12	6
Noting and protesting ditto, if £500 or upwards, including stamp duty of 10s.	0	17	6
Preparing special protest of bill of exchange, for presentment by a person residing at a place where there is no notary, and fee on instructions, (exclusive of stamp).....	0	7	6

ADDITIONAL CHARGES FOR DISTANCE.

1. If bills of exchange or promissory notes sent from a notary's office for presentment, beyond the limits of

the entry thereof, the noting, and the protest of the bill or note, and the attendance to return it to the Client. If the bill or note should be noted and protested on the same day, and consequently the additional labour, inconvenience, and time, and engagements broken in upon, incident to making the Protest at a subsequent time, should be thereby saved, it is not customary to charge an additional fee for the noting, and then the fee of 7s 6d includes the whole; but if not done on the same day, then the additional fee of 2s 6d for the noting, &c. is payable.

the parish and town in which the notary practises, and if he practise in a town of which the parish and ancient boundaries of the town are co-extensive, (as in the case of many places before the passing of the Act to provide for the regulation of Municipal Corporations in England and Wales, of the 5th and 6th William 4th, c. 76,) are sent any distance from his office not exceeding one mile, the additional charge⁽¹⁾ of£0 0 6

2. Exceeding one mile, and not exceeding two miles, the additional charge of 0 1 0
3. Exceeding two miles, but not exceeding three miles, the additional charge, besides the omnibus fare, or cab fare if there be no omnibus, of.... 0 1 6

(1) But where a city or town before the Act to provide for the regulation of Municipal Corporations consisted of several parishes, an extra charge is not made for sending a bill or note for presentment from one parish into another, within the ancient limits of the same city or town, where the distance sent does not exceed one mile. In most respects, however, it may be considered as a general rule, that an extra charge of 6d per mile is correct, unless the distance exceeds three miles; and in that case, as above mentioned, a reasonable additional charge is made for the extra distance, loss of time, and inconvenience.

Notarial Fees
and Charges.

4. Exceeding three miles, then a reasonable additional charge (the amount of which must depend upon various circumstances) is made for the extra distance, loss of time, and inconvenience, besides the omnibus fare, or cab fare if there be no omnibus.
5. But if sent into an adjoining county, and the inconvenience of crossing a ferry, and the expenses of the ferry are also incurred, and if the distance from the notary's office exceed one mile, and do not exceed two miles, an additional charge (which includes the payment for the ferry⁽¹⁾) is made of£0 1 6

Act of honour (exclusive of stamp duty) on acceptance or payment *supra protest*, (to be prepared on a stamp distinct from the protest) 0 7 6

If two or more bills are mentioned and copied on the act of honour, an additional fee of 1s to 1s 6d, according to the loss of time, or other circumstances, is payable for each bill beyond the first.

N.B.—Whenever a notary has to send a bill

(1) In general the payment for crossing and re-crossing a ferry is a mere trifle, usually a few pence only, but if considerable, it is to be charged for extra.

or note for presentment, or to send on any other business, to a place, *more than two miles distant* from his office, he is also entitled to charge the omnibus fare, or cab hire if there be no omnibus, in addition to the extra charge before mentioned for distance.

Notarial Fees
and Charges.

SHIP AND OTHER PROTESTS.

Noting each ship protest	£0	2	6
Fee on taking instructions for protest..	0	6	8
Drawing, engrossing, and registering protest 2s per folio of 72 words each, (exclusive of stamp.)			
Fee for attendance on reading over same	0	3	4
Fee on administering each declaration	0	1	0
Fee for notarial seal	0	2	6
Noting any protest of a special nature, as, for example, for refusing to sign bills of lading, for not proceeding to sea, for detention, or in any nautical or mercantile dispute	0	4	0
Making a copy of the note or entry of any ship protest, or protest of the above-mentioned special nature, when not formally certified or au- thenticated	0	2	0

Notarial Fees
and Charges.

CERTIFICATES, ATTESTATIONS,
DECLARATIONS, &c.

Preparing notarial certificate ⁽¹⁾ , and fee on attestation, and seal thereto, if of a <i>special</i> form, (exclusive of attendances and of stamp duty)....	} £1 1 0 to 1 11 6
Preparing notarial certificate, and fee on attestation, signature, and seal thereto, if of a common form, (according to the labour or to the loss of time, and exclusive of at- tendances and of stamp duty)	} 0 12 6 to 0 15 6
Fee on signing notarial certificate, or attestation, (when already prepared on a stamp, and brought to a no- tary,) of any fact or circumstance, or of the execution of any deed ⁽²⁾ , and notarial seal	0 10 0
Fee on attending signature to a survey, on ship or goods, drawing and en- grossing notarial certificate, fee on	

(1) As the Certificate is a notarial act, a Notary has a right to require that it should be prepared in his own office, but that is occasionally waived, when it has been prepared by some other Notary, or by a Solicitor.

(2) In the case of a *Power of Attorney*, however, as will be noticed *Infra*, p. 278, when the certificate accompanying it, is brought ready prepared on a stamp, to a Notary, and he has not any loss of time, or attendances, or any thing more to do than merely to sign the certificate, and pass it under his notarial seal, it is common to charge a smaller fee.

attestation, and seal, (including stamp duty of 5s)	£1	11	6	Notarial Fees and Charges.
Attendance and fee as a public notary, taking recognizance of bail, in proceedings in the Exchequer, at the suit of the Attorney-General, and attestation.....	0	10	6	
The like on any other occasion, and attestation.....	0	10	6	
Attesting any power of attorney in bankrupts' affairs, (exclusive of stamps, attendances, and of any charge for preparing the same)	0	7	6	
Attesting any deed or instrument on any other occasion, <i>under the hand only</i> of a notary, (exclusive of stamps, attendances, and of any charge for preparing the same) ⁽¹⁾	0	7	6	
Fee on swearing each deponent to affidavit before a Notary and Master Extraordinary in Chancery ⁽²⁾	0	2	6	

(1) The instances are very rare where a Notary is requested to attest the execution of an instrument, or sign a certificate, without using his notarial seal.

(2) The 13th section of the Act for the Abolition of Unnecessary Oaths, 5th and 6th William IV, c. 62, provides, that the Act shall not affect or extend to "any oath, affidavit, or affirmation which may be required by the laws of any Foreign Country, to give validity to Instruments in writing, designed to be used in such Foreign Countries respectively."

Notarial Fees
and Charges.

Fee on administering a common declaration, under the Act 5th and 6th William 4th, c. 62£0 1 0

NOTARIAL CERTIFIED COPIES.

Notarial copy of any document, 6d per folio of 72 words each.

Notarial certificate of same, being a true copy, attestation, and seal, (exclusive of stamp duty, and fees for loss of time and attendances) 0 12 6

REGISTERING.

Registering any document intended to be sent abroad, of which the parties wish a copy to be preserved in the notarial register, to provide against wreck or accidents, and attendances to inclose same in letter of advice; to be charged for according to the length of the document, and loss of time.

Notarial seal on the above, and minute in the register book, and attendance to deposit the same in a ship's letter bag 0 10 6

POWERS OF ATTORNEY.

Fee on instructions for, and drawing and engrossing power of attorney, (common form, exclusive of the stamp duty) 1 11 6

Fee on attendance on execution thereof.	£0	6	8	Notarial Fees and Charges.
Preparing declaration of execution thereof, by the attesting witness	0	5	0	
Attendance before the mayor, or a justice of the peace, whenever it may be considered necessary, and paid fee on his administering the decla- ration, 1s	0	4	4	
Notary's fee on his administering the declaration	0	1	0	
Preparing each mayor's certificate (if going to a British colony, in which case it is, as before mentioned, a com- mon practice to annex the mayor's certificate and seal) ⁽¹⁾	0	5	0	
Paid for mayor's seal				
Declaration of debt to accompany the power of attorney (usual form).....	0	7	6	
Fee on signing notarial certificate, or attestation, (when already pre- pared ⁽²⁾ on a stamp and brought to a notary,) that a declaration was duly made, or a power of attorney duly executed, and attendance and loss of time thereon, and notarial seal....	0	10	0	
In a common case of such a certificate				

(1) Vide Chap. 8, p. 249.

(2) Vide Supra in this Chapter, as to the right of a Notary to have Notarial Certificates granted by him, prepared as being notarial acts in his own office.

Notarial Fees
and Charges.

accompanying a power of attorney, when the certificate is already prepared on a stamp and brought to a notary, and he has not any loss of time, or attendances, or any thing more to do respecting the power of attorney or the certificate, than merely to sign the certificate, and pass it under his notarial seal, it is common to charge for signing the certificate, and attestation and notarial seal, a fee of ⁽¹⁾	£0	7	6
Preparing and granting notarial certificate to accompany a power of attorney or a declaration, and attestation, and notarial seal, (common form, exclusive of attendances, and the stamp duty)	0	12	6
Fee on attendance upon the consul for his certificate (if to be sent out to a foreign country)	0	3	4
Paid consul's fee for same			
Drawing, and engrossing each power of attorney to transfer American stock, attestation, and notarial seal, and if the same be certified, under the hands of two other notaries, in-			

(1) The charge of 7s 6d is exclusive of any fee for administering a declaration, if any should be made before the Notary, and exclusive of any attendances, &c.

cluding attendances thereon, and fees of two other notaries of 5s each (including the stamp duty of £1 10s)	£3	3	0
Filling up printed form of power of attorney to transfer American stock, (when the form and stamp are provided by the parties, and brought to a notary,) with the like attestation, and seal, and including attendance and procuring a certificate <i>under the hands</i> of two other notaries, and fees of same 5s each	1	1	0
Fee on granting, and signing notarial attestation (when already prepared on a stamp and brought to a notary) under the hand and seal of a notary, of the execution, of a power of attorney to transfer American stock....	0	10	0
Fees on attesting or certifying same, by two other notaries (without using their seals) at 5s each	0	10	0

AVERAGE AGREEMENTS.

Instructions for, and drawing and engrossing each average agreement (including the stamp duty of 2s 6d).	1	5	0
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INDENTURES OF APPRENTICESHIP.

Filling up each indenture of apprenticeship (printed form, including stamp duty of £1)	1	11	6
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Notarial Fees
and Charges.

Drawing and engrossing same (common form, including the stamp duty of £1) 2 2 0

N.B.—When such indenture of apprenticeship requires an *ad valorem* duty, the usual charge is one guinea and the amount of the stamp, and £5 per cent. upon the amount of the latter. An additional charge, according to the circumstances, is made when the form is a special one.

CHARTERPARTIES.

Instructions for, and drawing and engrossing each charterparty; according to the labour, and loss of time (common form, exclusive of the stamp duty of 5s)	}	£2 2 0
		to
		2 10 0

BOTTOMRY BONDS.

Instructions for, and drawing and engrossing each bottomry bond, and attending execution (exclusive of the stamp duty) 2 2 0

BILLS OF SALE OF VESSELS.

Instructions for, and drawing and engrossing each bill of sale of a vessel, attending execution (according to the number of the parties, and the loss of time)	}	2 2 0
		to
		2 12 6

ATTESTATIONS OF A DEED OF PROPERTY IN SCOTLAND BY A MARRIED WOMAN. Notarial Fees
and Charges.

Fee on attendance on the party, and attending before a justice of the peace making appointment for the execution of a deed of property in Scotland by a married woman in England, and afterwards attendance before the justice with the party and witnesses, and fee on attending on the execution; and attestation⁽¹⁾£1 11 6

N.B.—When any of the above instruments are of special form, considerable length, attended with unusual loss of time, or occasion journeys from home, an extra charge is made.

The following statement, of some additional fees, adopted by the Society of London Notaries, since the passing of the Act for the Abolition of Unnecessary Oaths⁽²⁾, was obligingly transmitted, by the committee of the society, to the author:—

“ Receiving simple declaration	£0	1	0
Ditto, if on a stamp.....	0	1	6
Notarial exemplification, and notarial act stamp	}	0 15	6
For every additional declarant.....			
	0	5	6

(1) Vide Chapter 8, p. 259 and 260.

(2) 5th and 6th William IV, c. 62.

CHAP. X.

PRECEDENTS.

No. 1.

ARTICLES OF CLERKSHIP TO A NOTARY.

Articles of
Clerkship.

ARTICLES of Agreement, entered into the day of _____, in the year of our Lord one thousand eight hundred and _____, between *A. B.* of L———, in the county of L———, son of *C. B.* of L——— aforesaid, merchant, of the first part, the said *C. B.* of the second part, and *D. E.* of L——— aforesaid, notary public, duly admitted and inrolled, and practising, of the third part, Witnesseth, that the said *A. B.* with the consent of his said father, (testified by his executing these presents,) doth hereby put, place, and bind himself a clerk or apprentice to the said *D. E.* to be by him taught and instructed in the practice, or profession of a Public Notary, and to serve him from the day of the date hereof, during the term of _____ years thence next ensuing. And the said *C. B.* doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said *D. E.* his executors and administrators, that the said *A. B.* shall and will well and faithfully serve the said *D. E.* as his clerk or apprentice in the profession or practice of a notary public, and all matters connected therewith, during the said term of _____ years, and

keep the secrets of the said *D. E.* and those of his clients, and obey and perform the lawful commands of the said *D. E.* and that the said *A. B.* shall not waste, destroy, injure, embezzle, or misapply any of the goods, writings, instruments, effects, stamps, or monies of the said *D. E.* or any of his clients, nor do any other damage to him or them, but to the utmost of his power shall prevent the same; and shall not absent himself from the service of the said *D. E.* without leave, during the said term; but shall honestly and faithfully behave himself in all respects, as a good and faithful clerk or apprentice ought to do. In consideration whereof, he, the said *D. E.* doth hereby for himself, his heirs, executors, and administrators, covenant and agree, with the said *C. B.* his executors and administrators, in manner following, that is to say, that he, the said *D. E.* shall and will, during the said term, well and sufficiently teach and instruct, or cause to be taught and instructed, the said *A. B.* in the profession or practice of a public notary; and will at the request and expense of the said *A. B.* sign, execute, and do any legal, usual, and reasonable certificate, act, matter, or thing to assist the said *A. B.* to be admitted a notary, and to obtain a notarial faculty, after the end of the said term, provided that during the said term he shall faithfully and diligently have been and continued, in the service of the said *D. E.* pursuant

No. 1.
—
Articles of
Clerkship.

No. 1.
—
Articles of
Clerkship.

to the intent and meaning hereof. Provided always, and it is expressly agreed between the said parties hereto, that if the said *A. B.* shall not well, faithfully, and diligently, conduct and demean himself in the service or employ of the said *D. E.* hereunder, or in the event of any neglect of duty, non-attendance, intoxication, dishonesty, disobedience of orders, or of any other misconduct during the said term on the part of the said *A. B.* it shall be lawful for, and the said *D. E.* his executors or administrators, is and are hereby authorized to determine and put an end to the said term, and to the said service and clerkship of the said *A. B.* hereunder, and to dismiss him from the service or employ of the said *D. E.* and thereupon these presents, and every thing herein contained shall cease and become void, save and except remedies, and rights of action, for, or in respect of covenants or agreements herein contained, then broken. In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first before written.

A. B. (Seal.)

C. B. (Seal.)

D. E. (Seal.)

Signed, sealed, and delivered,
(being first duly stamped,)
in the presence of
(2 witnesses.)

AFFIDAVIT OF EXECUTION OF ARTICLES OF
CLERKSHIP.

No. 2.

G. H. of _____, in the county of _____, Affidavit of
 clerk and book-keeper, maketh oath and saith, execution of
 that he was present, and did see *D. E.* of Articles
 aforesaid, gentleman, a Notary Public, prac- of Clerkship.
 tising as such at _____ aforesaid,
 and *C. B.* of _____ aforesaid, merchant,
 and *A. B.* of _____ aforesaid, son of the said
C. B. severally sign, seal, and as their several
 acts and deeds in due form of law deliver, certain
 Articles of Agreement, bearing date the
 day of _____ instant, and made between the said
A. B. of the first part, the said *C. B.* of the second
 part, and the said *D. E.* of the third part, whereby
 it was agreed that the said *A. B.* should serve
 the said *D. E.* as his clerk, in the profession of a
 Notary Public for the term of seven years, to be
 accounted from the day of the date of the said
 articles; and this deponent further saith, that the
 names "*A. B.*" "*C. B.*" and "*D. E.*" set or
 subscribed opposite to the several seals affixed to
 the said articles, as the parties executing the
 same, are of the several and respective hands
 writing of the said *A. B.* *C. B.* and *D. E.*
 and that the said articles were executed on
 the day of the date thereof, and that the names
 "*G. H.*" and "*J. K.*" set as the subscribing
 witnesses thereto, are of the respective proper
 handwriting of this deponent, and of *J. K.* of
 aforesaid, clerk and book-keeper.

No. 2.
—
Affidavit of
execution of
Articles
of Clerkship.

Sworn at aforesaid, this
day of in the year of our Lord
one thousand eight hundred and
Before me,

No. 3.
—
Protest of a
Bill.

PROTEST OF A BILL ON NON-ACCEPTANCE.

ON the day of , one thousand
eight hundred and , I, *R. B.* Notary
Public, duly admitted and sworn, dwelling⁽¹⁾
in L——, in the county of L——, and
United Kingdom of Great Britain and Ireland,
at the request of *C. D.* of L——, [*or of*
“the holder,” or “the bearer,” as the case may
be,] did exhibit the original bill of exchange,
whereof a true copy is on the other side written,
[*or did cause due and customary presentment to*
be made⁽²⁾ *of the original bill of exchange, whereof*
a true copy is on the other side written,] unto a
clerk in the counting-house of *E. F.* the person
upon whom the same is drawn, and demanded
acceptance thereof, [*or acceptance being there-*
upon demanded,] and he answered that it would
not be accepted at present⁽³⁾.

(1) Or *practising*; it is immaterial which word is used.

(2) See Appendix,—“Observations, and Opinions.”

(3) Or it may be stated as follows; “At the Counting-house of
E. F. the person upon whom the said Bill is drawn and demanded
acceptance thereof, and received for answer that it would not be ac-

Wherefore, I, the said notary, at the request No. 3.
 aforesaid, have protested, and by these presents ^{Protest of a}
 do protest against the drawer of the said bill, ^{Bill.}
 and all other parties thereto, and all others con-
 cerned, for all exchange, re-exchange, and all
 costs, damages, and interest, present and to
 come, for want of acceptance of the said bill.

Which I attest,

(Seal)

R. B.

Notary Public, L———.

PROTEST OF A BILL ON NON-ACCEPTANCE,
 WHEN THE DRAWEE HAS NEGLECTED TO
 LEAVE ORDERS WITH HIS CLERKS.—*See*
Chapter 3, page 94, 95, and 96.

No. 4.

ON the day of , [*commence* ^{Protest of a}
as in No. 3,] unto a clerk in the counting-house ^{Bill.}
 of *E. F.* the person upon whom the same is
 drawn and demanded acceptance thereof, [*or*
acceptance being thereupon demanded,] and he
 answered, that the said *E. F.* was not within,
 and had left no orders for the acceptance of the
 said bill.

Wherefore, I, the said notary, [*conclude as in*
No. 3.]

Which I attest,

(Seal.)

R. B.

Notary Public, L———.

cepted ;" or the substance of any other answer ought to be stated :
 it is sufficient to state the tenor or effect of the answer, without
 giving the exact words or language used.

PROTEST OF A BILL ON NON-ACCEPTANCE,
WHEN THE DRAWEE'S PLACE OF BUSINESS
IS SHUT UP, [AND HE IS BECOME BANKRUPT
OR INSOLVENT.]

No. 5.

Protest of a
Bill.

ON the day of , [*commence
as in No. 3,*] did take [*or exhibit*] the original
bill of exchange (whereof a true copy is on the
other side written) unto [*or at*] the counting-
house of *E. F.* the person upon whom the said
bill is drawn, in order to present the same, and to
demand acceptance of it, and the door was found
fastened⁽¹⁾, and there was no person there to
give an answer; [⁽²⁾and I am informed that the
said *E. F.* has been declared bankrupt, or has
suspended payment, *as the case may be.*]

Wherefore, I, the said notary, [*conclude as in
No. 3.*]

Which I attest,

(Seal.)

R. B.

Notary Public, L———.

PROTEST OF A BILL ON NON-ACCEPTANCE,
WHEN THE DRAWEE CANNOT BE FOUND, OR
WHEN THERE IS NO SUCH PERSON.

No. 6.

Protest of a
Bill.

ON the day of , [*commence
as in No. 3,*] did make, and cause to be made

(1) [*Or, "the same was found shut up."*]

(2) Sometimes the Drawee's Bankruptcy or Insolvency is not generally known, and, therefore, cannot with propriety, be stated in the Protest, and of course, it is not then mentioned. If the Notary has sent more than once to the Drawee's Counting-house, and it is still found shut up, that fact is occasionally also stated.

due and careful inquiries, at the Liverpool Post-office, and in other proper quarters, for *E. F.* the person upon whom the said bill purports to be drawn, in order to have demanded acceptance thereof, but was unable to discover him, or to learn any tidings of him or of his residence.

Wherefore, I, the said notary, [*conclude as in No. 3.*]

Which I attest,

(Seal.)

R. B.

Notary Public, L——.

PROTEST OF A BILL ON NON-ACCEPTANCE,
WHEN A COPY OR A MEMORANDUM OF THE
PRINCIPAL CONTENTS OF IT, HAS BEEN EX-
HIBITED IN THE ABSENCE OF THE ORIGINAL,
AND ACCEPTANCE HAS BEEN DEMANDED⁽¹⁾.

No. 7.

ON the day of , [*commence* as in No. 3,] did apply for the original bill of exchange, whereof on the other side a copy or the principal contents is or are written, unto a clerk

(1) It is taken for granted, that the bill has been left in the usual manner, for consideration and acceptance. This form may, with some little alteration, be also used when the original bill has been lost, and consequently cannot be presented for acceptance; or when the original has been left for consideration and acceptance, but the Drawee has locked it up, forgotten it, and gone home; or when from any other circumstance the clerk of the Drawee cannot get access to it, and consequently cannot return it to the holder. The form may also be easily adapted to the case of *non-payment* of the bill under any of those circumstances.

No. 7.
Protest of a
Bill.

in the counting-house of Mr. *D. K.* the person upon whom the same is drawn, and demanded acceptance of the said original bill, and I also demanded the delivery of the said original bill, but he did not deliver up the same, and stated that Mr. *K.* had left the counting-house, and had (as he believed inadvertently) taken the said bill away with him, and that the same was not accepted.

Wherefore, I, the said notary, [*conclude as in No. 3.*]

Which I attest,
(Seal.) *R. B.*

Notary Public, L——.

No. 8.
Protest of a
Bill.

PROTEST OF A BILL ON NON-PAYMENT.

ON the day of , [*commence as in No. 3,*] unto *E. F.* [*or as the case may be, unto a clerk in the counting-house of E. F.*] the person upon whom the said bill is drawn, [and by whom the same is accepted, *if the bill have been accepted,*] and demanded payment thereof, [*or payment being thereupon demanded,*] and he answered that it would not be paid⁽¹⁾.

(1) Or it may be stated as follows: "at the Counting-house of *E. F.* the person upon whom the said bill is drawn, and who has accepted the same, and demanded payment thereof, and received for answer that it would not be paid." A Protest for the non-payment of a Promissory Note, may be in the above form, with a slight alteration.

Wherefore, I, the said notary, at the request No. 8.
 aforesaid, have protested, and by these presents Protest of a
 do protest against the drawer of the said bill, Bill.
 and all other parties thereto, and all others concerned, for all exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of payment of the said bill.

Which I attest,

(Seal.)

R. B.

Notary Public, L——.

PROTEST OF A BILL ON NON-PAYMENT, WHEN
 THE HOUSE OR PLACE WHERE IT IS MADE
 PAYABLE BY THE ACCEPTANCE, IS SHUT
 UP, AND NO ONE IS THERE TO GIVE AN
 ANSWER.

No. 9.

On the day of , [commence Protest of a
as in No. 3. The protest ought to state the Bill.
attempt to make the presentment for payment,
by the bill's being taken to the place, at which,
by the acceptance, it is made payable.] did take
 [or exhibit] the original bill of exchange, whereof
 a true copy is on the other side written, unto
 [or at] the counting-house [or banking-house,
as the case may be] of Messrs. *E. F. and*
Company, where the said bill is made payable
 by the acceptance, in order to present the same
 and demand payment thereof, and the door was
 found fastened, and the place shut up, and there
 was no person there to give an answer, [and I am
 informed that the said *E. F. and Company* have

No. 9.
—
Protest of a
Bill.

been declared bankrupt, *or* have suspended payment⁽¹⁾, *as the case may be.*]

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the drawer of the said bill, and all other parties thereto, and all others concerned, for all exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of payment of the said bill.

Which I attest,

(Seal.)

R. B.

Notary Public, L——.

PROTEST OF A BILL FOR BETTER SECURITY.

No. 10.
—
Protest of a
Bill.

ON the day of , one thousand eight hundred and , I, *R. B.* Notary Public, duly admitted and sworn, dwelling in L——, in the county of L——, and United Kingdom of Great Britain and Ireland, at the request of *C. D.* of L—— aforesaid, [*or* of the holder, *or* the bearer,] did exhibit the original bill of exchange, (whereof a true copy is on the other side written,) at the counting-house of *E. F.* the person upon whom the said bill is drawn, and whose acceptance appears thereon, and did present the same unto a clerk there, and demand security for the payment thereof when the same should become payable, in consequence of the said *E. F.* having become bankrupt, [*or* insolvent

(1) See Note (2) to No. 5, Supra, p. 288.

or suspended payment,] and I received for answer, No. 10.
 that security for the same, could not be given by Protest of a
 the said *E. F.* who has been declared bankrupt, Bill.
 [or has suspended payment, *as the case may be.*]

Wherefore, I, the said notary, at the request
 aforesaid, have protested, and by these presents
 do protest against the drawer of the said bill, and
 the acceptor and all other parties thereto, and all
 others concerned, for all exchange, re-exchange,
 and all costs, damages, and interest, present and
 to come, for want of better security, for the pay-
 ment of the said bill when due.

Which I attest,

(Seal.)

R. B.

Notary Public, L———.

PROTEST OF A BILL ON NON-PAYMENT, WHEN
 THE ORIGINAL HAS BEEN LOST BEFORE
 MATURITY, AND A COPY OR THE SECOND OF
 EXCHANGE OF THE SAME SET, IS PRESENTED
 FOR PAYMENT.

No. 11.

ON the day of , one thousand Protest of a
 eight hundred and , I, *R. B.* Notary Bill.
 Public, duly admitted and sworn, dwelling in
 L———, in the county of L———, and United
 Kingdom of Great Britain and Ireland, at the
 request of *C. D.* of L——— aforesaid, did exhibit
 a copy of the original bill of exchange, [or
 did exhibit the second of exchange,] (whereof a
 copy is on the other side written,) unto *E. F.*
 the person upon whom the same is drawn, and

No. 11.
—
Protest of a
Bill.

by whom the said original bill [*or* the first of exchange of the same set] has been accepted and which has been lost or mislaid, as I am informed, and the same being this day due, I demanded payment thereof, and the said *E. F.*⁽¹⁾ answered that he would not pay the same.

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the drawer of the said bill, and the acceptor, and all other parties thereto, and all others concerned, for all exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of payment of the said bill, of which the original being lost, the said copy [*or* second of exchange] was exhibited in lieu of it, and payment demanded.

Which I attest,

(Seal.)

R. B.

Notary Public, L——.

PROTEST OF A BILL OF EXCHANGE FOR WANT
OF ACCEPTANCE UPON A LETTER.⁽²⁾

No. 12.
—
Protest of a
Bill.

ON the day of , &c. *Mr. A. B.*
of the city of London, produced unto me, *J. M.*

(1) If an indemnity were offered within the actual knowledge of the Notary, it is well to add here, "Although security to indemnify him, the said Acceptor, was offered."

(2) This is the form given in Montefiore's Commercial Precedents ; a Protest of the above nature seems to be of rare occurrence.

of the said city, Notary Public, &c. a bill of exchange, whereof a true copy is on the other side written, together with a letter signed *C. D.* for Messrs. *E.* and *F.* and dated at the day of , one thousand eight hundred and , directed to the said Messrs. *E.* and *F.* and which he received by the post, wherein he says as follows: "Sir, Yours of the day of instant, to Messrs. *E.* and *F.* is before me, covering Mr. *G. L.*'s bill of exchange, on them for £ , as said gentleman is from home, I have no orders to accept the said bill," (*or as the case may be,*) which letter and answer not being satisfactory, I, the said notary, at the request of the said Mr. *A. B.* have protested, &c.

No. 12.
Protest of a
Bill.

PROTEST OF A BILL, BY A RESIDENT PERSON
IN A PLACE WHERE THERE IS NO NOTARY.

No. 13.

ON the day of , one thousand eight hundred and , I, *A. B.* a substantial person, residing at N , in Northamptonshire, at the request of the holder of a certain bill of exchange, whereof a true copy is on the other side written, Did exhibit the said original bill of exchange unto Mr. of N aforesaid, the person upon whom the same is drawn, and demanded acceptance thereof, who answered that [*here state his answer and refusal*] and I, the said *A. B.* do hereby certify that there is no public notary practising in or near N

Protest of a
Bill by a
resident
Person in a
place where
there is no
Notary.

No. 13.
 —
 Protest of a
 Bill.

aforesaid. Wherefore, I, the said *A. B.* at the request aforesaid, and in the absence of and in default of a public notary at this place, have protested, and by these presents do protest against the drawer of the said bill, and all other parties thereto, and all others concerned, for all exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of acceptance thereof, *in the presence of C. D. and E. F. both credible persons residing at N aforesaid*⁽¹⁾.

Which I attest,

A. B.

a housekeeper and a merchant [*or a manufacturer, or an attorney-at-law, or banker, or hotel-keeper, &c. &c.*] residing at N aforesaid.

ACT OF HONOUR ON ACCEPTANCE SUPRA PROTEST BY A THIRD PERSON, FOR THE HONOUR OF THE DRAWER [*or indorser.*]

No. 14.
 —
 Act of Honour.

ON the day of , one thousand eight hundred and , I, *R. B.* Notary Public, duly admitted and sworn, dwelling in , in the county of , and United Kingdom of Great Britain and Ireland, do hereby certify, that the original bill of exchange, for five

(1) The concluding words in italics may be added if wished ; but they are not considered necessary in such Protests of Foreign Bills.

hundred pounds, of which a copy is on the other side written, (now protested for non-acceptance,) was this day exhibited [*or exhibited by me*] unto *E. F.* one of the firm of *E. F. and Company*, who declared that the said firm would accept the said bill *supra protest*, for the honour of the drawer [*or, ⁽¹⁾ of G. H. the indorser ;*] holding the drawer [*or, the said indorser ⁽²⁾ and the drawer*] and all other proper persons, responsible to the said firm for the said sum, and for all interest, damages, and expenses incident thereto ; I have, therefore, granted this notarial act of honour accordingly.

No. 14.

Act of Honour.

(Seal.)

Which I attest,

R. B.

Notary Public.

ACT OF HONOUR ON ACCEPTANCE SUPRA
PROTEST, BY THE DRAWEE, FOR PART OF
THE AMOUNT, FOR THE HONOUR OF THE
DRAWER⁽³⁾.

No. 15.

ON the day of , one thousand eight

Act of Honour.

(1) The above form may, by means of the alterations pointed out in italics within brackets, be easily adapted to an acceptance for the honour of either the Drawer or Indorser.

(2) If there are prior Indorsers, the words "*all prior Indorsers*" may with propriety be inserted here.

(3) In the Protest made prior to the Act of Honour, when the Drawee is willing to accept for part only of the amount of the Bill, it is usual to state, that he "*refused to accept it, according to the tenor of the Bill.*" Vide Supra, Chap. 4, p. 119.

P P

No. 15. hundred and , I, *R. B.* Notary Public,
 Act of Honour. duly admitted and sworn, dwelling in , in
 the county of , and United Kingdom of
 Great Britain and Ireland, do hereby certify,
 that the original bill of exchange for five hundred
 pounds, of which a copy is on the other side
 written, (now protested for non-acceptance) was
 this day exhibited unto *C. D.* one of the firm of
 C. D. and Company, upon whom the same is
 drawn, who declared [*or declared before me*] that
 the said firm would accept the said bill *supra*
 protest⁽¹⁾ for the honour of *E. F.* the drawer, for
 part thereof, namely, for the sum of three hundred
 pounds sterling; holding the drawer, and all
 other proper persons, responsible to them, the said
 C. D. and Company, for the last-mentioned sum,
 and for all interest, damages, and expenses; I
 have, therefore, granted this notarial act of
 honour accordingly.

(Seal.)

Which I attest,

R. B.

Notary Public.

ACT OF HONOUR ON ACCEPTANCE SUPRA
 PROTEST, BY A FIRM OF THIRD PERSONS,
 THROUGH THE MEDIUM OF AN AGENT, FOR
 No. 16. THE HONOUR OF THE DRAWERS.

Act of Honour. ON the day of , one thousand eight
 hundred and I, *R. B.* Notary Public,

(1) If it be accepted, as from a prior date, add the words, "as
 from the day of last." Vide *Supra*, Chap. 4, p. 125.

duly admitted and sworn, dwelling in _____, in
the county of _____, and United Kingdom of
Great Britain and Ireland, do hereby certify, that
the original bill of exchange for five hundred
pounds, of which a copy is on the other side
written, (now protested for non-acceptance,) was
this day exhibited [*or exhibited by me*] at
the counting-house of the firm of *C. D. and
Company*, who have declared [*or who have
declared through their agent on their behalf,*]
that the said firm would accept the said bill
supra protest for the honour of *E. F. and Company*
the drawers, for part thereof, namely, for the sum
of three hundred pounds sterling; holding the
drawers, and all other proper persons, responsible
to them, the said *C. D. and Company*, for the
last-mentioned sum, and for all interest, damages,
and expenses; I have, therefore, granted this
notarial act of honour accordingly.

No. 16.

Which I attest,

(Seal.)

R. B.

Notary Public.

ACT OF HONOUR, ON ACCEPTANCE SUPRA
PROTEST BY THE DRAWEES, FOR PART OF
THE AMOUNT FOR THE HONOUR OF THE
DRAWER, AND FOR THE RESIDUE FOR THE
HONOUR OF AN INDORSER.

No. 17.

On the _____ day of _____ one thousand _____
eight hundred and _____, I, *R. B.* Act of Honour.
Notary Public, duly admitted and sworn,

Notary Public.

ACT OF HONOUR, ON ACCEPTANCE SUPRA
 PROTEST BY A PERSON MERELY AS AN
 AGENT ON BEHALF OF A FIRM, FOR A PART
 OF THE AMOUNT, AND BY THE SAME PERSON
 IN HIS INDIVIDUAL CAPACITY FOR THE
 BALANCE.

No. 18.

ON the day of , one thousand eight Act of Honour.
 hundred and I, *R. B.* Notary Public,
 duly admitted and sworn, residing and prac-
 tising in , in the county of ,
 and United Kingdom of Great Britain and
 Ireland, do hereby certify, that the original bill
 of exchange for one thousand two hundred
 pounds, of which a copy is on the other side
 written, (now protested for non-acceptance,) was
 this day exhibited to Mr. *R. W.* the agent of the
 firm of *G. G.* and *S.* who declared that he would,
 as such agent for and on behalf of the said firm,
 accept the said bill *supra protest* for eight hundred
 pounds, part of the amount of the said bill, for
 the honour of *W. M. L.* the drawer, and that he
 would accept the same *supra protest* individually
 for four hundred pounds, the balance of the said
 bill, for the honour of the drawer; holding the
 drawer, and all other proper persons, responsible
 to the said firm, and to him the said *R. W.*
 individually, in the aforesaid proportions, for the
 said sum, and for all interest, damages, and ex-
 penses; I have, therefore, granted this notarial act
 of honour accordingly.

Which I attest,

(Seal.)

R. B.

Notary Public.

ACT OF HONOUR ON PAYMENT SUPRA PROTEST,
BY A FIRM OF THIRD PERSONS, FOR THE
HONOUR OF THE DRAWERS AND INDORSERS.

No. 19.

Act of Honour. ON the day of , one thousand
eight hundred and , I, *R. B.* Notary
Public, duly admitted and sworn, dwelling in
 , in the county of , and United
Kingdom of Great Britain and Ireland, do hereby
certify, that the original bill of exchange⁽¹⁾ for five
hundred pounds, of which a copy is on the other
side written, (now protested for non-payment,) was this day exhibited unto *C. D.* of Liverpool,
one of the firm of *C. D.* and *Company*, who
declared [*or declared before me*] that the said
firm would pay the amount of the said bill⁽²⁾ *supra*
protest, for the honour of *E. F.* and *Company*,
the drawers, and of *G. H.* and *Company*, the
indorsers; holding the drawers and the said in-
dorsers⁽³⁾, and all other proper persons, responsible
to them, the said *C. D.* and *Company*, for the
said sum, and for all interest, damages, and

(1) If more than one bill, here insert the words, "the
several Bills of Exchange for;" here state the several amounts.
See observations on this point, Chap. 4, p. 117.

(2) Or "several bills," as the case may be.

(3) If there are prior Indorsers, the words, "*all prior Indorsers*"
may be inserted here.

expenses; I have, therefore, granted this notarial act of honour accordingly.

No. 19.

Act of Honour.

(Seal.)

Which I attest,

R. B.

Notary Public.

ACT OF HONOUR ON PAYMENT SUPRA PROTEST,
OF PART OF THE AMOUNT, BY THE DRAWEE
THROUGH THE MEDIUM OF AN AGENT, FOR
THE HONOUR OF THE DRAWER.

No. 20.

ON the day of , one thousand eight hundred and I, *R. B.* Notary Public, duly admitted and sworn, dwelling in , in the county of , and United Kingdom of Great Britain and Ireland, do hereby certify, that the original bill of exchange for five hundred pounds, of which a copy is on the other side written, (now protested for non-payment,) was this day exhibited [*or exhibited by me,*] at the counting-house of the firm of *C. D. and Company*, upon whom the same is drawn, who have declared [*or, who have declared through their agent or clerk on their behalf,*] that the said firm would pay the sum of three hundred pounds sterling, part of the amount of the said bill *supra protest*, for the honour of *E. F.* the drawer; holding the drawer, and all other proper persons, responsible to the said firm of *C. D. and Company*, for the last-mentioned sum, and for all interest, damages,

Act of Honour.

and for all interest, damages, and expenses; I have, therefore, granted this notarial act of honour accordingly. No. 21.
Act of Honour.

Which I attest,

R. B.

(Seal.)

Notary Public.

ENTRY OR NOTE OF A PROTEST, OF A SHIP.

Note and Entry of the ship *Mary*.

No. 22.

⁽¹⁾ON this day of , in the year of our Lord one thousand eight hundred and , personally appeared and presented himself at the office of Entry or Note
of a Ship
Protest.

R. B. Notary Public, , *C. D.* master of the ship or vessel, the *Mary*, which sailed on a voyage from , on the of last, and arrived at on the of instant, laden with a cargo of . And the said master hereby gives notice of his intention of protesting, and causes this note or minute, of all and singular the premises, to be entered in this register.

C. D.

(1) The above is the common form, and may with ease be altered so as to embrace a note of any special circumstances, or any disputes or difficulties relating to the ship or cargo, which it is thought necessary to mention: they may be noticed at the end, or at the part after mentioning the cargo, and as there can be no difficulty in altering the above form to meet the case, it is not considered necessary to introduce any special form here.

SHIP PROTEST, (COMMON FORM,) IN CONSEQUENCE OF LOSS OR DAMAGE BY STORMS AND TEMPESTUOUS WEATHER, AND ALSO BY JETTISON.

No. 23.

Ship Protest.

By the public instrument of protest hereinafter contained⁽¹⁾;

BE it known and made manifest unto all people, that on the day of in the year of our Lord one thousand eight hundred and , personally came and appeared before *R. B.* Notary Public, duly authorised, admitted, and sworn, residing and practising in , in the county of , in the United Kingdom of Great Britain and Ireland, and also⁽²⁾ a Master Extraordinary of the High Court of Chancery in England, *A. B.* master of the ship or vessel, the *Eleanor Elspit*, belonging to Liverpool, *C. D.* chief mate, and *E. F.* carpenter of the said vessel⁽³⁾, who did severally, duly, and solemnly

(1) *Or*, "BY THIS PUBLIC INSTRUMENT OF PROTEST." See also another form of the commencement, *Infra*, Precedent, No. 37.

(2) If the Notary happen also to be a Master Extraordinary in Chancery, it is very common so to describe him.

(3) The 15th section of the Act 5th and 6th William IV, c. 62, for the Abolition of Unnecessary Oaths, directs, that in a Declaration substituted by it for an Oath or Affidavit, there shall be expressed the addition of the party making the Declaration, and the particular place of his or her abode; but by some strange neglect, it seems never to have occurred to the framers of that clause, that most seafaring men, and also many persons belonging to other classes, have no particular place of abode, and that in such cases it is impossible to comply with the enactment.

declare and state as follows ; that is to say, that these appearers, and the rest of the crew of the said vessel, set sail in her from Calcutta on the 12th of August last, bound on a voyage from thence to Liverpool, laden with a cargo of general goods, the vessel being then tight, staunch, and strong, well manned, victualled, and found, and in every respect fit to perform her said intended voyage. That they proceeded on their voyage with fine weather and variable winds, accompanied occasionally with rain, until the 19th, when they had fresh gales from the south-west, and passing squalls, and a heavy sea running, and they shipped large quantities of water on deck and over all parts of the ship, the vessel plunging the bowsprit end under water ; at noon, being in latitude 14 degrees 22 minutes north, longitude 88 degrees 13 minutes east, they had fresh gales from the south-west by west, with showers of rain ; at thirty minutes past one they got the bowsprit secured, the ship labouring and shipping great quantities of water. On the 20th they had fresh gales and squally weather, accompanied with rain ; at noon they had fresh winds from the south-west, and a heavy sea running, the ship labouring very much, and every attention being paid to the pumps. That they continued on their voyage with variable winds and cloudy weather, accompanied occasionally with rain, thunder, and lightning, but without any extraordinary occurrence, until the 30th of September,

No. 23.

—
Narrative or
Statement of
Facts.

No. 23. when they arrived off the Isle of France, and at
Ship Protest. four, p.m. came to anchor at Port Louis; took
in water there, and on the 3rd of October again
proceeded on their voyage with fine weather,
until the 21st of October, which commenced with
strong winds from the north-west, and a heavy
confused sea, the ship labouring very much.
That they proceeded on their voyage, and on
the 14th of November, at three, p.m. made the
island of St. Helena, bearing north-west by west.
On the 15th, at four, a.m. kept away for the
port; took in water there, and at thirty minutes
past eleven, bore away, and set all possible sail.
That they proceeded on their course, and on the
18th of December, being in latitude 32 degrees
57 minutes north, longitude 33 degrees west,
had fresh gales from west north-west, with cloudy
weather, and frequent showers of rain, the ship
labouring very much, and continually shipping
heavy seas over all, and filling the decks with
water; at fifteen minutes past eleven, a.m. kept
the ship away to go to the eastward of the Azores,
the squalls being very heavy, and the sea con-
tinually breaking over her, and the same bad
weather continued until midnight, with a cross
sea running. On the 19th more moderate, but
at ten, p.m. had freshening winds from the north-
east to north; the gale increasing, at eleven, p.m.
carried away the jib sheet, and tore the sail
nearly all to pieces, before they could stow it.
On the 21st they had more moderate weather,

and proceeded on their voyage. On the 24th they made the island of St. Mary, distant eight leagues. On the 25th the wind increased from the west north-west; at one, a.m. they had strong winds from the westward, accompanied with rain, which carried away the fore topmast studding sail boom; at thirty minutes past two, they had a heavy sea from the north-west; at thirty minutes past seven, a.m. the ship laboured very much, and shipping tons of water on deck, the main deck continually full of water; and they were trying the pumps every opportunity, and pumping every four hours. On the 27th they had steady winds from the south-west, and cloudy weather; at noon, in latitude 41 degrees 27 minutes north, longitude 20 degrees 43 minutes west; at three, p.m. double reefed the fore topsails; at eight they had strong winds, with heavy squalls from the west south-west, the sea getting up considerably; at nine they had tremendous gales from the west south-west, and a heavy sea broke on board, which carried away the long boat and skiff, bulwark rails, stanchions, and swept the decks of spars, and various other articles, and the pumps were instantly set on; at ten, p.m. had tremendous gusts, and a sea broke into the starboard quarter boat, and burst her, and she was necessarily obliged to be cut away. That in the course of the night they were continually pumping, found the ship to make a great deal of water, and on getting a light forward on the main

No. 23.
Ship Protest.

No. 23. Ship Protest. deck, in order to ascertain the extent of the damage, found the deck stove in very badly, and supposed it originated from the force of the boat or spars going overboard; the water still gaining on them, they were obliged to continue at the pumps throughout the night, and they found several stanchions gone on the larboard side, and also all the oars, rudders, and every thing belonging to the long boat and skiff, which had been lashed inside, also six water casks, and six more from the decks, which had been properly lashed; several spars were lost, which were partially washed over the side, and which they were obliged to throw away, not being able to get them in; the best main topmast studding sail, and all the studding sail yards were washed overboard, with all the studding geer, and other ropes, and every light article about the decks, although every thing had been securely lashed before the bad weather commenced. That the 28th commenced with heavy gales from the north-west to north north-west, being in latitude 42 degrees 45 minutes north, longitude 18 degrees west, the ship in the same state as on the preceding day; at daylight, no alteration, the ship a perfect wreck, and they cleared up what spars remained, and secured them, and finding the ship straining exceedingly, and being afraid of losing more stanchions, they were obliged to cut the guns adrift, and put them overboard with the carriages, the shot having previously rolled out of the shot rack overboard,

and they were obliged, in order to lighten the ship, and for the safety and preservation of the vessel, crew, and rest of the cargo, to throw overboard a portion of the cargo, consisting of [*here describe the goods or articles, voluntarily thrown overboard for the common benefit of all concerned,*] which was accordingly done; at noon, they had fresh winds, west by north, and cloudy weather, with a heavy sea running, and still shipping much water on deck, and pumping ship every hour; and during the remainder of the day, they had strong squalls at intervals, until midnight. That they continued on their voyage, generally with strong squalls, fresh gales, and cloudy weather, with hail and showers of rain, accompanied with lightning and heavy seas, and constantly shipping seas, the pumps being attended to every hour, until the 1st of January, when at noon they had fresh winds from the south-west; at ten, p.m. the Skerries light bore east north-east, distant three leagues; at one, a.m. on the 3rd, they rounded the Skerries; at two took a pilot on board; at daylight they made all possible sail for the New Channel, and got into the river Mersey, in the port of Liverpool, at three, p.m. and at six, p.m. they got safely moored in the Prince's Dock. And this appearer, *A. B.* further declares, that on the following day he appeared at the office of the said notary, and caused his protest to be duly noted.

No. 23.
—
Ship Protest.

And these appearers do protest, and I, the said

Protesting
Part.

No. 23. notary, do also protest against the aforesaid bad
—
Ship Protest, weather, gales, storms, accidents, and occur-
rences, and all loss or damage occasioned thereby.
Declaration. We, *A. B.*, *C. D.* and *E. F.* do solemnly and
sincerely declare⁽¹⁾, that the foregoing statement
is correct, and contains a true account of the facts
and circumstances, and we make this solemn
declaration conscientiously believing the same to
be true, and by virtue of the provisions of an
Act made and passed in the sixth year of the
reign of his late Majesty King William the 4th,
intituled, “An Act to repeal an Act of the present
session of Parliament, intituled an Act for the
more effectual abolition of Oaths and Affirmations,
taken and made in various departments of the
state, and to substitute Declarations in lieu thereof,
and for the more entire suppression of voluntary
and extra-judicial oaths and affidavits, and to
make other provisions for the abolition of unne-
cessary oaths.”

*A. B.**C. D.**E. F.*

Attestation.

Thus declared and protested in due form
of law, at L—— aforesaid, the day and
year first before written ; before me,

R. B.

(Seal.)

Notary Public, L——.

(1) Before the Act 5th and 6th William IV, c. 62, Ship Protests
were usually sworn to by the Appeárers.

SHIP PROTEST IN CONSEQUENCE OF A LOSS
BY COLLISION.

No. 24.

By the public instrument of protest hereinafter Ship Protest.
contained⁽¹⁾;

BE it known and made manifest unto all people, that on the day of in the year of our Lord one thousand eight hundred and , personally came and appeared before me, *R. B.* Notary Public, duly authorised, admitted, and sworn, residing and practising in L——, in the county of L——, in the United Kingdom of Great Britain and Ireland, and also a Master Extraordinary of the High Court of Chancery in England, *A. B.* master of the sloop or vessel the *Anne Mary*, belonging to Liverpool, *C. D.* mate, and *E. F.* seaman of the said vessel, who did severally, duly, and solemnly declare and state as follows, that is to say: That on the 1st day of February instant, about half-past three, p.m. these appearers, and the rest of the crew of the said vessel, set sail in her from L——, bound on a voyage to Watchett, near Bridgewater, laden with a cargo of hides, the said vessel being then tight, staunch, and strong, well manned, victualled, and found, and in every respect fit to perform her said intended voyage. And these appearers, the said *A. B.* and *E. F.* for themselves declare and say, that about half-past two, a.m. on the 2nd of February, whilst

Narrative or
Statement of
Facts.

(1) Or, "BY THIS PUBLIC INSTRUMENT OF PROTEST."

R R

No. 24. Ship Protest. the vessel was proceeding on her said intended voyage, the other appearer, the said *C. D.* being below in bed, and the said vessel being between the Great Ormshead and Point Linas, the wind being about east south-east, with moderate weather and smooth water, the vessel running before the wind and steering about west north-west, under all sail, with a square sail and half topsail set; and this appearer *A. B.* being then at the helm, and this appearer, the said *E. F.* being forward, he called out that he saw a light on the starboard bow, and they at first thought that it was Point Linas light, but it afterwards turned out to be the light of the steamer *Vesuvius*. That this appearer, the said *E. F.* immediately went below for a light and brought a lanthorn on deck, and showed the light over the starboard bow, and this appearer, the said *A. B.* put the helm of the *Anne Mary* to starboard until the course was altered, from west north-west to south-west, in order to avoid the steamer. That after so altering their course, this appearer, the said *E. F.* shifted the light from the bow to abaft the rigging on the starboard side, to make it better seen by the crew on board the steamer, and both these appearers, the said *A. B.* and *E. F.* called out to the steamer to starboard her helm, and in about five minutes after the light was shown, the steamer struck the *Anne Mary*, and she went down in a few minutes afterwards. And this appearer, the said *C. D.* for himself declares,

and says that he was below in bed, and was awoke by the said *A. B.* calling out "steamer ahoy," and immediately ran upon deck in his shirt and drawers, and saw the appearer, the said *E. F.* holding a lanthorn on the starboard quarter, and this appearer, the said *C. D.* had not been a minute on deck, before the steamer struck the *Anne Mary*. And these appearers, the said *A. B.* *C. D.* and *E. F.* for themselves declare and say, that immediately after the said *C. D.* came on deck, the steamer struck the *Anne Mary* nearly a-midships, and for the preservation of their lives, these appearers, and another of the crew of the *Anne Mary*, jumped on board the steamer, and arrived back at L——— in her, on the 2nd of February; and on the same day, this appearer, the said *A. B.* appeared at the office of me, the said notary, and caused his protest to be duly noted. And these appearers do protest, and I, ^{Protesting} the said notary, do also protest, against the ^{part.} said steamer, and the said collision, striking, facts, and occurrences, and all loss or damage occasioned thereby.

We, *A. B.*, *C. D.* and *E. F.* do solemnly and ^{Declaration.} sincerely declare, that the foregoing statement is correct, and contains a true account of the facts and circumstances, and we make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty, intituled, "An Act to repeal

No. 24. an Act of the present session of Parliament, in-
 Ship Protest. titled, an Act for the more effectual abolition
 of Oaths and Affirmations taken and made in
 various departments of the state, and to substi-
 tute Declarations in lieu thereof, and for the more
 entire suppression, of voluntary and extra-judicial
 oaths and affidavits, and to make other provisions
 for the abolition of unnecessary oaths."

A. B.

C. D.

E. F.

Attestation.

Thus declared and protested in due form
 of law, at L——— aforesaid, the day and
 year first before written; before me,

R. B.

(Seal.)

Notary Public, L———.

SUPPLEMENTAL SHIP PROTEST, IN CONSE-
 QUENCE OF A LOSS BY COLLISION.

No. 25. By the public instrument of protest hereinafter
 Supplemental Ship Protest. contained⁽¹⁾;

BE it known and made manifest unto all
 people, that on the day of , in the
 year of our Lord one thousand eight hundred
 and , personally came and appeared
 before me, *R. B.* Notary Public, duly authorised,
 admitted, and sworn, residing and practising in

(1) Or, "BY THIS PUBLIC INSTRUMENT OF PROTEST."

L——, in the county of L——, in the No. 25.
 United Kingdom of Great Britain and Ireland, ^{Supplemental}
 and also a Master Extraordinary of the High ^{Ship Protest.}
 Court of Chancery in England, *G. H.* a private
 in her Majesty's twenty-third regiment of fusiliers,
 who did duly and solemnly declare and state
 as follows: that is to say, that this appearer ^{Narrative or}
 being absent on furlough and leave, embarked ^{Statement of}
 about half-past five in the afternoon, on the 1st ^{Facts.}
 of February instant, at Dublin, on board the
 steamer *Vesuvius*, bound from thence to Liver-
 pool. That in the course of the following night,
 this appearer was walking the deck of the said
 steamer, on the fore part of the vessel, on
 the left side, it being then a very dark night,
 and the steamer going against the wind, and this
 appearer saw a light a-head of the steamer, and
 a little to the left of her, and he saw the light
 for three or four minutes, and he heard no orders
 given on board the steamer, but he heard the
 watch on the left side of the steamer shout out
 "a light," and almost instantly after it was
 shouted, the steamer struck a small vessel, which
 appearer was told afterwards was the sloop *Anne*
Mary, and appearer heard a great crash, and
 saw a person who called himself Captain *B.*
 master of the said sloop, and two or three of the
 crew, save themselves by getting on board the
 steamer, and this appearer saw the said sloop go
 down instantly afterwards. Wherefore, I, the ^{Protesting}
 said notary, do protest against the said steamer, ^{part.}

No. 25. — and the said collision, striking, facts, and occurrences, and all loss or damage occasioned thereby.

Declaration. I, *G. H.* do solemnly and sincerely declare, that the foregoing statement is correct, and contains a true account of the facts and circumstances, and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty, intituled, “An Act to repeal an Act of the present session of Parliament, intituled, an Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the state, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.”

G. H.

Attestation. Thus declared and protested in due form of law, at L——— aforesaid, the day and year first before written ; before me,

(Seal.)

R. B.

Notary Public, L———.

ATTESTATION OR CERTIFICATE SUBJOINED TO
A SHIP PROTEST, WHEN THE APPEARER IS
AN ILLITERATE PERSON, AND NOT ABLE TO
WRITE.

No. 26.

Attestation or
Certificate

THUS declared and protested in due form of law at L——— aforesaid, the day and year first

before written, before me, the said notary, the said appearer being an illiterate person, the declaration or protest was first read over in his presence, and he seemed perfectly to understand the same, and made his mark thereto in my presence.

(Seal.)

R. B.

Notary Public, L——.

when the
Appearer
cannot write.

SHIP PROTEST, WHEN BY DECLARATION OR
STATEMENT ANNEXED TO THE PROTESTING
PART, AND TO THE NOTARIAL ATTESTATION. No. 27.

By the public instrument of protest annexed hereto; Ship Protest.

BE it known and made manifest unto all people, that on the day of , in the year of our Lord one thousand eight hundred and , personally came and appeared before *R. B.* Notary Public, duly authorised, admitted, and sworn, residing and practising in L——, in the county of L——, in the United Kingdom of Great Britain and Ireland, and also a Master Extraordinary of the High Court of Chancery in England, *A. B.* master of the ship or vessel the *Eleanor Elizabeth*, belonging to Liverpool, *C. D.* chief mate, and *E. F.* carpenter of the said vessel, who did severally, duly, and solemnly declare and state as follows: that is to say, that [*proceed as in form No. 23.*]

Narrative or
Statement of
Facts.

No. 27.
—
Declaration.

We, *A. B.*, *C. D.* and *E. F.* do solemnly and sincerely declare, that the statement hereunto annexed is correct, and contains a true account of the facts and circumstances; and we make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty King William the 4th, intituled, “ An Act to repeal an Act of the present session of Parliament, intituled, an Act for the more effectual abolition Oaths and Affirmations, taken and made in various departments of the state, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.”

A. B.

C. D.

E. F.

Protesting
part.

The appearers, *A. B.*, *C. D.* and *E. F.* mentioned in the statement and declaration hereunto annexed, have protested, and I, the undersigned *R. B.* Notary Public, of L——, in the county of L——, in the United Kingdom of Great Britain and Ireland, do hereby protest against the bad weather, gales, storms, accidents, and occurrences, mentioned in the statement hereunto annexed, and all loss, injury, or damage whatsoever, occasioned thereby.

Attestation.

Thus declared and protested in due form

of law, at L——— aforesaid, this No. 27.
 day one thousand eight hundred Ship Protest.
 and ; before me,
 (Seal.) *R. B.*
 Notary Public, L———.

SHIP PROTEST, WHEN PRECEDED BY A NOTARIAL CERTIFICATE, FORMING PART OF IT.

No. 28.

To all to whom these presents shall come, I, *R. B.* Notary Public, duly authorised, admitted, and sworn, residing and practising in L———, in the county of L———, in the United Kingdom of Great Britain and Ireland, and also a Master Extraordinary of the High Court of Chancery in England, do hereby certify, that the statement of facts, declaration, and protest, on the other side written, and of which this certificate or attestation forms part, respecting the ship or vessel called the *Mary Anne*, were declared and made in due form of law on the day of the date hereof, and are hereby declared to be duly completed and authenticated by and before me, the said notary.

[*Here add any other circumstances, relating to the vessel, the appearers, or the crew, which it may be advisable that the notary should certify or authenticate.*]

In testimony whereof, I have hereunto
 subscribed my name, and affixed my
 s s

No. 28.
—
Ship Protest.

seal of office, this day of ,
in the year of our Lord one thousand
eight hundred and
(Seal.) *R. B.*
Notary Public, L——.

BY the public instrument of protest hereinafter contained ;

BE it known and made manifest unto all people, that on the day of , in the year of our Lord one thousand eight hundred and , personally came and appeared before me, *R. B.* Notary Public, duly admitted and sworn, residing and practising in L——, in the county of L——, in the United Kingdom of Great Britain and Ireland, and also a Master Extraordinary of the High Court of Chancery in England, *A. B.* master of the ship or vessel the *Mary Anne*, belonging to ,
C. D. chief mate, and *E. F.* carpenter, of the said vessel, who did [*as in form No. 23.*]

Narrative or
Statement of
Facts.

Protesting
part.

Declaration.

And these appearers do protest, and I, the said notary, do also protest against [*as in form No. 23.*]

We, *A. B.*, *C. D.* and *E. F.* do solemnly and sincerely declare, that the foregoing statement is correct, and contains a true account of the facts and circumstances ; and we make this solemn declaration, &c. &c. [*as in form No. 23.*]

A. B.

C. D.

E. F.

Thus declared and protested in due form of law, at L—— aforesaid, the day and year first before written; before me, No. 28.
Attestation.

R. B.

Notary Public.

NOTARIAL CERTIFIED COPY OF A SHIP PROTEST. No. 29.

To all to whom these presents shall come, I Notarial Copy
of a Ship
Protest.
R. B. Notary Public, duly authorised, admitted, and sworn, residing and practising in L——, in the county of L——, in the United Kingdom of Great Britain and Ireland, and also a Master Extraordinary of the High Court of Chancery in England, do hereby certify, that the paper writing hereunto annexed, purporting to be a copy of a protest of the master and part of the crew therein named, of the ship or vessel the Anne, bearing date the day of last, is a true and correct copy of the said protest, the same having been carefully examined and compared with the original protest, which was made and declared before me [*or before C. D. of aforesaid, notary public,*] [*or, as the case may be,* examined and compared with the original draft of the said protest, drawn up, and registered in my office, and which protest was duly made and declared before me, the said notary.]

In testimony whereof, I have hereunto subscribed my name, and affixed my seal of office, this day of ,

No. 29.

in the year of our Lord one thousand
eight hundred and

R. B.

Notary Public, L——.

Notarial Copy
of a Ship
Protest.

No. 30.

Protest.

PROTEST BY SHIPPERS OF GOODS, AGAINST
THE MASTER AND OWNERS OF A VESSEL, IN
CONSEQUENCE OF THE MASTER'S REFUSAL,
AFTER NOTICE, TO SIGN A BILL OF LADING
IN THE CUSTOMARY FORM.

By the public instrument of protest hereinafter
contained⁽¹⁾;

BE it known and made manifest unto all
people, that on the day of , in the
year of our Lord one thousand eight hundred
and , personally came and appeared
before me, *R. B.* Notary Public, duly authorised,
admitted, and sworn, residing and practising in
L——, in the county of L——, in the
United Kingdom of Great Britain and Ireland,
and also a Master Extraordinary of the High
Court of Chancery in England, *G. G.* one of the
firm of *G. G. and Company*, of L——, mer-
chants, the shippers of goods and merchandize
per the ship or vessel the *Frances*, bound on a
voyage from L—— for New York, in the
United States of America, and *C. D.* of L——,
clerk to the said *G. G. and Company*, who

(1) Or, "BY THIS PUBLIC INSTRUMENT OF PROTEST."

did severally declare and state; and first this appearer, the said *C. D.* for himself did declare and state as follows; that is to say, that this appearer did attend for the said *G. G. and Company*, the shippers, and did conduct the delivery on the day of instant, at and alongside of the said vessel the *Frances*, of the goods and merchandize, mentioned in the duplicate [*or copy*] bill of lading after mentioned. That *E. F.* the master of the said ship or vessel, signed and gave a bill of lading, for the seven chests of merchandize therein mentioned, with the words, “one chest in dispute, if on board to be delivered, contents unknown,” written at the foot thereof, and that the said *G. G. and Company* objected to the same; and that this appearer, the said *C. D.* was present, and did see the said seven chests of merchandize carefully delivered, at and alongside the said vessel, at L——— aforesaid, in the usual manner, and left under the charge of the mate and crew thereof; and that on this day of instant, this appearer, the said *C. D.* did deliver to the said *E. F.* a notice and demand, signed by the said *G. G. and Company*, of which a copy is hereunto annexed, but the said *E. F.* refused to comply therewith, or to sign or deliver any other bill of lading, in another form.

No. 30.

—
Protest.

And the appearer, the said *G. G.* for and on behalf of himself and of his said co-partner in trade, under the said firm of *G. G. and Company*,

No. 30.

—
Protest.

and for and on behalf of all other persons who are, or shall or may be interested in the said goods and merchandize, doth declare and protest before me, and I, the said notary, at the request of the said shippers, the said *G. G. and Company*, do protest against the owners and the said master of the said vessel, for and in respect of the said refusal and neglect to sign and give a correct bill of lading, for the said goods, in the usual and customary form, and for and in respect of all fall of markets, loss, damage, or expenses, which the said shippers, or any other person or persons, who is, or are, or shall, or may be interested therein, have or hath incurred, or may incur, by reason of the premises.

*G. G.**C. D.*

Thus protested in due form, at L——
aforesaid, the day and year first before
written ; before me,

(Seal.)

R. B.

Notary Public, L——.

COPY OF THE NOTICE TO THE MASTER REFERRED TO IN THE FOREGOING PROTEST, OBJECTING TO THE QUALIFICATION INTRODUCED INTO THE BILL OF LADING, WITHOUT CONSENT, AND DEMANDING A BILL OF LADING IN THE CUSTOMARY FORM.

To Captain *E. F.* Master of the ship or vessel
called the *Frances*.

No. 30.

WE, the shippers of seven chests of merchandize, on board the *Frances*, for New York, hereby give you notice, that we object to the qualification or exception of "one chest in dispute, if on board to be delivered, contents unknown," added without our consent to the bill of lading, signed by you for the said goods, for New York, and that we hold you and the owners of the vessel, responsible for the value and safety of all and every goods, which we shall prove to have been delivered at the said vessel: and we demand and require you, forthwith to sign and deliver to us a bill of lading for the said goods, in a usual, legal, and customary form, and we give you notice, that in default thereof, we protest against you, and we hold you and the owners of the vessel responsible for all loss, damage, or expenses, by reason of the premises.

Protest.

Noticereferred
to in the fore-
going Protest.

Liverpool, day of 18

G. G. and Co.

PROTEST, BY MERCHANTS, AGAINST THE MASTER AND OWNERS, IN CONSEQUENCE OF THE MASTER NOT PROCEEDING TO SEA AFTER SIGNING BILLS OF LADING.

No. 31.

By the public instrument of protest hereinafter contained;

Protest.

Protest.

BE it known and made manifest unto all people, that on the day of , in the year of our Lord one thousand eight hundred and , personally came and appeared before me, *R. B.* Notary Public, duly authorised, admitted, and sworn, residing and practising in L———, in the county of L———, in the United Kingdom of Great Britain and Ireland, and also a Master Extraordinary of the High Court of Chancery, in England, *A. B.* of L——— aforesaid, merchant, one of the partners composing the firm of *A. B. and Company*, who did duly and solemnly declare and state as follows; that is to say, that this appearer and his co-partner, under their said firm of *A. B. and Company*, did, on the day of last, ship on board the ship or vessel called the *Victoria*, *G. H.* master, at L———, then bound on a voyage from L——— to [*here state the destination, and describe the goods,*] and that the said *G. H.* the master of the said ship, signed the usual bills of lading for the said goods and merchandize, part expressed to be deliverable to order, and the other part to Messrs. of

aforesaid ; and that soon after this
 appearer's said firm shipped the said goods on
 board the said vessel she was ready for sea, and
 that the wind was fair, and she might have
 proceeded on her said voyage on or about
 the day of last, and that vessels
 bound to the same port, as the said vessel, have

sailed since she was ready for sea, but that she has not done so, although this appearer has repeatedly given notice to, and required the said master, to set sail, and proceed with the said vessel, and the said goods, on board, on her said intended voyage to _____, but that she is still lying and remaining in the port of L———. Wherefore, the said appearer, *A. B.* on behalf of himself and his said firm, and for and on behalf of all other persons who are, or shall or may be interested in the said goods, doth protest; and I, the said notary, at his request, do protest against the said master, the crew, and the owner or owners of the said vessel, for all negligence, inattention, and delay, and all fall of market, loss, damage, and expenses, which the said appearer or his said firm, or the owners or consignees of the said cargo or goods, may sustain, or be put unto, in consequence of such delay, matters, and circumstances as aforesaid.

No. 31.

—
Protest.*A. B.*

Thus protested, &c. &c. [*as in No. 30, Attestation.*
page 326.]

(Seal.)

R. B.

Notary Public, L———.

PROTEST, BY MERCHANTS, AGAINST THE MASTER AND OWNERS, IN CONSEQUENCE OF THE INTOXICATION OF THE MASTER, AND OF HIS NEGLECTING TO PROCEED TO SEA AFTER SIGNING BILLS OF LADING.

No. 32.

Protest.

BY the public instrument of protest hereinafter contained ;

BE it known and made manifest unto all people, that on the day of , in the year of our Lord one thousand eight hundred and , personally came and appeared before me, *R. B.* Notary Public, duly authorized, admitted, and sworn, residing and practising in *L——*, in the county of *L——*, in the United Kingdom of Great Britain and Ireland, and also a Master Extraordinary of the High Court of Chancery in England, *C. D.* of *L——* aforesaid, merchant, carrying on business in co-partnership with *E. F.* under the firm of *C. D. and Company*, who did declare and state that he, this appearer, and his said co-partner, under their said firm of *C. D. and Company*, are the shippers of [*here describe the goods*] shipped on board the ship or vessel called the *Elizabeth*, *G. H.* master, bound for Oporto, in Portugal, deliverable to the shippers' order. That the said goods were loaded on board the said vessel on the 1st of instant, on which day during such shipment, he, this appearer, did notify the said shipment to the said master, and did on the 2nd instant, require him to proceed

to sea therewith, in his said vessel, which the said master had agreed on the preceding day to do accordingly. That the wind was then fair for such voyage, and so continued on the 3rd and 4th instant, but the said master neglected to proceed to sea therewith, and the said master was, during the above-mentioned days, repeatedly in a state of intoxication, so as to disqualify him from his said office of master. That he hath signed bills of lading for the said goods, but hath not yet proceeded to sea with the said goods on board. Wherefore, the said appearer, *C. D.* on behalf of himself and his said firm, and for and on behalf of all other persons who are, or shall or may be interested in the said goods, doth protest; and I, the said notary, at his request, do protest against the said master, the crew, and the owner or owners of the said vessel, for all negligence, inattention, drunkenness, and delay before mentioned, and all fall of market, loss, damage, and expenses, which the said appearer, or his said firm, or the owners or consignees of the said cargo or goods, may sustain, or be put unto, in consequence of such delay, matters, and circumstances as aforesaid.

No. 32.

Protest.

C. D.

Thus protested in due form, at L———
aforesaid, the day and year first before
written; before me,

R. B.

(Seal.)

Notary Public, L———.

PROTEST BY THE MASTER OF A VESSEL, FOR
DEMURRAGE, PAYABLE UNDER THE STIPU-
LATIONS OF A CHARTERPARTY.

No. 33.

Protest.

By the public instrument of protest hereinafter contained ;

BE it known and made manifest unto all people, that on the day of , in the year of our Lord one thousand eight hundred and , personally came and appeared before me, *R. B.* Notary Public, duly authorized, admitted, and sworn, residing and practising in L——, in the county of L——, in the United Kingdom of Great Britain and Ireland, and also a Master Extraordinary of the High Court of Chancery in England, *C. D.* master of the ship or vessel the *Sarah*, belonging to the port of , who did declare and state, that he, this appearer, as such master as aforesaid, did, on or about the day of last, let the said ship to freight to *E. F.* of ; and a charterparty of the said vessel for a voyage from to L——, and from thence back to , was entered into, dated on the said day of last, and made between this appearer of the one part, and the said *E. F.* of the other part, for the said voyage, whereby it was, amongst other stipulations, engaged and agreed [*here state the number of days allowed for unloading and re-loading, and the amount per day to be paid for demurrage, as mentioned in the charterparty.*] That this appearer, pursuant to the said charter-

party, did receive on board the said vessel, at
aforesaid, a cargo of lawful goods,
provided and shipped by the agents of the said
E. F. there, and from thence proceeded there-
with on board the said vessel, direct to L——
aforesaid, where she arrived on the day of
instant; and that on the instant,
when the said vessel had been reported, and had
got into a proper berth for discharging, this ap-
pearer gave notice to *G. H. and Company*, the
agents at L——, of the said *E. F.* and to
which agents the said cargo was addressed, that
this appearer was ready to deliver the said
cargo of goods; and that the said agents of
the said freighter caused the discharge of the
said cargo of goods to be commenced, and they
received and took the same from the said vessel,
and then proceeded to put on board the said
vessel another cargo of goods for her voyage
back to aforesaid, but that the agents of
the said freighter did not complete the loading
thereof until the day of instant,
being days beyond the time hereinbefore
mentioned, and allowed in and by the said
charterparty, to the said freighter or his agents,
for discharging and re-loading the said vessel at
L——, as aforesaid, whereby the said freighter
hath become liable to pay demurrage, for such
delay or detention, pursuant to the said charter-
party, for days, at and after the rate of
per day, amounting to the sum of

No. 33.

—
Protest.

No. 33.
—
Protest.

sterling, and which sum, or any part thereof, the said agents of the said freighter have refused to pay. Wherefore, the said appearer, *A. B.* on behalf of the owners of the said vessel, and on behalf of himself as master, doth protest, and I, the said notary, at his request, do also protest against the said freighter, *E. F.* and against his agents, the said *G. H.* and *Company*, and against all and every other person or persons whomsoever responsible, or whom these presents do or may concern, and holding him and them responsible for the breach of the said charterparty, and for all demurrage, loss, damage, wages, and expenses incurred, owing or sustained, or to be incurred or sustained, in consequence of such breach, delay, or detention as aforesaid.

C. D.

Thus protested, &c. &c. [*as in No. 30, page 326.*]

(Seal.)

R. B.

Notary Public, L——.

PROTEST BY THE MASTER OF A VESSEL FOR
DEMURRAGE, AND CONTINUING DETENTION,
AND NEGLECT AND DELAY IN PROVIDING
A CARGO, AND DESPATCHING THE VESSEL
PURSUANT TO A CHARTERPARTY.

No. 34.
—
Protest.

By the public instrument of protest hereinafter contained;

BE it known and made manifest unto all

people, that on the day of , in the year
of our Lord one thousand eight hundred and
 , personally came and appeared before me,
R. B. Notary Public, duly authorized, admitted,
and sworn, residing and practising in L———, in
the county of L———, in the United Kingdom
of Great Britain and Ireland, and also a Master
Extraordinary of the High Court of Chancery
in England, *C. D.* Master of the ship or vessel
the *Anne*, belonging to the port of ,
who did declare and state, that he, this ap-
pearer, as such master as aforesaid, did, on or
about the day of last, let the
said ship to freight to *E. F.* of

*[proceed as in the form No. 33, until after
the statement, that the notice was given to the
freighter's agents, by the appearer, that he
was ready to deliver the cargo of goods,]*
and that the said agents of the said freighter
caused the discharge of the said goods to be
commenced, and received and took the same from
the said vessel, and then proceeded to re-load
and put on board her some other goods, but only
a very small part of such a cargo as she could
conveniently stow and carry for her voyage back
to aforesaid; and that up to the date and
making of these presents they have neglected,
and have not completed the loading of the said
vessel, nor offered nor provided sufficient goods
for that purpose, and they still continue to detain
her, at L———, although the time hereinbefore

No. 34.

—
Protest.

No. 34.

Protest.

mentioned and allowed, in and by the said charterparty to the said freighter or his agents, for discharging and re-loading the said vessel, at L——— aforesaid, is expired, and days over and beyond the time so allowed have already elapsed; and this appearer did further declare and state, that he hath been detained during the said days, and still is detained with his said vessel, at L———, by reason of the said delay and neglect, of the said freighter, and his agents as aforesaid; and that this appearer hath repeatedly, during that time, given notice to and required the said freighter's agents to complete the said loading, and to despatch the said vessel from L———, pursuant to the said charterparty; Wherefore, the said appearer, *C. D.* on behalf of the owners of the said vessel, and on behalf of himself as master, doth protest, and I, the said notary, at his request, do also protest against the said freighter, *E. F.* and against his agents, *G. H. and Company*, and against all and every other person or persons whomsoever responsible, or whom these presents do or may concern, and holding him and them responsible for the breach of the said charterparty, and for all demurrage, loss, damage, wages, and expenses incurred or sustained, or to be incurred or sustained, in consequence of such breach, delay, or detention as aforesaid.

C. D.

Thus protested, in due form, at L———

aforesaid, the day and year first before
written ; before me,

No. 34.

(Seal.)

R. B.

Protest.

Notary Public, L———.

PROTEST BY THE MASTER OF A VESSEL,
AGAINST THE CONSIGNEES OF GOODS, FOR
NOT DISCHARGING AND TAKING THEM FROM
THE VESSEL IN A REASONABLE TIME.

No. 35.

BY the public instrument of protest hereinafter
contained ;

Protest.

BE it known and made manifest unto all
people, that on the day of , in the year
of our Lord one thousand eight hundred and
 , personally came and appeared before me,
R. B. Notary Public, duly authorized, admitted,
and sworn, residing and practising in L———,
in the county of L———, in the United Kingdom
of Great Britain and Ireland, and also a Master
Extraordinary of the High Court of Chancery
in England, *A. B.* master of the ship or vessel
the *Innes*, belonging to the port of , who did
duly and solemnly declare and state as follows :
that is to say, that this appearer did, on or about
the day of last, receive on board the
said vessel, at the port of Dantzic, in the king-
dom of Prussia [*here describe the goods,*] all of
which were shipped on board her there by Messrs.
B. and L. addressed to *C. D.* at L——— afore-
said ; and this appearer duly signed bills of

No. 35. lading as customary, expressing the said goods
Protest. to be deliverable to the said *C. D.* at L——, he or they paying freight for the same, with primage accustomed. That this appearer proceeded with the said goods on board the said vessel direct to L—— aforesaid, where she arrived on the day of instant, and on the day of instant, when the said vessel had been reported, and had got into a proper berth for discharging, this appearer gave notice to the said *C. D.* to whom the said goods were addressed, that this appearer was ready to deliver the said goods; but from that time up to the date and making of these presents, neither the said *C. D.* nor any other person on his behalf, hath received or discharged, or offered to receive or discharge the said goods from the said vessel, or paid or offered to pay the freight and primage thereof, although this appearer is willing and desirous to deliver the said goods; and notwithstanding this appearer hath several times applied to and requested the said *C. D.* to have the said goods discharged from the said vessel, and received by him, yet he still delays and neglects so to do; and that such delay and neglect are unreasonable, and injurious to the interests of the owners and master of the said vessel. Wherefore, the said appearer, *A. B.* on behalf of the owners of the said vessel, and on behalf of himself, as master, doth protest, and I, the said notary, at his request, do also protest against the said *C. D.*

and against all and every other person or persons whomsoever responsible, or whom these presents do or may concern, and holding him or them responsible for all demurrage, loss, damage, wages, and expenses incurred, owing, or sustained, or to be incurred or sustained, in consequence of such unreasonable delay, detention, and circumstances as aforesaid. *A. B.*

No. 35.

Protest.

Thus protested, in due form, at L———
aforesaid, the day and year first before
written; before me,

(Seal.)

R. B.

Notary Public, L———.

FORM OF THE COMMENCEMENT OF A NOTARIAL INSTRUMENT, WHICH CAN BE ADAPTED EITHER TO THE EARLY PART OF A NOTARIAL CERTIFICATE, A SHIP PROTEST, OR AN ACT OF HONOUR.

By this public instrument⁽¹⁾;

No. 36.

BE it known, and made manifest unto all people, that on the day of in the year of our Lord one thousand eight hundred and I, *R. B.*, Notary Public, duly authorized, admitted, and sworn, residing and practising in L———, in the county of L———,

(1) When the above form is used for the commencement of a Ship Protest, the words "*of Protest*" must be inserted after the word "Instrument," thus:

"By this Public Instrument *of Protest*" [*as in Form No. 37.*]

No. 36. — in the United Kingdom of Great Britain and Ireland, and also a Master Extraordinary of the High Court of Chancery in England, do hereby certify, that⁽¹⁾, &c. &c.

No. 37. — THE FOLLOWING IS THE LAST-MENTIONED FORM (NO. 36) ADAPTED TO THE COMMENCEMENT OF A SHIP PROTEST.

By this public instrument *of protest*⁽²⁾;

BE it known and made manifest unto all people, that on the day of in the year of our Lord one thousand eight hundred and , I, *R. B.* Notary Public, duly authorized, admitted, and sworn, residing and practising in L——, in the county of L——, in the United Kingdom of Great Britain and Ireland, and also a Master Extraordinary of the High Court of Chancery in England, do hereby certify, that *A. B.* master of the ship or vessel, the *Eleanor Elspit*, belonging to L——, *C. D.* chief mate, and *E. F.* carpenter of the said vessel, personally came and

(1) When the above form is used for a Notarial Certificate, or an Act of Honour, it may conclude in the usual manner, with the words "Which I attest," or "Quod Attestor;" and with the signature and seal of the Notary.

(2) See Note (1) to Form No. 36, as to the expediency of the addition of the words "*of Protest.*"

appeared before me, and did duly and solemnly
 declare and state as follows, that is to say, [*pro-*
ceed as in form No. 23.]

No. 37.

NOTARIAL CERTIFICATE OF A SURVEY ON A
 SHIP OR GOODS.

No. 38.

To all to whom these presents shall come, Notarial
 I, *R. B.* Notary Public, duly authorized, ad- Certificate of a
 mitted, and sworn, residing and practising in Survey.
 L——, in the county of L——, in the
 United Kingdom of Great Britain and Ireland,
 and also a Master Extraordinary of the High
 Court of Chancery in England, do hereby certify,
 that *A. B.* [*state his trade or occupation,*] *C. D.*
 [*state his trade or occupation,*] and *E. F.* [*state*
his trade or occupation,] all experienced and
 credible persons, personally came and appeared
 at the office of me, the said notary, and each of
 them signed and acknowledged the paper writing
 or certificate of survey, marked A, hereunto
 annexed. That the respective names, “*A. B.*
C. D.” and “*E. F.*” severally subscribed thereto,
 are of the proper hands writing of the before-
 mentioned three persons, and that full faith and
 credit are due to them and to their said certificate
 of survey, respecting the ship or vessel [*or the*
goods therein mentioned per the ship or vessel]
 the Queen Elizabeth.

In testimony whereof, I have hereunto
 subscribed my name, and affixed my

the present month, unless prevented by wind and weather, and then by the next favourable opportunity, set sail and proceed with all possible despatch, and either with or without a cargo, goods, or passengers on board, at the option of the said owner, to Carthagena, with liberty nevertheless to call at Lagaira, as after mentioned; and upon her arrival at Carthagena, shall immediately discharge such outward cargo as may be on board. And being so discharged, and being made ready, tight, staunch, and strong, she shall receive on board her there from the said freighter, his factors or agents, a full and complete cargo of lawful goods and merchandize, not exceeding what she can conveniently stow or carry, as he or they may provide, and send to her. And shall, with the first favourable opportunity of wind and weather, set sail and proceed therewith on board, direct to Liverpool, and there deliver the same to the said freighter, his consignees or agents, in good order and condition as when shipped, (the act of God, dangers of the seas and navigation, restraints of princes and rulers, fire, pirates, enemies, or other inevitable accident, excepted⁽¹⁾,) and so end the said voyage. That the said vessel shall, at the commencement and during the continuance of such voyage, be tight, staunch, and strong, well manned, victualled, found, and provided, with every thing

No. 39.

Charterparty.

(1) Vide Supra, Chap. 7, p. 203 and 204.

- No. 39. necessary for the voyage, (except as aforesaid.)
- Charterparty. That the master and crew of the said vessel shall navigate her with skill and in the usual manner, and give their assistance in loading and discharging, and shall properly stow the cargo. And that the freighter shall be allowed thirty-five lay days in all for loading, to commence at her port, or at each port of loading if more than one, upon her having discharged her outward cargo, and getting into a proper berth, and being reported there, and cease respectively when fully loaded, or when loaded with the part of her cargo to be furnished at each port, so that no more than thirty-five days in all shall be consumed at both ports, and for discharging at Liverpool ten lay days, to commence upon being reported at the Custom-house, and getting into a proper berth, and cease when fully discharged. And it is hereby declared and agreed, by the said parties, that the said owner shall have liberty to send the said vessel on her outward voyage from Liverpool, to call at Laguira, for the purpose of discharging any of her outward cargo, but nevertheless that no time be unnecessarily lost, and that she is to be despatched from thence to Carthagenia with all possible speed. And also that the said freighter shall be at liberty to send the vessel from Carthagenia to Savanilla, and to load her there with the whole or any part of the homeward cargo, and despatch her from thence, if practicable to Liverpool, but if not,

then to proceed to a place of clearance allowed No. 39.
by the government of that country, on the same Charterparty.
terms and conditions. And also [*Any other
covenants or stipulations, on the part of the
owner, may be introduced here.*]

In Consideration whereof, the said freighter hereby engages and agrees with the said owner of the said vessel, that he, the said freighter, or his agents, shall and will as soon as practicable, after the vessel has arrived and discharged at Carthagena, procure and send to be laden on board her, a full and complete cargo of lawful goods, (not exceeding what she can conveniently stow and carry,) and despatch her therewith, and give the requisite instructions, and that within a reasonable time, for her to proceed to Liverpool, and shall there discharge the same. And shall cause the said cargo to be brought within reach of the vessel's tackle, free of expense and risk, it being understood that it is to be discharged, at Liverpool, in the usual manner. And shall and will pay, or cause to be paid, unto the said owner for freight and hire of the said vessel for the said voyage, as follows, viz : —at and after the rate of £2 15s per ton for wood, with £5 per cent. primage, and seven-eighths of a penny per pound for cotton, with £5 per cent. primage, and for other goods composing the cargo in proportion, calculated on the nett weight of the said cargo, at the King's beam, in Liverpool, to be paid as
w w

No. 39. follows, viz :—by as much cash at her port or
 Charterparty. ports of loading as the master may reasonably
 require for necessary disbursements there, the
 same being advanced by the freighter free of
 interest, but subject to all usual charges, and the
 remainder upon delivery of the cargo, by good
 and approved bills upon London, not exceeding
 three months' date ; and in case of the detention
 of the said vessel over and above the days and
 times allowed for loading and discharging as
 aforesaid, the said freighter shall also pay him
 the sum of £5 per day, day by day, for such
 detention. [*Any other covenants or stipulations,
 on the freighter's part, may be introduced here.*]

In Witness whereof, the said parties have
 hereunto subscribed their names.

Signed in the presence of

CHARTERPARTY FOR A VOYAGE TO ST. DO-
 MINGO AND BACK TO A PORT IN ENGLAND,
 SIGNED BY ONE OF THE OWNERS WHEN
 THE VESSEL IS HELD BY TWO OWNERS,
 BEING PARTNERS, IN THE NAME OF THEIR
 CO-PARTNERSHIP FIRM.

No. 40.
 Charterparty. THIS charterparty of affreightment, made this
 day of , one thousand eight hundred
 and , between R. S. for himself and
 his co-partner, carrying on trade at Liverpool,
 under the firm of A. and S. the owners of the
 ship or vessel called the Clare Trafford, now lying
 in the port of Liverpool, of the burthen of 149

register tons, or thereabouts, of the one part, No. 40.
and *J. T.* for himself and co-partners, carrying Charterparty.
on trade at Liverpool, under the firm of *J. T.*
and *Company*, merchants and freighters of the
said vessel, of the other part, Witnesseth, that
for the considerations after mentioned, the said
owners hereby agree to let to freight and charter
unto the said freighters, their executors, admini-
strators, and assigns, and the said freighters ac-
cordingly agree to hire the said vessel, her boats,
tackle, and apparel, (her cabin, and room sufficient
for her crew, tackle, and necessities, excepted,)
for a voyage from Liverpool aforesaid, to Aux
Cayes, in St. Domingo, and at the option of the
said freighter, to any second port there, as herein-
after mentioned, and from thence back to London
or Liverpool, at the option of the freighters, as
after mentioned, on the terms following:—The
said owners agree with the said freighters, that
the said vessel, being forthwith made ready,
tight, staunch, and strong, the master of the
vessel shall receive on board her, at Liverpool,
from the said freighters, their factors or agents,
such a full and complete cargo of lawful goods
and merchandize, not exceeding what she can
conveniently stow and carry, as they may pro-
vide and send to her, and being so laden, shall,
with the first favourable opportunity of wind and
weather, set sail and proceed therewith on board
to Aux Cayes, in St. Domingo, and upon her
arrival there deliver her said cargo, in whole or

No. 40. in part, to the said freighters, their consignees or
Charterparty. agents, in the same order and condition as when
shipped, (the act of God, dangers of the seas and
navigation, restraints of princes and rulers, fire,
pirates, enemies, and other inevitable accidents,
excepted⁽¹⁾); and being so discharged, in whole
or in part, shall receive on board her there, from
the said freighters, their factors or agents, such a
part of her homeward cargo, consisting of coffee,
as they may think proper to load her with, and pro-
ceed therewith, at the option of the said freighters,
to a second port in the island of St. Domingo,
and there complete her delivery, if so required, and
receive on board from the said freighters, their
factors or agents, such cargo as aforesaid, (not
exceeding what she can conveniently stow and
carry,) as they may provide and send to her; and
shall, with the first favourable opportunity of wind
and weather, set sail and proceed therewith on
board direct to London or Liverpool, at the option
of the said freighters, (such port to be notified
before she leaves her last port in St. Domingo,)
and there deliver the same to the said freighters,
their consignees or agents, in the same order and
condition as when shipped, (except as aforesaid,)
and so end the said voyage. That the said vessel
shall, at the commencement and during the con-
tinuance of such voyage, be tight, staunch, and
strong, well manned, victualled, and found and

(1) Vide Supra, Chap. 7, p. 203 and 204.

provided with every thing needful and necessary, (except as aforesaid). That the master and crew of the vessel shall navigate her with skill, and in the usual manner, and give their assistance with the boats in loading and discharging, and shall properly stow such cargoes. And that the said vessel shall be allowed for discharging and loading at such port or ports in St. Domingo, and for discharging at London or Liverpool, in the whole forty running days. And also [*Any other covenants or stipulations, on the part of the owners, may be introduced here.*]

No. 40.
—
Charterparty.

In Consideration whereof, the said freighters hereby agree with the said owners, that they, the said freighters, or their agents, shall and will, as soon as practicable, procure and send to be laden on board her, at Liverpool, a full and complete cargo of lawful goods, (not exceeding what she can conveniently stow and carry,) and despatch her therewith to Aux Cayes, and there discharge the same, and procure and send to be laden on board her at that, or some second port to be chosen as aforesaid, a full and complete cargo of coffee, (not exceeding as aforesaid,) and despatch her therewith, and give the requisite instructions, and that within a reasonable time, and before her leaving her last port of loading in St. Domingo, for her to proceed to London or Liverpool as the case may be, and shall there discharge the same. And shall cause the said cargo to be brought to and

No. 40. taken from alongside the vessel at the respective
Charterparty. ports, at the freighter's expense and risk. And shall and will pay, or cause to be paid unto the said owners, for freight, and hire of the said vessel for the said voyage, as follows, viz : after the rate of £5 per ton of 20 cwt. nett of the cargo to be laden on board for Liverpool or London for coffee in bags, and £5 10s per ton for the same in casks, if the said vessel return to Liverpool, and the same freight if she return to London, together with the difference of port charges, between the Liverpool and London port charges ; the freight to be paid according to the weight, at the weighing at the King's beam ; to be paid as follows, viz : as much cash in St. Domingo as may be required for the vessel's disbursements there, £150 in cash on her arrival at her homeward port of discharge, and the remainder on final delivery, in approved bills, not exceeding three months' date, all free of interest or commission ; and in case of the detention of the said vessel over and above the days and times allowed for loading and discharging as aforesaid, the said freighters will also pay the sum of £5 5s per day, day by day, for such detention. And it is hereby declared and agreed, that the said vessel shall and may, at the freighters' option, and upon the terms, stipulations, and agreements, hereinbefore contained, proceed to and be sent to any third port in St. Domingo, according to the orders of the

freighters or their agents, for the purpose of completing her loading of a full and complete cargo of coffee, but in that case the said freighters shall pay all the charges and expenses to be incurred at such third port, and that the time past, or consumed at such third port, is to be reckoned and included as part of the said forty days so allowed as aforesaid; and it is hereby agreed that the said freighters shall have a cabin passage to and from St. Domingo, for one passenger, the freighters paying for the same. [Any other covenants or stipulations, on the freighters' part, may be introduced here.]

No. 40.

Charterparty.

Witness the hands of the said parties.

Signed in the presence of

CHARTERPARTY (ANOTHER FORM) OF A VESSEL
TO TRIESTE AND BACK TO ENGLAND, SIGNED
BY THE MASTER.

No. 41.

THIS charterparty, made this _____ day
of _____, one thousand eight hundred and _____
_____, between *A. B.* master of the
ship or vessel the *Richard Arnaud*, belonging
to the port of _____, of the burthen per re-
gister of _____ tons, or thereabouts, now lying in
the port of Liverpool, on behalf of the owners of
the said vessel, of the one part, and *C. D.* and
Company, of Liverpool, merchants and freighters,
of the other part; Witnesseth, that it is agreed,
by the master, on behalf of the owners, that the

Charterparty.

No. 41. said vessel being forthwith made ready, tight,
Charterparty. staunch, and strong, shall receive on board from
 alongside, from the freighters or their agents,
 such a quantity of lawful goods and merchandize,
 not exceeding what she can reasonably
 stow and carry, as the freighters or their agents
 shall think proper to put on board, and there-
 upon being despatched, shall proceed to Trieste,
 or as near thereto as she can safely get, and
 there deliver the outward cargo from the ves-
 sel's tackle to the freighters, or their agents.
 And on being discharged, shall take on board
 at Trieste from alongside, from the freighters
 or their agents, such a quantity of lawful
 goods and merchandize, not exceeding what
 she can reasonably stow and carry, as they
 may think proper to put on board there; and
 on being despatched, shall proceed therewith
 according to the orders of the said freighters
 or their agents, (to be delivered in writing
 to the master at Trieste,) either to London,
 Liverpool, or Bristol, and shall, according to
 such orders, deliver at one of those ports the
 said homeward cargo from the vessel's tackle to
 the freighters, or their agents. And it is declared
 that the cabin and state rooms, and sufficient
 room for the cables, ship's stores, provisions,
 and crew, throughout this charterparty are
 excepted.

 In Consideration whereof, it is agreed by the
 freighters, that they or their agents, will provide

and deliver at Liverpool and at Trieste respectively, No. 41.
alongside and within reach of the vessel's tackle, Charterparty.
such goods as they may think proper to put on
board the said vessel at those places, and shall at
Trieste, by themselves or their agents, give the
master directions in writing, whether he shall
proceed to London, Liverpool, or Bristol, and
shall at Trieste, and at London, Liverpool, or
Bristol, according to the orders aforesaid, receive
the said respective cargoes from the vessel's
tackle; And that the freighters shall pay for the
use and hire of the said vessel in respect of the
whole of the said voyage out and home, the sum of
in full, for all freight, primage, pilotage,
pierage, and port charges whatsoever, to be paid
by advancing the master at Trieste cash for the
ship's necessary disbursements there, (not ex-
ceeding £150,) free of interest and commission,
at the current rate of exchange, £ further
part thereof, in cash on the vessel's arrival at the
port of discharge of the said homeward cargo,
and the residue on delivery of the homeward
cargo, by good and approved bills on London,
at not exceeding three months' date. And it is
agreed between the said parties, that the master
shall at Trieste, sign such usual bills of lading
for the cargo put on board there as the freighters
or their agents may direct; And that the master
shall give every assistance to the freighters, with
his boats and crew, in loading and discharging
at the freighters' risk. And it is agreed that the

x x

- No. 41. [—]
Charterparty. freighters shall be allowed seventy running days, for loading the said outward cargo at Liverpool, and for unloading the same, and loading the homeward cargo at Trieste, to be calculated from the day on which the vessel shall be in a proper berth for loading at Liverpool, being in readiness to receive goods, and notice thereof given to the freighters or their agents, and to cease on her being despatched thence, to re-commence on her arrival at a proper place of discharge, at Trieste, being in readiness to discharge, and notice thereof given to the freighters or their agents, and finally to cease on her being despatched on her homeward voyage. And it is also agreed that for every day that the vessel shall be detained beyond the time hereinbefore allowed, for the purposes aforesaid, by default of the freighters or their agents, they shall pay demurrage at the rate of £4 per day, to be paid day by day, as the same shall become due; and also that at the port of discharge in England, the cargo shall be unloaded with all possible speed; and also that the vessel shall, during the whole of the said voyage, be kept by the owners, staunch, strong, and well found and provided with men and mariners, sufficient to navigate her, and with all manner of rigging, boats, tackle, provisions, and appurtenances. And it is declared and agreed that adverse winds, tempestuous weather, fire, the act of God, the dangers and accidents of the seas, and restraints of rulers, princes, and pirates, through-

out all the engagements, as well of the one party as of the other, are excepted⁽¹⁾.—As witness the hands of the parties. No. 41.
Charterparty.

Signed by the said parties, being
 first duly stamped in the pre-
 sence of

BOTTOMRY BOND, (USUAL FORM.)

No. 42.

Bottomry
Bond.

KNOW all men by these presents, that I, *A. B.* master of the ship or vessel called the *Margaret Duchess of Burgundy*, belonging to *Quebec* in *North America*, am held and firmly bound unto *C. D.* of _____, in the county of _____, in the United Kingdom of Great Britain and Ireland, merchant, in the sum of _____ of lawful British money to be paid to the said *C. D.* or his certain attorney, executors, administrators, or assigns, for which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, and also the said ship or vessel, her tackle, apparel, and furniture, and the freight to be earned by her on the voyage after mentioned, firmly by these presents, sealed with my seal.—Dated the _____ day of _____ one thousand eight hundred _____ and _____

(1) Vide Supra, Chap. 7, p. 203 and 204.

No. 42.
—
Bottomry
Bond.

WHEREAS, the said ship or vessel is lately arrived at _____, from Quebec aforesaid, and having on her voyage to the port of _____ sustained damage, and [*here recite clearly, the damage and circumstances giving rise to the occasion of taking up money, on the adventure and risk of the voyage, and advert concisely to the repairs, &c. which have been necessarily had, to enable her to proceed on her voyage,*] and she is now bound for and about to return to Quebec aforesaid, and the said *A. B.* in order to be enabled to pay for the necessary repairs of the said vessel, and her necessary and lawful disbursements and expenses, and to enable him to proceed to sea with her on the said intended voyage, hath requested the said *C. D.* to lend and advance the sum of _____ for the aforesaid purposes, which the said *C. D.* hath accordingly done on the hazard and adventure of the said vessel, on her said intended voyage from _____ to Quebec aforesaid, and the said master, *A. B.* hath taken up the same on the hazard and adventure aforesaid. Now the condition of the above obligation is such, that if the said ship or vessel do and shall, with all reasonable and convenient speed, sail from the port of _____ aforesaid, on the said intended voyage to Quebec, and that without deviation, (the perils, damages, accidents, and casualties of the seas and navigation excepted); and if the above-bounden *A. B.* his heirs, executors, or administrators, or the owners of the said vessel

do and shall, within ten days after the said vessel shall arrive at Quebec aforesaid, well and truly pay or cause to be paid unto the said *C. D.* his agent, attorney, executors, administrators, or assigns, the said sum of _____ of lawful sterling British money, together with _____ pounds sterling per centum, bottomry premium thereon⁽¹⁾, or if on the said voyage the said vessel shall be utterly lost, cast away, or destroyed, in consequence of fire, enemies, men of war, pirates, storms, or other the unavoidable perils, dangers, accidents, or casualties of the seas and navigation, to be sufficiently shown or proved by the said *A. B.* his executors or administrators, or by the owners of the said vessel, their executors or administrators, Then the above written bond or obligation to be void, otherwise to remain in full force and virtue.

No. 42.
—
Bottomry
Bond.

A. B. (Seal.)

Signed, sealed, and delivered, &c.

NOTARIAL CERTIFICATE OCCASIONALLY SUB- JOINED TO THE BOTTOMRY BOND.

To all to whom these presents shall come, I, *R. B.* Notary Public, duly authorised, admitted, and sworn, dwelling⁽²⁾ in _____, in the county of _____, in the United Kingdom of Great

Notarial Certi-
ficate occasion-
ally subjoined
to the Bot-
tomry Bond.

(1) Or, together with Maritime Interest at the rate of £ _____ per centum per annum.

(2) Or, "*practising*," or, "*residing and practising*."

No. 42.
 —
 Notarial Certi-
 ficate occasion-
 ally subjoined
 to the Bot-
 tomry Bond.

Britain and Ireland, do hereby certify, that on the day of the date hereof, I was present, and did see *A. B.* master of the ship or vessel called the *Margaret Duchess of Burgundy*, belonging to *Quebec*, duly sign, seal, and as his act and deed, deliver the paper writing, or bottomry bond on the other side written, in the presence of
 and , both of aforesaid, *clerks to me, the said notary*⁽¹⁾, whose names are thereunto subscribed as witnesses to the execution of the said bond by the said *A. B.* And I do hereby certify, that the names "*A. B.*" and "" thereto respectively subscribed, are of the proper hands writing of the said master, and of the said witnesses.

In testimony whereof, I have hereunto subscribed my name, and affixed my seal of office, this day of , in the year of our Lord one thousand eight hundred and

(Seal.)

R. B.

Notary Public, L———.

BOTTOMRY BOND ON SHIP, GOODS, AND FREIGHT,
 WHEN THE CONTEMPLATED VOYAGE IS TO
 THE UNITED STATES OF AMERICA, BUT THE
 BOND IS ASSIMILATED TO THOSE REQUIRED
 FOR EAST INDIA VOYAGES, BY THE ACT 19TH
 GEORGE 2ND, C. 37, SEC. 5.

No. 43.
 —
 Bottomry
 Bond.

To all to whom these presents shall come, I,

(1) Or whatever else may be the description of the witnesses.

, master of the ship or vessel called the Lady Jane Seymour, of , of the burthen of tons, send greeting ;

No. 43.

—
Bottomry
Bond.

WHEREAS, the said vessel now lies in the port of Liverpool, in Great Britain, and I have been obliged by want of funds, to borrow, and take up at maritime interest on bottomry from , of Liverpool, merchant, the sum of for the necessary and indispensable repairs and supplies of the said vessel in the said port of Liverpool, and to enable her to prosecute her voyage from Liverpool to , in the United States of America.

Now know ye, that in consideration of the sum of sterling to me advanced, and paid by the said before the execution hereof, lent as aforesaid upon the said adventure, upon the said ship and the goods laden or to be laden on board thereof as aforesaid, and the freight thereof upon the said voyage, at the maritime premium of per cent. I, the said , by these presents, do covenant and grant with and to the said , his executors, administrators, and assigns, that the ship or vessel shall forthwith set sail, and without deviation or delay proceed to the port of aforesaid, and there the said voyage shall end ; and I do hereby bind myself, my heirs, executors, and administrators, lands, tenements, goods, and chattels, and especially the said ship, with her tackle, apparel, boats, oars, and appurtenances, and also the said goods and the freight which is or shall become due and payable in

the said ship, freight, and goods, or any of them.
In witness whereof, I, the said master, have here-
unto set my hand and seal, this day of
 , in the year of our Lord one thousand
eight hundred and

No. 43.

Bottomry
Bond.

Signed, sealed, and delivered, &c.

[See Form of Bottomry Bond taken by an Agent set out in the Report of the case of the Hero, 2 Dodson's Adm. Rep. 139.]

NOTARIAL CERTIFICATE OCCASIONALLY SUB-
JOINED TO THE BOND.

ON this day of , in the year of our Notarial Certi-
 Lord one thousand eight hundred and , ficate occasion-
 before me, *R. B.* Notary Public, duly authorized, ally subjoined
 admitted, and sworn, dwelling⁽¹⁾ in L——, to the preced-
 England, personally appeared , master of ing Bottomry
 the ship *Lady Jane Seymour*, mentioned in the Bond.
 foregoing instrument of bottomry, and in my pre-
 sence, and also in the presence of the two credible
 persons, whose names are subscribed thereto
 as witnesses, did duly sign, seal, and execute the
 said instrument of bottomry, and I certify that
 the name , set opposite the seal thereof is
 of the proper hand writing of the said master.

In testimony whereof, I have hereunto
subscribed my name, and affixed my seal
of office, this day of , one
thousand eight hundred and

(Seal.)

R. B.

Notary Public, L_____.

(1) Or, "*residing and practising.*"

FORM OF A RESPONDENTIA BOND ON A VOYAGE
TO THE EAST INDIES⁽¹⁾.

No. 44.

—
Respondentia
Bond on a
voyage to the
East Indies.

KNOW all men by these presents, that we, James Peter Fearon, commander of the ship *Belvidere*, in the service of the Honourable East India Company, and Peter Douglas, of Fitzroy-square, are held and firmly bound to Hans Busk, of New Broad-street, London, merchant, in the sum or penalty of one thousand five hundred pounds, of good and lawful money of Great Britain, to be paid to the said Hans Busk, or to his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves jointly and separately, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this
day of _____, in the year of our Lord
one thousand eight hundred and

WHEREAS, the above-named Hans Busk has, on the day of the date above written, advanced and lent unto the said James Peter Fearon and Peter Douglas, the sum of seven hundred and fifty pounds, upon the goods and merchandizes, and effects laden, and to be laden on board the good

(1) The above Form of a Respondentia Bond is from Abbott on Shipping, 4th edition—Appendix, No. 3, p. 497.

ship or vessel called the *Belvidere*, of the burthen of 987 tons or thereabouts, now riding at anchor in the river of Thames, outward bound to China, and whereof James Peter Fearon is commander, by his acceptance of a bill of exchange to that amount, at four months' date, for the account of them, the said James Peter Fearon and Peter Douglas.

No. 44.
—
Respondentia
Bond.

Now the condition of this obligation is such, that if the said ship or vessel do and shall, with all convenient speed, proceed, and sail from and out of the said river of Thames on a voyage to any port or place, ports or places, in the East Indies, China, Persia, or elsewhere, beyond the Cape of Good Hope, and from thence do and shall sail, return, and come back into the said river of Thames, at or before the end and expiration of thirty-six calendar months, to be accounted from the day of the date above written, and there to end her said intended voyage, (the dangers and casualties of the seas excepted,) and if the said James Peter Fearon and Peter Douglas, or either of them, their, or either of their heirs, executors, or administrators, do and shall within thirty days next, after the said ship or vessel shall be arrived at her moorings, in the said river of Thames, from her said intended voyage, or at or upon the end and expiration of the said thirty-six calendar months, to be accounted as aforesaid, (which of the said times shall first and next happen,) well and truly pay or cause to be paid unto the said

No. 44.
—
Respondentia
Bond.

Hans Busk, his executors, administrators, or assigns, the full sum of one thousand and twenty pounds, of lawful money of Great Britain, together with thirteen pounds ten shillings of like money per calendar month, for each and every calendar month, and so proportionably for a greater or lesser time than a calendar month, for all such time, and so many calendar months as shall be elapsed and run out of the said thirty-six calendar months, and over and above twenty calendar months, to be accounted from the day of the date above written; or if in the said voyage, and within the said thirty-six calendar months, to be accounted as aforesaid, an utter loss of the said ship or vessel by fire, enemies, men of war, or any other casualties shall unavoidably happen, and the said James Peter Fearon and Peter Douglas, their heirs, executors, or administrators, do and shall within six calendar months next, after such loss, well and truly account for, (upon oath, if required,) and pay unto the said Hans Busk, his executors, administrators, or assigns, a just and proportionable average on all the goods and effects of the said James Peter Fearon, carried from England on board the said ship or vessel, and the nett proceeds thereof, and on all other goods and effects which the said James Peter Fearon shall acquire during the said voyage, for or by reason of such goods, merchandizes, and effects, and which shall not be unavoidably lost, then the above written obligation to be void and

of none effect, else to stand in full force and virtue. No. 44.

Respondentia
Bond.

Signed, sealed, and delivered,
(being first duly stamped) in }
the presence of }

AVERAGE AGREEMENT.

No. 45.

ARTICLES of Agreement entered into this
day of , in the year
one thousand eight hundred and
between *A. B.* master of the ship or vessel
the *Alexander*, belonging to ,
of the one part, and the several persons
whose names are hereunto subscribed of
the other part ;

Average
Agreement.

WHEREAS, the said ship or vessel *Alexander*,
having, on the day of last, sailed
from , bound on a voyage from thence
to , laden with a cargo of , and
having, in the prosecution of such voyage, en-
countered stormy and tempestuous weather, the
said vessel labouring very hard and driving fast
on shore, the crew were obliged for the safety
of the vessel and cargo to [*here must be recited,
clearly and carefully, the facts and occurrences
which gave rise to the general average, in order
to show that the sacrifice and expenses were for*

No. 45. *the benefit of all concerned, and that the parties*
Average *are liable, in point of law, to contribute pro ratâ*
Agreement. *to the general average ;]* whereby, or in consequence of the premises, considerable loss has been sustained, and considerable expenses, disbursements, and charges have been or may be incurred, the amount whereof cannot, at present, be sufficiently ascertained, and which may form a charge on the vessel, freight, and the goods laden on board, or may come under the denomination of a general average, to which the said parties of the second part being respectively owners, or consignees, or agents of owners or consignees of the goods laden on board, may be liable to contribute.

Now these articles witness, that in consideration of the engagements and agreements of the said parties of the second part, hereinafter contained, the said *A. B.* for himself separately and individually, and also for the owners of the said vessel, agrees with each of the said parties respectively of the second part, that he, the said *A. B.* or the said owners shall and will deliver, or cause to be delivered, as soon as can be reasonably done, at the port of aforesaid, and on reasonable request, the respective goods, wares, and merchandize, so laden on board the said vessel, and belonging, or consigned, respectively unto the several parties of the second part, or their agents, or assigns, and permit them to take, and remove the same respectively

according to their respective rights, positions, or ownerships thereof, (the dangers and casualties of the seas, rivers, and navigation, restraints of princes and rulers, fire, pirates, enemies, or other inevitable accident not preventing.) In consideration whereof, the said parties of the second part hereby for themselves, severally and respectively, and not jointly, personally engage and agree with the said master, *A. B.* individually, and also engage and agree with the owners of the said vessel, to pay or cause to be paid unto the said *A. B.* or as may be required unto the owners of the said vessel, or their agents, the proper and respective proportions of the said general average loss, and expenses, in respect of their respective goods, and all legal charges, salvage, and other expenses, to which they are or shall be respectively liable, or which the cargo ought to bear under the aforesaid circumstances, rateably, and in fair proportions; And for the better computing the same, they, the said parties hereto respectively agree to refer the amount and proportions thereof, to be ascertained and adjusted by *C. D.* of aforesaid, insurance broker, and whose decision and adjustment in the premises they hereby respectively agree to abide by and perform. Witness the hands of the said parties hereto.

POWER OF ATTORNEY TO ACT ABROAD, COLLECT DEBTS, REFER TO ARBITRATION, COMPROMISE, RELEASE, PROSECUTE ACTIONS, SUITS, ATTACHMENTS, &c. IN FOREIGN COURTS OF JUDICATURE, AND WITH A POWER OF SUBSTITUTION.

No. 46.

Power of
Attorney.

KNOW all men by these presents that *we*⁽¹⁾, *A. B. and C. D.* of _____, in the county of _____, in the United Kingdom of Great Britain and Ireland, merchants and co-partners, carrying on business under the firm of *A. B. and Company*, do jointly, and each of us doth separately, hereby make, constitute, and appoint, and in our and each of our place, depute *E. F. and G. H.* of _____, in _____, merchants, our, and each of our true and lawful attorneys and attorney, agents and agent, jointly, and each of them separately, for us and each of us⁽¹⁾, and in our and each of our names or name, and also for and in the name of the survivor of us, to collect, sue for, and receive of and from _____, and of and from any other person or persons whomsoever liable in that behalf, in _____ aforesaid, or elsewhere in _____, all sum and sums of money, debts, goods, property and effects, which now is or are, or which hereafter may be owing, payable, or belonging to us or either of us; and to state,

(1) If the power be from or to one person only, the form must be altered accordingly.

No. 46.

—
Power of
Attorney.

settle, and adjust all accounts, differences, disputes, and demands respecting the same; and in case of need to leave any disputes to reference, to appoint an arbitrator or arbitrators, to subscribe, sign, seal, or execute any agreement of reference or arbitration bond, and to obey any award in the premises; and to compound with the said _____, and any other debtor or debtors, to accept part for the whole, to sign and duly execute any composition or trust deed, letter of licence or other instrument relating thereto. And upon receipt of any sum or sums of money, or delivery of any goods, property, or effects, for *us and each of us*, and in *our and each of our names or name*, receipts, acquittances, releases, or other sufficient discharges, to sign, seal, or execute. And for *us and each of us*, and in *our or each of our names or name*, as occasion may require, to commence and prosecute any action or actions, suit or suits, or other proceedings at law or in equity, in any Court or Courts. And by all lawful ways and means to attach, seize, or arrest the persons, monies, goods, debts, estate, or effects of the said _____, and any other debtor or debtors, or other person or persons liable in that behalf, wheresoever the same may be, according to the laws or customs of the place or places; and to proceed therein in every respect, so as to obtain effectual payment and delivery thereof. And to act in the premises

z z

No. 46.
—
Power of
Attorney.

from time to time as effectually as if *we and each of us* were personally present and did the same. And as may be found expedient to prosecute any such proceedings to judgment, or to suspend, or put an end thereto, in any stage. And to appear to, answer, and defend any action or actions, suit or suits, respecting the premises. And *we, and each of us*, hereby give to our said *attorneys and attorney, jointly, or either of them separately*, full power to nominate and appoint one or more substitute or substitutes, attorney or attorneys, agent or agents under *them or him* for all or any of the purposes aforesaid, and the same to revoke and again re-appoint, and another or others in their or his stead to depute, which nomination or substitution shall continue, notwithstanding *our said attorneys or attorney* should die or leave aforesaid. And *we* do hereby give to *our said attorneys and attorney, jointly or either of them separately*, and to *their and his* substitute or substitutes *our and each of our* full authority in the premises; HEREBY confirming whatsoever shall be lawfully done in the premises, by virtue hereof.—IN WITNESS whereof, *we* have hereunto set and affixed *our hands and seals*, at aforesaid, this day of , in the year of our Lord one thousand eight hundred and

Signed, sealed, and delivered, }
 (being first duly stamped,) in }
 the presence of }

POWER OF ATTORNEY, FROM ONE OF THE PARTNERS IN A FIRM, TO A PERSON IN ENGLAND, TO ACT IN THIS COUNTRY, FOR THE FORMER, IN HIS INDIVIDUAL CAPACITY, AND ALSO FOR HIS CO-PARTNERSHIP FIRM DURING HIS ABSENCE.

No. 47.

Power of Attorney.

To all to whom these presents shall come, I, *A. B.* of L——, in the county of L——, in the United Kingdom of Great Britain and Ireland, merchant, a partner in the firm of *B. D. and Company*, of L—— aforesaid, send greeting ;

WHEREAS, I, the said *A. B.* now carry on business at L—— aforesaid, in co-partnership with *C. D.* of the city of New York, in the United States of America, under the firm of *B. D. and Company*, and I am desirous of appointing *E. F.* of L—— aforesaid, merchant, my attorney and agent, and the attorney and agent of my said firm, to act for me individually, and also as far as can be lawfully and correctly done for my said firm, for the purposes after mentioned, from time to time, whenever I may be absent from Great Britain.

Now know ye, that I, the said *A. B.* for and on behalf of myself individually, and also as a co-partner in business with the said *C. D.* trading under the said firm of *B. D. and Company*, do hereby make, constitute, and appoint, and in my place, and in the place of my said firm, put and depute the said *E. F.* my true and lawful

No. 47.
—
Power of
Attorney.

attorney and agent, for me individually, and in my individual name or capacity, and also as a partner in the said firm, and for and on behalf of and in the name of the said firm, as occasion may require, to [*Here must be stated fully and carefully, the various powers and authorities, which it is intended to delegate to the agent, by the power of attorney, and it may proceed as follows:*] and to do, act, and transact all other matters and things which may be necessary in Great Britain and Ireland, and any of the adjacent British islands, in respect of the mercantile business or affairs of myself individually, or as a partner as aforesaid in the said firm; and generally to act for me, and also for my said firm, in the premises from time to time, as effectually as if I were personally present and did the same; and to commence, prosecute, appear to, or defend any action or actions, suit or suits at law or in equity, for or on behalf of me, or for and on behalf of me and my said partner jointly, or against me, or against me and my said partner jointly, respecting any of the premises. And I hereby give to my said attorney, full power to [*it is usual to give the agent a power of substitution, and it is generally introduced here. See form of it in No. 46, p. 370:*] And I do hereby give to my said attorney or agent, and to his substitute or substitutes, my full authority in the premises; hereby confirming, whatsoever shall be lawfully done in the premises, by virtue hereof. IN WITNESS whereof, I have

hereunto set and affixed my hand and seal, at
 L—— aforesaid, this day of , in the
 year of our Lord one thousand eight hundred and
 A. B. (Seal.)

No. 47.

—
 Power of
 Attorney.

Signed, sealed, and delivered, }
 (being first duly stamped,) in }
 the presence of }

POWER OF ATTORNEY, FROM A MERCHANT
 ABOUT TO GO ABROAD, AUTHORISING PER-
 SONS TO CARRY ON HIS BUSINESS, AND TO
 ACT FOR HIM IN HIS MERCANTILE AFFAIRS
 IN THE UNITED KINGDOM.

No. 48.

—
 Power of
 Attorney.

To all to whom these presents shall come, I,
F. M. of L——, in the county of L——,
 in the United Kingdom of Great Britain and
 Ireland, merchant, send greeting ;

WHEREAS, I, the said *F. M.* am desirous of
 appointing *J. R.* and *J. B.* both of L——
 aforesaid, my attorneys and agents, jointly and
 severally, to act for me in my mercantile affairs
 during my absence, from time to time, from
 England, and for the purposes after mentioned.

Now know ye, that I, the said *F. M.* do hereby
 make, constitute, and appoint, and in my place,
 and in my absence, from time to time, depute
 the said *J. R.* and *J. B.* my true and lawful at-
 torneys and attorney, agents and agent, jointly
 or either of them separately, for me and in my
 name, to contract for, buy, and sell, pledge, and

No. 48. [—]
Power of
Attorney. deposit goods, wares, and merchandize; and also to sell ships or vessels, or shares of ships or vessels belonging to me, or in which I may be interested; and to effect insurances on ships, goods, freights, or other interests; and to let to freight, and also to hire and charter ships or vessels; to load, ship, consign, receive, and take possession of goods and merchandize; and also to sign, seal, or execute all bills of sale or transfers of vessels, or shares of vessels, and charterparties, and all bonds, deeds, or instruments, at the customs, excise, or elsewhere, respecting any goods, wares, or merchandize, or the importation or exportation thereof; and to sign, seal, or execute all and every usual and customary mercantile transfers, contracts, engagements, guarantees, or undertakings, which I, the said *F. M.* from time to time, may, or might be called upon, or required to sign or execute; and to draw, indorse, and accept any bill or bills of exchange, or promissory note or notes, incident to or requisite in respect of my business as a merchant; and to carry on and conduct my said mercantile business; and to do, act, and transact all other matters, things, and ceremonies, which may be requisite or necessary in Great Britain or Ireland, or any of the adjacent British islands, in respect of my mercantile business, or affairs as a merchant. And also to [*Here must be stated fully and carefully, the power to prosecute and defend actions and suits,*

and any other powers and authorities, which it is intended to delegate to the agent by the power of attorney.]—IN WITNESS whereof, I have hereunto set and affixed my hand and seal at L_____aforesaid, this day of , in the year of our Lord one thousand eight hundred and
F. M. (Seal.)

No. 48.
—
Power of
Attorney.

Signed, sealed, and delivered, }
(being first duly stamped) in }
the presence of }

POWER OF ATTORNEY TO TRANSFER AMERICAN STOCK.

No. 49.

ON this day, the _____ of _____, in
the year of our Lord one thousand eight hundred
and _____, before me, *R. B.* of
L_____, Notary Public, by royal authority,
duly admitted and sworn, and in presence of
the undersigned witnesses, appeared *A. B.*
Esquire, of _____, in England, merchant,
who hath made, ordained, constituted, and ap-
pointed

Power of Attorney.

_____, his true and
lawful attorn
for him, and in his name to transfer

one hundred shares by two certificates, Nos. 8569 and 8570, for fifty shares each unto him, the said

No. 49.
—
Power of
Attorney.

constituent belonging, in the capital stock of the bank of the United States, at Philadelphia, and standing in his name on the books of the said bank, and to make and execute all necessary acts of assignment and transfer thereof, with power to the said attorn

to substitute an attorney or attorneys, under for all or any of the purposes aforesaid, and to do all lawful acts for effecting the premises, hereby ratifying and confirming whatever the said attorn

, substitute or substitutes, shall lawfully do or cause to be done therein, by virtue of these presents.—IN WITNESS whereof, *A. B.* Esquire, the constituent above named, hath signed, sealed, and acknowledged this letter of attorney to be his act and deed before me, the said notary, and I have hereunto set my hand and caused my notarial seal of office, to be hereto affixed, the day and year first above written.

Witnesses,

C. D.

E. F.

A. B. (Seal.)

Quod attestor,

R. B.

(Seal.)

Notary Public.

CERTIFICATE OF TWO MERCHANTS ENDORSED
UPON THE PRECEDING POWER OF ATTORNEY.

WE, the underwritten, do hereby certify to whom it may concern, that Mr. *R. B.* who hath passed and signed the foregoing letter of attorney, is a sworn public notary, practising in this town, and

that to all acts by him so signed, full faith and credit ought to be given in judicature, and there-out.—Witness our hands, in Liverpool, the day of _____, 18

G. H. of Liverpool, merchant.

J. K. of Liverpool, merchant.

No. 49.

—
Power of
Attorney.

POWER OF ATTORNEY TO TRANSFER AMERICAN STOCK. (ANOTHER FORM.)

No. 50.

KNOW all men by these presents, that I, *A. B.* of L——, merchant, do hereby make, ordain, constitute, and appoint

—
Power of
Attorney.

my true and lawful attorn

for me and in my name, to transfer

sixty-eight shares, by three certificates, No. 8565 and 8566, for twenty-five shares each, and No. 8571, for eighteen shares unto me belonging, in the capital stock of the bank of the United States, at Philadelphia, and standing in my name on the books of the said bank, and to make and execute all necessary acts of assignment and transfer thereof, with power to the said attorn

to substitute any attorney or attorneys under _____, for all or any of the purposes aforesaid, and to do all lawful acts requisite for effecting the premises; hereby ratifying and con-

A A A

foregoing act is a sworn public notary, practising in this town, and that to all acts by him so signed and passed, full faith and credit are and ought to be given in judicature, and thereout.—IN WITNESS whereof, we have hereunto set our hands, at L——, the day of , one thousand eight hundred and

C. D.

E. F.

No. 50.

Power of Attorney.

POWER OF ATTORNEY TO TRANSFER AMERICAN STOCK WHEN STANDING IN THE NAME OF A FIRM.

No. 51.

ON this day, the _____ of _____ in the year
of our Lord one thousand eight hundred and
_____, before me, *R. B.* of _____ in
England, Notary Public, by royal authority, duly
admitted and sworn, and in the presence of the
undersigned witnesses, appeared Messieurs *A. &
S. R. and Company*, of _____ aforesaid, who
have made, ordained, constituted, and appointed

Power of Attorney.

[illegible]

fifty shares, by
a certificate, No. , fifty shares by a
certificate, No. , fifty shares
by a certificate, No. , forty-nine shares by a
certificate, No. , and one
share by a certificate, No. , unto
them the said constituents belonging, in the

No. 51.

—
Power of
Attorney.

capital stock of the bank of the United States, at New York, (being in all two hundred shares, unto them the said constituents belonging,) and standing in their names in the books of the said bank, and to make and execute all necessary acts of assignment and transfer thereof, with power to the said attorn , to substitute an attorney or attorneys, under for all or any of the purposes aforesaid; and to do all lawful acts for effecting the premises; hereby ratifying and confirming whatsoever the said attorn , substitute or substitutes, shall lawfully do or cause to be done therein, by virtue of these presents.—IN WITNESS whereof, *W. H.* a partner, in the house of *A. & S. R. and Company*, the constituents above named, hath signed, sealed, and acknowledged, this letter of attorney to be his and their act and deed, before me, the said notary; and I have hereunto set my hand and caused my notarial seal of office to be hereto affixed, the day and year first above written.

Witnesses,

C. D. *A. & S. R. & Company.* (Seal.)*E. F.* Quod attestor,

(Seal.)

R. B.

Notary Public, L——.

CERTIFICATE TO FOLLOW THE ABOVE POWER OF
ATTORNEY TO TRANSFER AMERICAN STOCK.

WE, the undersigned, do hereby certify, to whom it may concern, that *R. B.* who hath passed and

signed the foregoing letter of attorney is a sworn public notary, practising in this town, and that to all acts by him so signed, full faith and credit ought to be given in judicature, and thereout.—

WITNESS our hands, in _____, the
day of _____, in the year one thousand eight
hundred and _____

G. H.

Notary Public.

J. K.

Notary Public.

No. 51.

—
Power of
Attorney.

POWER OF ATTORNEY TO TRANSFER FRENCH
STOCK.

No. 52.

PAR devant moi *R. B.* Notaire Public, et
royal⁽¹⁾, à Liverpool, comté de Lancaster, en
Angleterre, par autorité royale, duement admis et
juré, et en presence des temoins soussignés, Fut
present Monsieur *T. P.* demeurant en cette ville
de Liverpool, lequel a par ces présentes fait et
constitué pour _____ procureur gene-
ra et specia

—
Power of
Attorney.

au quel il donne pouvoir de pour lui et en son

(1) The French Notaries are accustomed to the use of the word Royal; and as it is a harmless addition to the Title of a Notary, and is often expected to appear in Notarial Documents going to France, and meets their ideas, it is not unfrequently introduced into Notarial Instruments made here, and intended to be sent to France; it is also occasionally used in Notarial Instruments going to other Foreign Countries.

No. 52. nom céder et transferer à

—
Power of
Attorney.

la somme de quatre mille trois cents Francs de
rentes cinq pour cent consolidés, inscrite sur le
Grand Livre de la dette publique du Gouverne-
ment Français inscription

au nom du comparant, et qui lui appartient, à cet
effet passer et signer tous transferts, fixer toutes
epoques des jouissance, recevoir le prix de
transferts, donner toutes quittances et décharges
valables, signer et emarger tous registres et
feuilles de payement, substituer, et generalement
faire tout cequi sera necessaire, promettant
l'avouer; Fait et passé à Liverpool, le
jour de Decembre, Mil huit Cent quarante
en presence de *C. D.* et *E. F.* tous deux demeurans
en cette ville, temoins à ce requis, qui ont signès
avec le comparant et moi notaire, après lecture.

Temoins }

C. D.

E. F.

(Seal.)

T. P.⁽¹⁾

Quod attestor,

R. B.

Notaire Public.

(1) A seal is often placed opposite the Appearer's name, but there does not appear to be any certain rule in that respect. Every part ought to be written in French except names of persons and places. The fly sheet must not be torn off or written upon. It is not requisite or usual to add the residence or occupations of the Witnesses.

COMMENCEMENT AND CONCLUSION OF A POWER
OF ATTORNEY, TO ACT IN FRANCE, HOL-
LAND, BELGIUM, AND VARIOUS OTHER PARTS
OF EUROPE.

No. 53.

—
Power of
Attorney.

PAR devant moi *R. B.* Notaire Public et royal⁽¹⁾,
à L——, en Angleterre, et en présence des
Temoins soussignés, a comparu *G. E. B.* demeu-
rant à L——, lequel a par ces presentes fait
et constitué *M. A. M. W.* demeurant à *A.*

auquel il donne pouvoir de pour lui et en son nom
représenter sa personne, et

[*Here state the various functions and powers
which it is intended to authorise the agent to
exercise.*]

Nommer constituer tous avoués, avocats ou
défenseurs, arbitres, surarbitres, experts et tiers
experts, substituer une ou plusieurs personnes
en tout ou en partie des presents pouvoirs, les
revoquer, en substituer d'autres, et généralement
faire tout ce qui sera nécessaire, ou que le con-
stituant jugera convenable à l'effet des presentes,
promettant l'avouer.

Fait à L——, ce vingt un Janvier, Mil huit
cent quarante

G. E. B. (Seal.)

Temoins
 W. W. E. }
 A. B. } (Seal.)

Quod attestor,
 R. B.
 Notaire Public.

(1) Vide Note (1), to Form No. 52, p. 381.

DECLARATION MADE BEFORE A MAYOR, OR A JUSTICE OF THE PEACE, OR A NOTARY, BY AN ATTESTING WITNESS OF THE DUE EXECUTION OF A POWER OF ATTORNEY, DEED, OR OTHER INSTRUMENT.

No. 54.

Declaration. Borough of L——.

I, _____ of L——, in the county of _____, and United Kingdom of Great Britain and Ireland, _____, do solemnly and sincerely declare, that I was present and did see _____ duly sign, seal, and as his act and deed deliver the paper writing, or *power of attorney* hereunto annexed, and that the name _____ thereto subscribed is of the proper handwriting of the said _____, and that the names _____ and _____ thereto subscribed, as the witnesses thereto, are of the proper handwriting of this declarant, and of _____, of _____ aforesaid, _____ respectively; and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his Majesty King William the Fourth, intituled, “An Act to repeal an Act of the present session of Parliament, intituled, an Act for the more effectual abolition of Oaths and Affirmations, taken and made in various departments of the state, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and

extra-judicial oaths and affidavits; and to make other provisions for the abolition of unnecessary oaths.”

No. 54.

Declaration.

Declared at L——— aforesaid,
 the day of , one
 thousand eight hundred and
 Before me,
 C. D.

Mayor of L———.

Or if it be declared before a Justice of the Peace who is not a Mayor, or before a Notary, add after his name the words “a Justice of the Peace for the County of L———,” or “for the Borough of L———,” or “Notary Public, L———,” as the case may be.

MAYOR'S CERTIFICATE TO ACCOMPANY THE
 PRECEDING DECLARATION OF ITS HAVING
 BEEN MADE BEFORE THE MAYOR.

No. 55.

Mayor's
 Certificate.

To all to whom these presents shall come, I,
 Mayor of the borough and
 town of L———, in the county of L———,
 and United Kingdom of Great Britain and Ire-
 land, and also one of her Majesty's Justices of the
 Peace in and for the said borough, do hereby
 certify, that on the day of the date hereof,
 personally came and appeared before me,
 , of L——— aforesaid,

the declarant, named in the declaration on the
 other side written, being a person well known

B B B

No. 55. and worthy of good credit, and by solemn declaration which he then took before me, he did
 — Mayor's
 Declaration. solemnly and sincerely declare to be true, the several matters and things mentioned and contained in the said declaration.

In faith and testimony whereof, I, the said Mayor, have caused the seal of mayoralty of the said borough and town, to be hereunto put and affixed, and the power of attorney mentioned and referred to, in the said declaration to be hereunto annexed.
 Dated at L——, the day
 of , in the year of our
 Lord, one thousand eight hundred and

(Seal.)

NOTARIAL CERTIFICATE, THAT A DECLARATION
 SUBSTITUTED FOR AN OATH WAS MADE BE-
 FORE A MAYOR, OR A JUSTICE OF THE
 PEACE.

No. 56.

—
 Notarial
 Certificate.

⁽¹⁾To all to whom these presents shall come, I,
R. B. Notary Public, duly authorized, admitted,
 and sworn, residing and practising in L——,
 in the county of L——, in the United
 Kingdom of Great Britain and Ireland, and also
 a Master Extraordinary of the High Court of
 Chancery, in England, do hereby certify, that

(1) Or commence and conclude as in the form of Certificate No.
 36, p. 339.

W. J. the person named in the paper writing, or declaration *on the other side written*⁽¹⁾, did duly and solemnly declare to the truth thereof on the day of the date thereof, before *J. A.* Esquire, *Mayor of the borough and town of L——* *aforsaid, and also*⁽²⁾ one of her Majesty's Justices of the Peace in and for the borough and town of *L——* *aforsaid, and that the names "J. A."* and "*W. J.*" thereto subscribed, are of the respective proper handwriting of the said *J. A.* and *W. J.* and that to all acts by him the said *J. A.* done, in his said capacity or office, full faith and credit are due in judicature and thereout.

No. 56.
—
Notarial
Certificate.

In testimony whereof, I have hereto subscribed my name, and affixed my seal of office, this day of ,
in the year of our Lord one thousand
eight hundred and

(Seal.)

R. B.

Notary Public, *L——*.

NOTARIAL CERTIFICATE OF A DECLARATION
HAVING BEEN MADE BEFORE A NOTARY.
(COMMON FORM.)

No. 57.
—
Notarial
Certificate.

⁽³⁾To all to whom these presents shall come, I,

(1) Or, "hereto annexed."

(2) If the Declaration be made before a Justice of the Peace who is not a Mayor, the part in italics must be omitted.

(3) Or commence and conclude as in the form of Certificate, No. 36, p. 339.

No. 57.
 —
 Notarial
 Certificate.

R. B. Notary Public, duly authorized, admitted, and sworn, residing and practising in L——, in the county of L——, in the United Kingdom of Great Britain and Ireland, and also a Master Extraordinary of the High Court of Chancery, in England, do hereby certify, that *A. B.* the person named in the paper writing or declaration *on the other side written*⁽¹⁾, did duly and solemnly declare to the truth thereof, before me, on the day of the date thereof, and that the name "*A. B.*" thereto subscribed is of the proper handwriting of the said *A. B.*

In testimony whereof, I have hereunto subscribed my name, and affixed my seal of office, this day of , in the year of our Lord one thousand eight hundred and

(Seal)

R. B.

Notary Public, L——.

NOTARIAL CERTIFICATE, THAT A DECLARATION SUBSTITUTED FOR AN OATH WAS MADE BEFORE A NOTARY (OR BEFORE A MAYOR OR A JUSTICE OF THE PEACE,) AND ALSO THAT A DEED, POWER OF ATTORNEY, OR OTHER INSTRUMENT, WAS EXECUTED BY THE PARTIES TO IT.

No. 58.
 —
 Notarial
 Certificate.

To all to whom these presents shall come, I, *R. B.* Notary Public, duly authorised, admitted,

(1) Or, "*hereto annexed.*"

and sworn, [*commence as in the form of the Notarial Certificate, No. 56⁽¹⁾,*] that *A. B.* the person named in the paper writing, or declaration *on the other side written⁽²⁾*, did duly and solemnly declare in due form of law to the truth thereof, before *me⁽³⁾*, [or, "*J. A. Esquire, Mayor of the borough and town of L—— aforesaid,*" or, "*J. A. Esquire, one of the Justices of the Peace in and for the borough of L—— aforesaid,*" as the case may require,] on the day of the date thereof, and that the name *A. B.* thereto subscribed, is of the proper handwriting of the said *A. B.* and I also certify that the [*deed, power of attorney, or other instrument,*] hereto annexed, was duly signed, sealed, and executed, by the several persons parties thereto, whose names appear opposite the seals thereof.

No. 58.
—
Notarial
Certificate.

In testimony whereof, I have hereunto subscribed my name, and affixed my seal of office, this day of ,
in the year of our Lord one thousand eight hundred and

(Seal.)

R. B.

Notary Public, L——.

(1) Or commence and conclude as in the form of Certificate No. 36, p. 339.

(2) Or, "*hereto annexed.*"

(3) If the Declaration be made before a Mayor or a Justice of the Peace, the requisite alteration must be made in the part where the words in Italics occur.

NOTARIAL CERTIFICATE, THAT A DEED, POWER
OF ATTORNEY, OR OTHER INSTRUMENT,
WAS EXECUTED IN THE PRESENCE OF THE
NOTARY.

No. 59.

—
Notarial
Certificate.

To all to whom these presents shall come, I,
R. B. Notary Public, duly authorised, admitted
and sworn, [*commence as in the form of the
Notarial Certificate, No. 56⁽¹⁾,*] that I was present
on the day of instant, and
did see *A. B.* the person named in the paper
writing, or hereto annexed, duly
sign, seal, and execute the said ,
and that the name *A. B.* thereto subscribed, is
of the proper handwriting of the said *A. B.* and
that the names *C. D.* and *E. F.* thereto sub-
scribed as the witnesses thereto, are of the
respective proper handwriting of *C. D.* and
E. F. both of aforesaid, the sub-
scribing witnesses thereto.

[*By the laws or regulations of some countries, it is
expected that the Notary should also certify that
the witnesses are above the age of twenty-one years.*]

In testimony whereof, I have hereunto
subscribed my name, and affixed my seal
of office, this day of ,
in the year of our Lord one thousand
eight hundred and

(Seal.)

R. B.

Notary Public, L———.

(1) Or commence and conclude as in the form of Certificate No. 36,
p. 339.

NOTARIAL CERTIFICATE, OF A DECLARATION
HAVING BEEN MADE BEFORE A NOTARY, IN
THE FORM ADOPTED BY THE SOCIETY OF
LONDON NOTARIES.

No. 60.

Notarial
Certificate.

To all to whom these presents shall come, I, _____ of the city of London, Notary Public, duly admitted and practising, In pursuance of an Act of Parliament made and passed in the sixth year of the reign of his Majesty King William the 4th, intituled, "An Act to repeal an Act of the present session of Parliament, intituled, an Act for the more effectual abolition of Oaths and Affirmations, taken and made in various departments of the state, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extrajudicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths," do hereby certify, that on the day of the date hereof, personally came and appeared before me, _____, named and described in the declaration hereunto annexed, being a person well known and worthy of good credit, and by solemn declaration which the said _____ then made before me, did solemnly and sincerely declare to be true, the several matters and things mentioned and contained in the said annexed declaration.

In faith and testimony whereof, I have hereunto set my hand and seal of office, and have caused the

ration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his Majesty King William the Fourth, intituled, “An Act to repeal an Act of the present session of Parliament, intituled, an Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the state, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits; and to make other provisions for the abolition of unnecessary oaths.”

No. 61.
—
Declaration.

Declared at L——— afore-
said, the day of
 one thousand eight
hundred and

J. H.

Before me,

R. B.

Notary Public.

[N.B. The above form may, with a slight alteration, be used, when a Declaration of Debt of a similar nature and object, is made by a Creditor without the intervention of his Clerk.]

NOTARIAL CERTIFICATE TO ACCOMPANY THE PRECEDING DECLARATION.

No. 62.

[*Commence and conclude as in the form No. 36 or No. 57.*] do hereby certify, that *J. H.* the person named in the paper writing, or declaration on the other side written, did duly and

—
Notarial
Certificate.

c c c

No. 62. solemnly declare, in due form of law, to the truth
— thereof, before me, on the day of the date thereof,
Notarial and that the name "*J. H.*" thereto subscribed
Certificate. is of the proper handwriting of the said *J. H.*

DECLARATION OF A DEBT OWING BY A PER-
SON ABROAD TO A FIRM IN THIS COUNTRY,
WHEN MADE BY ONE OF THAT FIRM AND
BY A CLERK, BEFORE A NOTARY.

No. 63. I, *G. G.* the younger, of L——, in the county
— Declaration. of L——, in the United Kingdom of Great
Britain and Ireland, merchant, do solemnly and
sincerely declare, that *F. R.* of Natchez, in the
United States of America, planter, now is justly
and truly indebted unto me, the said *G. G.* the
younger, and to *G. G.* my co-partner in trade,
carrying on business at L—— aforesaid, under
the firm of *G. G. and Company*, in the sum of

British sterling, upon balance of accounts be-
tween the said firm of *G. G. and Company* and
the said *F. R.* arising out of the transactions
mentioned and set forth in the account current
hereto annexed, marked A; and that the said
account current contains a true and correct ac-
count of the dealings and transactions between
the said firm of *G. G. and Company* and the said
F. R. And I, *R. W.* of L—— aforesaid, clerk
and book-keeper, do solemnly and sincerely de-
clare, that I am a clerk and book-keeper in the

counting-house of the said firm of *G. G. and Company*, and that I was in that capacity in the employ of the said *G. G. and Company*, at the time and during the periods of the transactions between them and the said *F. R.* which transactions are mentioned in the account current hereto annexed, marked A; and that the said *F. R.* now is justly and truly indebted unto the said firm of *G. G. and Company* in the sum of

No. 63.
—
Declaration.

British sterling, upon balance of accounts between the said firm of *G. G. and Company* and the said *F. R.*; and that the said account current is true and correct. And I, the said *G. G.* the younger, for myself individually, and I, the said *R. W.* for myself individually, make this solemn declaration, conscientiously believing the same to be true, and by virtue of, &c. &c. [*conclude with the declaration under the Act 5th and 6th William 4th, c. 62, as in form No. 61.*]

Declared at L——— afore-
said, the day of
 one thousand eight
hundred and

G. G. Jun.

R. W.

Before me,

R. B.

Notary Public, L———.

NOTARIAL CERTIFICATE TO ACCOMPANY THE
PRECEDING DECLARATION.

No. 64.

—
Notarial
Certificate.

[*Commence and conclude as in the form No. 36*]

No. 64. *or No. 57.]* do hereby certify, that *G. G.* the
 — Notarial younger, and *R. W.* the persons named in the
 Certificate. paper writing or declaration on the other side
 written, did duly and solemnly declare, in due
 form of law, to the truth thereof, before me, on
 the day of the date thereof, and that the names
 “*G. G. Jun.*” and “*R. W.*” thereto subscribed
 are of the respective proper handwriting of the
 said *G. G.* the younger and *R. W.*

DECLARATION MADE BEFORE A NOTARY BY THE
 WITNESSES OF THE DUE EXECUTION OF A
 DEED OF DISCLAIMER AND RENUNCIATION,
 BY TWO EXECUTORS OF AN EXECUTORSHIP,
 WHEN EXECUTED BY EACH OF THE EXE-
 CUTORS SEPARATELY, IN THE PRESENCE OF
 A DIFFERENT WITNESS.

No. 65.
 — Declaration. I, _____ of L_____,
 in the county of L_____,
 do solemnly and sincerely declare, that I was
 present and did see _____,
 one of the parties to a certain deed of disclaimer
 and renunciation of the executorship of the will
 of the late *C. S.* of L_____ aforesaid, mer-
 chant, dated the _____ day of _____ one
 thousand eight hundred and _____,
 duly sign, seal, and execute the said deed, and
 that the name _____ thereto
 subscribed as a party executing the same is of
 the proper handwriting of the said

And I, _____ of L—— aforesaid, No. 65.
do solemnly and sincerely declare, Declaration.

that I was present and did see
one of the parties to the said deed, duly sign,
seal, and execute the same, and that the name
_____ thereto subscribed as one of
the parties executing the same, is of the proper
handwriting of the said

And I, the said _____ for myself
individually, and I, the said _____
for myself individually, make this solemn decla-
ration, conscientiously believing the same to be
true, and by virtue of, &c. &c. [*conclude with the
declaration under the Act 5th and 6th William
4th, c. 62, as in form No. 61.*]

Declared at L—— aforesaid,	{	*
said, this _____ day of		
_____ one thousand eight	{	*
hundred and _____		

Before me,

R. B.

Notary Public, L——.

NOTARIAL CERTIFICATE TO ACCOMPANY THE
PRECEDING DECLARATION, AND ALSO AU-
THENTICATING A COPY OF THE DEED OF
DISCLAIMER AND RENUNCIATION, OF AN
EXECUTORSHIP.

No. 66.

[*Commence and conclude as in form No. 36 or
No. 57.*] _____ do hereby certify that the paper
writing marked A, hereto annexed, purporting to

Notarial
Certificate.

No. 66. be a copy of a deed of disclaimer and renunciation
 — of executorship, dated the day of
 Notarial one thousand eight hundred and
 Certificate. , on the parts of
 and , the executors named in the
 will of the late C. S. of L—— aforesaid,
 merchant, deceased, they having declined to act
 as such executors, is a true and correct copy of
 the said original deed, the same having been
 carefully examined and compared by me with
 the said original deed ; and I also certify, that
 and the persons
 named in the declaration on the other side, did
 duly and solemnly declare, in due form of law,
 to the truth thereof, before me, on the day of the
 date thereof, and that the names
 and thereto subscribed re-
 spectively, are of the respective proper hands-
 writing of and

NOTARIAL CERTIFICATE OF A TRUE COPY OF
 A WILL, AND OF THE PROBATE OF IT, IN
 THE PREROGATIVE COURT OF THE ARCH-
 BISHOP OF YORK.

No. 67. [Commence and conclude as in form No. 36 or
 — No. 57.] that the paper writing hereto an-
 Notarial nexed, purporting to be a true copy of the last
 Certificate. will and testament of R. P. formerly of Rio
 de Janeiro, merchant, but late of L——, in
 the county of L——, gentleman, deceased,

bearing date the day of , No. 67.
 one thousand eight hundred and ,
 is a true and correct copy of his last will and Notarial
 testament, and of the grant and certificate of the Certificate.
 probate thereof, in the Prerogative Court of the
 Lord Archbishop of York, the same having been
 carefully compared and examined by me with
 the original probate grant and certificate, under
 the official seal of the Lord Archbishop of
 York, of administration of the goods, rights,
 credits, and chattels of the said deceased to *W. D.*
 and *J. D.* two of the executors in the said will
 named, who are by law now legally entitled to
 receive, recover, and possess the debts, monies,
 effects, and personal property of the said de-
 ceased by virtue thereof.

DECLARATION AUTHENTICATING A COPY OF AN
 ENTRY IN THE REGISTER BOOK OF INTER-
 MENTS OF THE BURIAL OF A PERSON, AND
 IDENTIFYING THE DECEASED AS A PROPRIE-
 TOR OF STOCK, MADE BY THE DECLARANT
 BEFORE A NOTARY, PURSUANT TO THE REGU-
 LATIONS OF THE BANK OF ENGLAND.

No. 68.

Declaration.

"The burial extract certified
 "by the officiating Minister of
 "the Parish to be here inserted
 "or annexed."

No. 68.
—
Declaration.

* Christian name, description, and quality of
Declarant at full length.

*I, _____, of Liverpool, in the county of Lancaster, gentleman, do solemnly and sincerely declare, that I have compared the paper writing annexed, with the register book of burials belonging to the Church of St. James, in Toxteth-park, which is often said to be in the parish of Walton-on-the-Hill, in the county of Lancaster, but usually considered to be an extra-parochial place, and that the said paper writing contains a true copy of the entry in the said register book of the burial of *M. B.* late of Liverpool, in the county of Lancaster, (the wife of *R. B.*) deceased.

And I further declare that the said *M. B.* was the identical person who is named and described in the letters of administration to her effects granted by the Prerogative Court of Canterbury, the 27th day of February, 1847, by the name and description of *M. B.* late of Liverpool, in the county of Lancaster, and in the books of the Bank of England, for reduced 3 per cent. annuities, wife of *R. B.* of ——— street, Liverpool, Esquire.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in fifth and sixth years of the reign of his late Majesty, intituled, “An Act to repeal an Act of the present session of Parliament, intituled, An Act for the more effectual abolition of Oaths and Affirmations taken and made in various depart-

ments of the state, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths."

No. 68.
—
Declaration.

* Declarant must sign on the line.

Declared at L_____ }
aforesaid, this
day of _____, one
thousand eight hun-
dred and

Before me,

T. A.

A Notary Public, Liverpool.

COPY OF PRINTED INSTRUCTIONS FROM THE
BANK OF ENGLAND SUBJOINED TO THE
ABOVE FORM.

"By the Act of Parliament before referred to
"any person making a false declaration is de-
"clared guilty of a misdemeanour, and may be
"prosecuted as he would have been in the case of
"perjury committed before the passing of the act."

"N.B.—The above declaration to be made
"before a Justice of the Peace, a Notary Public,
"or a Master in Chancery, by a disinterested
"person of known character and respectability,
"who has compared a copy of the entry with the
"register. The Magistrate must state the
"county where declared."

D D D

DECLARATION, AUTHENTICATING A COPY OF AN ENTRY IN THE REGISTER BOOK OF INTERMENTS IN A PUBLIC CEMETERY (THE NECROPOLIS) OF THE BURIAL OF A PERSON WHO WAS A PROPRIETOR OF STOCK, AND THAT HE WAS THE IDENTICAL PERSON NAMED IN CERTAIN LETTERS OF ADMINISTRATION, MADE BY THE DECLARANT BEFORE A NOTARY, PURSUANT TO THE REGULATIONS OF THE BANK OF ENGLAND.

“The burial extract certified
 “by the officiating Minister of
 “the Parish to be here inserted
 “or annexed.”

No. 69. *I, _____, of L———, in the county of
 Declaration. Lancaster, gentleman, do solemnly and sincerely
 declare, that I have compared the paper writing
 hereto annexed with the register book of burials
 belonging to the general cemetery called the
 Necropolis, at Low-hill, near Liverpool, in the
 said county of Lancaster, and that the said paper
 writing contains a true copy of the entry in the
 said register book of the burial of *H. B.* late of
 L———, in the county of Lancaster, excise-
 officer. And I further declare, that the said
H. B. was the identical person who is named
 and described in the letters of administration
 granted by the Prerogative Court of Canterbury,
 the _____ day of _____ 184 _____, by the name
 and description of *H. B.* late of L———, in the
 county of Lancaster, bachelor, deceased. And
 I make this solemn declaration, conscientiously

* Christian name, description, and quality of
 Declarant at full length.

believing the same to be true, and by virtue of the provisions of an Act, &c. &c. [*conclude pursuant to the Act 5th and 6th William 4th, c. 62, as in form No. 68.*] No. 69.
—
Declaration.

_____*

Declared at L_____ aforesaid,
 this day of
 one thousand eight hundred
 and

Before me,

W. P.

Notary Public, L_____.

[The printed Instructions from the Bank of England respecting such Declarations are subjoined to Form No. 68.]

* Declarant must sign on the line.

DECLARATION, OF THE IDENTITY OF A DECEASED PROPRIETOR OF STOCK, WHEN HIS DESCRIPTION IN HIS WILL DID NOT CORRESPOND WITH THAT IN THE BOOKS OF THE BANK OF ENGLAND, MADE BY A DECLARANT WHO WAS PERSONALLY ACQUAINTED WITH HIM, BEFORE A NOTARY, PURSUANT TO THE REGULATIONS OF THE BANK OF ENGLAND.

No. 70.

I, *J. P. E.* of L_____, in the county of L_____, gentleman, do solemnly and sincerely declare, that I well knew and was acquainted with *T. P.* late of L_____, in the county of L_____, Esquire, deceased, for forty years and upwards, previous to his death, and who is described in the probate of his last will and testament, dated —
Declaration.

merchant, one of the partners in the firm of *J. W. G. and Company*, of L——— aforesaid, maketh oath and saith, that he, this deponent, and his partner *J. W.* did, on the

day of _____, one thousand eight hundred and _____, take into part-

nership with them *W. M.* and they carried on the business in partnership together, in the name of this deponent, *J. W. G.* at L———; and that on the _____ day of _____,

in the year one thousand eight hundred and _____, they sent out to their connexions

and correspondents, a printed letter or circular comprising the signatures of the said partners, and communicating the existence of the new firm of *J. W. G. and Co.* and of which printed letter or circular a true and correct copy, marked A, is hereunto annexed; and this deponent fur-

ther saith, that the said *W. M.* hath ever since the _____ day of _____, one thousand

eight hundred and _____, continued to be,

and still is a partner in the said business, and

that the said firm still consists of this deponent,

and the said *J. W.* and the said *W. M.* as partners.

Sworn at L——— aforesaid,

the _____ day of

one thousand eight hundred

and _____

Before me,

R. B.

Notary Public, L———.

NOTARIAL CERTIFICATE OF THE PRECEDING
AFFIDAVIT HAVING BEEN MADE BEFORE THE
NOTARY.

No. 72.

Notarial
Certificate.

To all to whom these presents shall come, I,
R. B. Notary Public, duly authorised, admitted,
and sworn, [*commence as in the form of the
Notarial Certificate, No. 36 or No. 57,*] that
J. W. G. the person named in the paper writing,
or affidavit, on the other side written, was duly
sworn to the truth thereof, before me, on the
day of the date thereof, and that the name
“ ” thereto subscribed,
is of the proper handwriting of the said *J. W. G.*

In testimony whereof, I have hereunto
subscribed my name, and affixed my seal
of office, this day of , in
the year of our Lord one thousand eight
hundred and

(Seal.)

R. B.

Notary Public, L———.

AFFIDAVIT, REQUIRED BY THE LAWS OF A
FOREIGN COUNTRY, OF THE IDENTITY AND
DEATH OF AN EXECUTOR OF A WILL, AND
ALSO AUTHENTICATING A COPY OF AN ENTRY
OF HIS DEATH AND BURIAL, MADE IN THE
REGISTER BOOK OF INTERMENTS, SWORN
BEFORE A NOTARY.

No. 73.

Affidavit.

E. W. R. of L———, in the county of L———,
cotton broker, maketh oath and saith that he,
this deponent, is the son of *J. R.* late of L———,

in the county of L——, cotton broker, deceased, and that the said *J. R.* was the same person of that name who was constituted and appointed one of the executors of the will of *A. B.* formerly *A. R.* spinster, widow and relict of *F. B.* formerly of Rio de Janeiro, in South America, merchant, and late of Neuilly-sur-Seine, near Paris, in the kingdom of France, Esquire, deceased, dated on or about the

day of one thousand eight hundred and which said *A. B.* was the sister of the said *J. R.* and the aunt of this deponent. And also that the said *J. R.* died at L—— aforesaid, on the day of , one thousand eight hundred and , and was interred at the public cemetery called the Necropolis, at Low-hill, near L—— aforesaid, and that the paper writing marked *A*, hereto annexed, purporting to be a copy of the entry of the death and interment of the said *J. R.* is a true and correct copy thereof, the same having been carefully compared and examined by this deponent with the original book of register of interments, kept at the said public cemetery called the Necropolis.

Sworn at L—— aforesaid,)
 this day of , one }
 thousand eight hundred and)

E. W. R.

Before me,

R. B.

Notary Public, L——.

No. 73.

Affidavit.

NOTARIAL CERTIFICATE TO ACCOMPANY THE
PRECEDING AFFIDAVIT, CERTIFYING THE
IDENTITY OF THE EXECUTOR, AND AUTHEN-
TICATING A COPY OF THE ENTRY OF HIS
DEATH AND BURIAL, AND THE AFFIDAVIT
HAVING BEEN MADE BEFORE THE NOTARY.

No. 74.
—
Notarial
Certificate.

⁽¹⁾BY this public instrument be it known and
made manifest unto all people, that on the
day of in the
year of our Lord one thousand eight hundred
and

I, *R. B.* Notary Public, duly authorised, ad-
mitted, and sworn, residing and practising in
L——, in the county of L——, in the United
Kingdom of Great Britain and Ireland, and
also a Master Extraordinary of the High Court
of Chancery in England, do hereby certify, that
I was personally acquainted with *J. R.* late of
L——, in the county of L——, cotton-
broker, deceased, for many years previous to
his death, and that the said *J. R.* was con-
stituted and appointed one of the executors of
the last will and testament of *A. B.* formerly
A. R. spinster, widow and relict of *F. B.*
formerly of Rio de Janeiro, in South America,
merchant, and lately of Neuilly-sur-Seine, near
Paris, in the kingdom of France, Esquire, de-
ceased, bearing date on or about the

(1) The commencement and conclusion of the Certificate may
either be in the above form, or in that of No. 57, as may be found
most convenient.

day of _____ one thousand eight hundred
 and _____. And I also certify, that
 the paper writing marked A, hereto annexed,
 purporting to be a copy of the entry of the death
 and interment of the said *J. R.* is a true and
 correct copy thereof, the same having been care-
 fully compared and examined by me, the said
 notary, with the original book of register of in-
 terments kept at the public cemetery called the
 Necropolis, at Low-hill, near L——— aforesaid,
 and that *E. W. R.* the son of the said *J. R.*
 deceased, and the person named in the affidavit
 on the other side written, was duly sworn to the
 truth thereof, before me, on the day of the date
 thereof, and that the name "*E. W. R.*" thereto
 subscribed is of the proper handwriting of the
 said *E. W. R.*

No. 74.
 —
 Notarial
 Certificate.

Which I attest,

R. B.

Notary Public, L———⁽¹⁾.

No. 75.

AFFIDAVIT, OF A PART-OWNER OF A VESSEL TO
 OBTAIN A WARRANT OUT OF THE HIGH COURT

Affidavit of a
 Part-owner to
 obtain a War-
 rant to Arrest
 a Vessel.

(1) Sometimes the words "*and also a Master Extraordinary in
 Chancery*" are added.

OF ADMIRALTY, TO ARREST THE VESSEL, IN ORDER TO OBTAIN SECURITY FOR THE VALUE OF HIS SHARES, FROM THE OTHER PART-OWNERS ABOUT TO EMPLOY HER WITHOUT HIS CONSENT.

Admiralty.
The Anne Pimlow,
W. M. Master. }

No. 75.

Affidavit of a
Part-owner to
obtain a War-
rant to Arrest
a Vessel.

APPEARED personally, *E. M.* of L——, in the county of L——, ship broker, and made oath, that he is the owner of eight sixty-fourth parts or shares of the said ship called the Anne Pimlow, and of her tackle, apparel, and furniture, which parts or shares he, this appearer, estimates to be of the value of one hundred and thirty pounds, or thereabouts, and that *A. B.* and other persons, whose names this appearer doth not know, are the owners of the remaining parts or shares of the said ship; and this appearer saith, that the said ship is now about to be employed by the said *A. B.* and the said other persons whose names this appearer doth not know, in a certain voyage, without his, the appearer's, concurrence and consent, and he verily believes, unless the said ship is restrained from proceeding to sea by warrant of this Court, until good and sufficient security be given for the safe return thereof to the port of Swansea, in the amount or value of the aforesaid eight sixty-fourth shares therein, that such property will be greatly endangered.

Sworn at L—— aforesaid,
 this day of , in the
 year of our Lord one thousand
 eight hundred and

Before me, *R. B.*

A Master Extraordinary in Chancery.

INSTRUCTIONS, TO EXECUTE THE WARRANT
 GRANTED UPON THE FOREGOING AFFIDAVIT.

“INSTRUCTIONS for arresting the ship or vessel called the *Anne Pimlow*, *W. M.* master, agreeably to the warrant herewith sent.

Instructions to
 execute the
 Warrant.

The warrant may be executed by any literate person, for which purpose he is to repair on board the vessel, and seize and arrest the same, by affixing the original warrant under seal upon the mast of the said vessel for a few minutes, and he is then publicly to declare,

“That he doth, by virtue of the said warrant, arrest the said ship or vessel called the *Anne Pimlow*, whereof *W. M.* now is or lately was master, her tackle, apparel, and furniture, and that he doth cite all persons in general who have or pretend to have any right, title, or interest therein, to appear before the Judge of the High Court of Admiralty of England, or his surrogate, in the Common Hall of Doctors Commons, situate in the parish of Saint Benedict, near Paul’s Wharf, London, on the sixth day after arrest, if a Court day, otherwise on the Court day then

Instructions to
execute the
Warrant.

next following, between the usual hours of hearing causes there, to answer to *E. M.* of *L——*, in the county of *L——*, ship broker, the lawful owner of eight sixty-fourth parts or shares of the said ship or vessel, in a cause of possession civil and maritime.”

Then let him take down the original warrant, and affix a true copy thereof, and leave it instead of the original, making at the same time, with chalk or otherwise, on the said mast, a foul anchor, and keep possession.

An affidavit must be made (agreeably to the form hereunder written) by the person who shall have executed the warrant, which affidavit and warrant must be then forwarded to Doctors Commons, in order to the same being returned into the High Court of Admiralty, and the further usual requisite proceedings being taken.”

AFFIDAVIT ABOVE REFERRED TO, OF THE DUE
EXECUTION OF THE WARRANT.

No. 76.

The Anne Pimlow, *W. M.* master.

Affidavit of the
due execution
of the Warrant.

APPEARED personally
of
on the day of , one
thousand eight hundred and
by virtue of the warrant hereto annexed, issued
under seal of the High Court of Admiralty, go
on board the ship or vessel called the Anne Pim-
low, *W. M.* master, and did arrest the said ship

or vessel, her tackle, apparel, and furniture, now No. 76.
 lying at _____, in the county of _____, Affidavit of the
 by publicly affixing the said warrant, for some due execution
 time, on the mast of the said vessel, and by citing of the Warrant.
 all persons in general, to appear on the day, at
 the time and place, and for the purpose in the
 said warrant mentioned, and by leaving thereon
 affixed a true copy thereof.

On the _____ day of _____,
 one thousand eight hundred _____
 and _____, the said _____
 was duly _____
 sworn to the truth of this
 affidavit,

Before me,

R. B.

A Master Extraordinary in Chancery.

SECURITY, OR STIPULATION, FOR THE RETURN
 OF A SHIP, [as set out in *Abbott on Shipping*,
Appendix, No. 6, p. 503, and in Holt on
Shipping, vol. 2, Appendix, No. 5, p. 437.]

Esther.

12th January, 18

No. 77.

ON which day Bogg exhibited as procter, and Security or
 made himself a party for George Goodwin Hope, Stipulation for
 master of the said ship Esther, and produced a Vessel's
 for sureties Josiah Culmer, of Wapping, High- Return.
 street, mathematical instrument maker, and
 James Powell of the same place, undertaker,
 who, submitting themselves to the jurisdiction

No. 77. of this Court, bound themselves, their heirs, executors, and administrators, for the said George Goodwin Hope, in the sum of six hundred and eighty-four pounds of lawful money of Great Britain, being double the appraised value of two eighth parts of the said ship, unto William Fennings, of Rood-lane, Fenchurch-street, London, merchant, and Philip Fennings, of Harwich, in the county of Essex, owners of the said two eighth parts or shares of the said ship, for the return of the said ship, to the amount of the shares of the said William Fennings and Philip Fennings; and unless they shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, wheresoever the same shall be found, to the value of the sum aforementioned; which caution the said surrogate received on the report of John Cricket, Marshal of this Court, as to the sufficiency of the said sureties, and, at the petition of Bogg, decreed the said ship to be released from the arrest.

Present,
Bedford.

INDENTURE OF APPRENTICESHIP, TO A MERCHANT, [*with variations where a salary is to be paid to the Apprentice, and also providing for the determination of the Apprenticeship at the end of a fixed period of the term.*]

No. 78. Indenture of THIS Indenture, made the day of ,

in the year of our Lord one thousand eight hundred and , between *A. B.* son of ^{Apprentice-}*ship.*
C. B. of , in the county of ,
 , of the first part, the said *C. B.*
of the second part, and *E. F.* of ,
merchant, of the third part. Witnesseth, that
the said *A. B.* with the consent of his father,
(testified by his executing these presents,) doth
hereby put, place, and bind himself a clerk or
apprentice, unto the said *E. F.* from the day of
the date hereof, during the term of seven years,
thence next ensuing. And the said *C. B.* doth
hereby for himself, his heirs, executors, and ad-
ministrators, covenant and agree with the said
E. F. his executors and administrators, that the
said apprentice, *A. B.* shall and will faithfully
and diligently serve the said *E. F.* during the
said term; his secrets keep, his lawful com-
mands willingly obey and perform; and that
he, the said apprentice, shall not waste, lose,
purloin, or embezzle any of the monies, goods,
chattels, or effects of the said *E. F.* nor those
of his principals or connexions, nor give nor
lend the same without leave, nor engage in any
trade or business on his own account, nor
absent himself during the said term from the
service of the said *E. F.* without leave, nor
do any act whatever to the injury of the said
E. F. or of his principals or connexions in
business, but to the utmost of the power of the
said *A. B.* shall prevent the same; and shall

No. 78.

Covenant by
the Father to
provide the
Son with ne-
cessary Sus-
tenance,
Clothes, Lodg-
ings, &c. &c.

Covenant to
pay the
Apprentice a
Salary.

honestly and faithfully behave himself in all respects during the said term as a good and faithful apprentice ought to do; *and that the said C. B. shall and will, during the said term, find and provide for his said son good and sufficient meat, drink, washing, lodging, clothes, wearing apparel, and all necessary medicines and medical attendance and advice.* In consideration whereof, he, the said *E. F.* doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said *C. B.* his executors and administrators, that he, the said *E. F.* shall and will during the said term, teach and instruct, or cause and procure to be taught and instructed, by the best ways and means in his power, the said *A. B.* in the trade or business of a merchant; *and shall and will pay, or cause to be paid, to or for the use of the said A. B. the sum of at the end of the first year of the said term, the sum of at the end of the second year, the sum of at the end of the third year, the sum of at the end of the fourth year, the sum of at the end of the fifth year, the sum of at the end of the sixth year, and the sum of at the end of the seventh year,* provided he, the said *A. B.* shall, at such respective periods, well and faithfully be in the service of the said *E. F.* hereunder. [*Any further covenants or stipulations by the merchant, which may have been agreed upon, may be introduced here.*]

Provided always, and it is hereby agreed No. 78.
between the said parties, that in case the said ^{Proviso}
A. B. shall be desirous to determine the said ap- occasionally
prenticeship, and to leave the service of the said introduced for
E. F. at or at any time after the expiration of five terminating
years from the date hereof, he, the said A. B. shall the Service
be at liberty so to do, and then this indenture, at the end of a
and every thing herein contained, shall, as far as certain period.
relates to a continuance of such service, cease,
determine, and become inoperative, otherwise the
same to remain in full force during the said term.
 —In witness whereof, the said parties to these
 presents have hereunto set their hands and seals,
 the day and year first before written.

Signed, sealed, and delivered, }
 (being first duly stamped) } *A. B.* (Seal.)
 by the within-named parties, } *C. B.* (Seal.)
 in the presence of } *E. F.* (Seal.)

INDENTURE OF APPRENTICESHIP, TO TRADES-
 MEN, WHERE THE APPRENTICE IS TO LODGE
 IN THE HOUSE OF ONE OF HIS MASTERS,
*[with variations where a Premium is paid
 with the Apprentice, and where a stipulation
 is entered into for his medical attendance,
 medicines, and support, and where the event
 of a dissolution of the Co-partnership concern
 of the Masters is provided for.]*

No. 79.

THIS Indenture, made the day of Indenture of
 in the year of our Lord one thousand eight Apprentice-
 hundred and , between *A. B.* son of *C. B.* ship.

F F F

No. 79.
—
Indenture of
Apprentice-
ship.

of _____, in the county of _____, manu-
facturer, of the first part, the said *C. B.* of the
second part, and *D. E.* and *F. G.* of _____,
chemists and druggists and co-partners, of the
third part. Witnesseth, that the said *A. B.* with
the consent of his father, (testified by his execut-
ing these presents,) doth hereby put, place, and
bind himself an apprentice unto the said *D. E.*
and *F. G.* from the day of the date hereof, during
the term of five years, thence next ensuing.
And the said *C. B.* doth hereby for himself, his
heirs, executors, and administrators, covenant
and agree with the said *D. E.* and *F. G.*
their executors and administrators, that the said
A. B. shall and will faithfully and diligently
serve the said *D. E.* and *F. G.* during the
said term, their secrets keep, their lawful com-
mands willingly obey and perform; that he shall
not waste, lose, purloin, or embezzle any of
their monies, goods, chattels or effects, nor give,
nor lend the same without leave, nor engage in
or carry on any trade or business on his own
account, nor absent himself by day or night from
their service, during the said term, without leave,
nor do any thing whatsoever to their injury,
or to the injury of their customers, but to the
utmost of his power shall prevent the same, and
shall correctly and faithfully behave himself in
all respects during the said term as a good
and faithful apprentice ought to do; and that
he, the said *C. B.* shall and will, during the

said term, find and provide for his said son, good and sufficient clothes and wearing apparel of all kinds, necessary and suitable for him, and bear and pay the charge and expense of all washing which his linen or apparel may require. In consideration whereof, *and of the sum of* , *by the said C. B. to the said D. E. and F. G. paid at or before the execution hereof, the receipt whereof they do hereby acknowledge, they, the said D. E. and F. G. do hereby for themselves, their heirs, executors, and administrators, covenant and agree with the said C. B. his executors and administrators, that they, the said D. E. and F. G. shall and will, during the said term, teach and instruct, or cause to be taught and instructed, by the best ways and means in their power, the said A. B. in the art, trade, and mystery of a chemist and druggist; and shall and will find and provide for the said A. B. during his continuance in their service under this indenture, good and sufficient meat, drink, and lodging, with and in the family and house of the said D. E. or F. G. and also medicine and medical advice in case of sickness, except as hereinafter mentioned.*

No. 79.
—
Indenture of
Apprentice-
ship.

Provided always, and it is hereby agreed between the said parties, that if through sickness or indisposition at any time during the said term, the said A. B. shall be incapable of attending in the service of the said D. E. and F. G. according to the meaning hereof, and shall, in consequence

No. 79.
—
Indenture of
Apprentice-
ship.

thereof, leave, or be removed from the said dwelling-house, and the shop and place of business of the said D. E. and F. G. then the said C. B. his executors and administrators, shall, in every such case, find and provide for his said son, sufficient meat, drink, lodgings, medical advice, and medicines, during the continuance of such sickness, until he is enabled to enter again into the service of the said D. E. and F. G.

Provided also, and it is hereby declared and agreed that in case the partnership between the said D. E. and F. G. shall at any time during the said term end, or be dissolved, then the said A. B. shall serve and continue with such one of the said partners who shall continue to carry on the business, as they, the said partners, may mutually agree upon, until the end of the said term, precisely on the same terms, conditions, and stipulations, on each of their parts respectively, as if the said apprentice had been originally bound hereby to such partner solely.—In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first before written.

Signed, sealed, and delivered,)	A. B.	(Seal.)
(being first duly stamped,)		C. B.	(Seal.)
by the within-named parties,)	D. E.	(Seal.)
in the presence of		F. G.	(Seal.)

CERTIFICATE, OF THE DUE EXECUTION OF
A COMMISSION FROM A FOREIGN COURT
OF JUDICATURE, FOR THE EXAMINATION OF
WITNESSES, TO ACCOMPANY THE COMMIS-
SION AND DEPOSITIONS, WHEN NOTICE HAD
BEEN GIVEN TO ANOTHER COMMISSIONER,
PREVIOUSLY, AND HE DID NOT CHOOSE TO
ACT ON THE EXECUTION OF IT⁽¹⁾.

No. 80.

We, the undersigned commissioners, *R. B.* Notary Public, and *C. C.* Merchant, both of L———, in the county of L———, in that part of the United Kingdom of Great Britain and Ireland called England, two of the commissioners named and authorised, in and by virtue of the commission hereunto annexed, issued out of the Supreme Court of Judicature of the people of the State of New York, to us, the undersigned commissioners, and to another commissioner directed, for the examination of *C. S.* a witness in a certain cause there depending, and at issue between *W. G. J.* and *C. B.* plaintiffs, and *T. S.* and *C. S.* defendants, on the part and behalf of the plaintiffs, do hereby certify, that we, the undersigned commissioners, did cause due, reasonable, and sufficient notice to be given to the other com-

—
Certificate of
the due Execu-
tion of a
Commission.

(1) Certificates of the nature of the Forms No. 80 and 81, often accompany a Commission and Examinations; and though perhaps not indispensibly necessary, yet such Certificates are considered useful, as tending to show that the Commissioners have, in all respects, conformed to the powers given by the Commission, and have duly executed it.

No. 80. *Certificate of the due Execution of a Commission.* missioner, in the said commission named, of the time and place of executing it, but that he did not attend on the execution thereof; and although due notice was so given as aforesaid, we, the undersigned two only of the said commissioners, in the said commission named, did attend on the execution of the said commission, and did duly and faithfully execute the same, on this day of _____, in the year of our Lord one thousand eight hundred and _____, and that we did first well and duly administer to the said witness the following oath: "You are true answer to make to all such questions as shall be asked you upon these interrogatories, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God."

In testimony whereof, we, the said commissioners, have hereunto set and subscribed our names, at L_____ aforesaid, this _____ day of _____, in the year of our Lord one thousand eight hundred and _____

R. B.

C. C.

CERTIFICATE, OF THE DUE EXECUTION OF A COMMISSION FROM A FOREIGN COURT OF JUDICATURE, FOR THE EXAMINATION OF A WITNESS, WHEN THE ENGROSSING CLERK IS

SWORN TO SECRECY, TO ACCOMPANY THE
COMMISSION AND DEPOSITIONS⁽¹⁾.

No. 81.

To all to whom these presents shall come, we the undersigned, *R. B.* Notary Public, and *A. L.* Merchant, both of L——, in the county of L——, in that part of the United Kingdom of Great Britain and Ireland called England, two of the commissioners named and authorised in and by virtue of a commission issued out of the Honourable the Superior Court of McIntosh County, in the state of Georgia, in the United States of America, for the examination of *A. L. M.* a witness in a certain cause or suit now pending in the aforesaid Court, in which *H. T. H.* administrator of the estates of *J. C.* and *A. C.* are complainants, and *P. G.* administrator of the estate of *J. C.* is defendant, do hereby certify, that before we acted in the swearing of the said witness, and the taking of his answers or depositions, pursuant to the said commission, we did, severally, duly take *and subscribe*⁽²⁾ the commissioner's oath, firstly specified in the schedule to the said commission annexed; and we did also duly administer to *N. P.* of L—— aforesaid, the clerk employed in writing or engrossing the answers or deposi-

Certificate of
the due Execu-
tion of a
Commission.

(1) See Note (1) No. 80, p. 421.

(2) Conform to the Commission or Instructions accompanying it, as to the insertion or omission, of the words in italics.

No. 81.
—
Certificate of
the due Execu-
tion of a
Commission.

tions of the said witness, the clerk's oath, secondly specified in the said schedule, and which clerk did duly take *and subscribe*⁽¹⁾ the said oath before he was permitted to act as clerk as aforesaid, or was present at such examination; and that we did proceed to execute the said commission at L—— aforesaid, on the day of instant, and did duly take and complete the depositions or examinations hereunto annexed of the said witness, on the said day instant: and we further certify, that previous to taking such depositions or examinations, we did duly administer to the said witness the following oath: "You are true answer to make to all such questions as shall be asked you upon these interrogatories, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God."

In testimony whereof, we, the said commissioners, have hereunto subscribed our names, at L—— aforesaid, this day of , in the year of our Lord one thousand eight hundred and

R. B.

A. L.

(1) Conform to the Commission or Instructions accompanying it, as to the insertion or omission, of the words in italics.

NOTARIAL CERTIFICATE, THAT A COMMISSION AND INTERROGATORIES IN A SUIT IN A FOREIGN COURT, WERE PRODUCED TO ONE OF THE PARTIES IN THE SUIT, TO ENABLE HIM TO EXHIBIT CROSS INTERROGATORIES, AND THAT HE REFUSED TO DO SO.

No. 82.

Notarial
Certificate.

I, *R. B.* Notary Public, duly authorized, admitted, and sworn, residing and practising in *L*———, in the county of *L*———, in the United Kingdom of Great Britain and Ireland, and also a Master Extraordinary of the High Court of Chancery, in England, do hereby certify, that on the day of instant, I, the said notary, waited upon *C. M.* of *L*——— aforesaid, merchant, and exhibited to him a commission and interrogatories issued out of the Court of Common Pleas for the county of Suffolk, and Commonwealth of Massachusetts, for taking the depositions of witnesses in a certain cause there pending, wherein *J. H.* and *B. A.* are plaintiffs, and the said *C. M.* is defendant, and I explained to the said *C. M.* that he had permission by virtue of the said commission and interrogatories, to prepare and add cross interrogatories thereto on his own behalf, when the said *C. M.* requested to have the said documents left with him for consideration until the following day, and I accordingly left *the same* [or, *copies of the same*, as the case may be] with him. And I also certify, that on the day of instant, I, the said notary, received back the said [or, *copies of the said*] commission and

G G G

No. 82. interrogatories from the said *C. M.* apparently
 — Notarial in the same state as when the same were left
 Certificate. with him, and without any cross interrogatories
 accompanying the same or annexed thereto,
 and at the same time I also received a verbal
 message from the said *C. M.* stating, that
 it was not his intention to exhibit any cross
 interrogatories.

In testimony whereof, I have hereunto
 subscribed my name, and affixed my
 seal of office, at L—— aforesaid, this
 day of , in the year
 of our Lord one thousand eight hundred
 and

(Seal)

R. B.

Notary Public, L——.

ARTICLES OF CO-PARTNERSHIP, OF MERCHANTS,
 WHEN ONE OR OTHER OF THE PARTNERS IS
 TO GO ABROAD, AND CONDUCT THE BUSINESS
 THERE.

No. 83.
 —
 Articles of Co-
 partnership.

ARTICLES of Co-partnership, entered into
 this day of , in the year
 of our Lord one thousand eight hundred
 and , between *A. B.* of L——,
 merchant, of the one part, and *C. D.* of
 L——, merchant, of the other part ;

Witnesseth, that each of them, the said parties,
 doth hereby for himself, his heirs, executors,

and administrators, covenant and agree with the other of them, that they, the said parties, will be and continue co-partners together as merchants, from the day of the date hereof, during the term of *five* years, (determinable as hereinafter mentioned) upon the terms and conditions following, that is to say :—

No. 83.

Articles of Co-
partnership.

That the partnership shall be carried on at L——, under the firm of *A. B. and Company*; and at Mobile, or elsewhere in the United States of America, as may be considered expedient and be mutually agreed on, under the firm of *C. D. and Company*.

That each of them, the said parties, shall immediately provide and advance towards the capital of the said concern ———— sterling, and each of them shall receive interest on his share of capital advanced, at the rate of £5 per cent. per annum, to be calculated at the end of each year; and that if either of the said parties shall, with the consent of the other, advance into the said concern more money or capital than as hereinbefore mentioned, or leave his or any of his profits therein, he shall receive interest for the same after the rate aforesaid, for so long as he shall be in advance, and the capital and stock in trade shall be a security for such amount brought in, advances, and interest, and if at any time they shall be found insufficient or not readily convertible into money, the other partner shall, in his own proper person, and from his own separate

No. 83. funds, be liable to make good to the partner in
Articles of Co. advance a proportion of the same, according to
partnership. their respective interests in the said concern, as
far as in equity he ought to be responsible.

That each of the said parties shall, in addition to the said interest, be allowed to take out of the said concern *one-third* only of his profits, unless a larger portion of his profits shall be mutually consented and agreed by both parties to be drawn out.

That the said parties shall be interested in and entitled to equal moieties or half-parts of the profits, gains, and increase of the said concern, and that all losses, bad debts, wages, rents, salaries, and the wear and tear of the counting-house furniture, and all other expenses of the said concern, shall, in like manner, be borne by them in the aforesaid shares.

That the said *A. B.* shall, as soon as practicable, go out to and commence, and duly and diligently attend to and conduct the business of the said concern, at Mobile, or elsewhere, as may be mutually agreed upon, in the United States of America, during the proper and usual season for business of or in the first year of the said term; the said *C. D.* in like manner in the second and third years; the said *A. B.* in like manner in the fourth year; and the said *C. D.* in like manner in the fifth year; and the party not bound hereby to be then in the United States, may return in the intermediate time to and be in this

country, unless the said parties shall mutually otherwise agree and declare the same in writing ; and that the party who may be in this country shall duly and diligently attend to and conduct the business here.

No. 83.

Articles of Co-
partnership.

That proper books of account shall be kept at the various places of business of the said parties, wherein shall be entered the accounts, dealings, and transactions of the partnership, to which and to all other books, papers, letters, and writings belonging to the said concern, each of the said parties, his executors and administrators shall at all reasonable times, have free access to peruse, extract, and copy at pleasure. That the said books shall be balanced at the end of every year during the partnership, and a balance sheet shall be prepared, and when satisfactorily adjusted, shall be signed by each party.

That the said parties shall, at all reasonable times, when required, give to each other full information and explanation respecting the said concern.

That neither of the said parties shall, for his individual use, or for any purpose other than the immediate and proper use of the said concern, use the name of the said firm, or draw, indorse, or subscribe any bill of exchange, promissory note, guarantee, or other engagement in the name of the said firm, or by means of which the said partners or the said firm shall become bound or sued, engaged or liable, nor pay nor apply any

No. 83. of the said partnership monies or effects, except
Articles of Co- on account of the said partnership, nor suffer the
partnership. joint stock or effects to be in any way charged,
or taken in execution or extent, for any private
debt or liability of his own, on pain of forfeiting
to the other of them treble the amount of such
bill, note, guarantee, or other engagement, or of
the money so mispaid or misapplied, or for which
the said partnership stock or effects shall be taken
in execution or incumbered; the same to be paid
by or deducted from the share of capital or profits
of the offending party, or to be recovered from
him by an action at law, at the suit of the other
of them.

That each of the said parties shall give his best
assistance and exertions in conducting the said
business, and that neither of them shall enter into
or carry on any other trade or business, or enter
into or engage in any speculation or purchase of
goods or merchandize, distinct from the said
concern.

That neither of the said parties shall at any
time during the said partnership, become bail,
bound, or surety, for any other person, or any
vessel, nor execute or make any assignment or
transfer of his share or interest in the partnership
effects, or any part thereof, nor draw, accept, or
indorse any promissory note or bill of exchange
for the accommodation of any other person,
without the consent in writing of the other of the
said parties; but that this covenant or stipulation

shall not affect or apply to the signing or executing any usual bonds, at the customs or excise, either as principals or sureties.

No. 83.

Articles of Co-
partnership.

That it shall be lawful for either of the said parties to give calendar month's notice in writing, at any time during the said term, to the other of them, of an intention or wish to dissolve the said partnership, or to cause such notice to be left at the usual or last known dwelling-place, or place of business of such other, or to be transmitted to him through the general post-office, addressed to him at the place where the said business shall for the time being be carried on, or where he is, or is supposed to be, or to have last been, and immediately at the end of the said months, the said partnership shall absolutely cease and determine.

That if either of the said parties shall become permanently incapable, from sickness or any other cause, of actively attending to the business, or insane, or insolvent, or enter into any composition with his creditors generally, or assign or attempt to assign all or any of his interest in the said partnership, then and in any such case, the said partnership shall, at the option of the other, cease and determine; and also, that the same shall be determined and cease absolutely by the death of either of them.

That if either of the said parties shall depart this life at any time during the continuance of the said partnership, the survivor of them shall

No. 83. *pay to the widow of the deceased partner, or in*
case he shall not leave a widow surviving him,
Articles of Co- *then to his executors or administrators, as part of*
partnership. *his personal estate, an annuity or sum of*
every year, from the time of his decease, until
the expiration of the said term, such annuity or
sum to be paid half yearly.

And that in any event provided for in these presents, where either of the said parties is hereby authorised to quit, determine, or dissolve the said partnership before the expiration of the said term, he is and shall be also at liberty and empowered to advertise the dissolution and notice thereof in the London Gazette, and also in any public prints or papers.

That within twelve calendar months next after the expiration of the said term, or the sooner determination of the said partnership, by any of the means hereinafter mentioned, each of the said parties, their or his representatives shall account together, and state and adjust a final account in writing of the state, capital, and affairs of the said concern.

And lastly, that if, during this partnership, or after the end thereof, any variance or difference shall arise between the said parties or their personal representatives, concerning the said partnership, or any thing herein contained, then and as often as the case may occur, the said parties, or their respective representatives, shall, upon reasonable request made by the other of

them, or his representatives, before the com- No. 83.
 mencement of any action at law or suit in equity, Articles of Co-
 cause to be elected three indifferent persons, one partnership.
 to be chosen by each party or his executors or
 administrators, and a third by the two so chosen,
 who may take such reasonable time for the in-
 vestigation, not exceeding three calendar months
 from the appointment of the last of them, as may
 be thought proper, the award of whom, or any
 two of them, made in writing, and ready to be
 delivered to the said parties, or such of them
 as may require it, shall be conclusive, and who
 shall have full power in case of misconduct or
 breach of any of the covenants or stipulations
 herein contained, by either party, to the prejudice
 of the concern, to declare the said partnership
 dissolved and at an end, and thereupon the same
 shall cease and determine; and which award
 the said parties mutually agree to abide by; and
 they do hereby respectively agree that such sub-
 mission and reference shall or may be made a
 rule of her Majesty's Court of Queen's Bench,
 or of any other of the Courts of Record at West-
 minster.—In witness whereof, the said parties to
 these presents have hereunto set their hands and
 seals, the day and year first before written.

Signed, sealed, and delivered, }
 (being first duly stamped,) } *A. B.* (Seal.)
 by the within named parties, } *C. D.* (Seal.)
 in the presence of }

No. 84. ARTICLES OF CO-PARTNERSHIP, OF TRADESMEN.

Articles of Co-
partnership.

ARTICLES of Co-partnership, entered into this day of , in the year of our Lord one thousand eight hundred and , between *A. B.* of *L——*, tea dealer and oilman, of the one part, and *C. D.* of the same place, tea dealer and oilman, of the other part ;

Witnesseth, that each of them, the said parties, doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the other of them, and his executors and administrators, That they, the said parties, will be and continue co-partners together, at *L——*, as tea dealers and oilmen, under the firm of *B.* and *D.* and be equally concerned in and carry on the said trade or business, and such other business connected therewith as they shall mutually agree upon, from the day of instant, during the term of years, from thence next ensuing, (determinable as hereinafter mentioned,) upon the terms and conditions following, that is to say :—

That the said *C. D.* shall, immediately after the execution hereof, pay unto the said *A. B.* one-half of the value of the stock in trade, fixtures, utensils, and effects, now in or belonging to the shop, warehouse, vaults, and premises, now or lately in the occupation of *and in lease to* the said *A. B.* in street, in *L——* aforesaid, such value to be taken at the amount fixed upon, by

the valuation or estimate already made and No. 84.
agreed upon, by or on behalf of the said parties, ^{Articles of Co-}
and that immediately upon such payment thereof ^{partnership.}
by the said *C. D.* to the said *A. B.* the said stock,
fixtures, utensils, and effects, shall belong to and
be possessed by, and be for the mutual benefit
of the said parties in equal undivided shares;
and the said shop, warehouse, and premises, shall
thereupon be jointly possessed and occupied by
the said *A. B.* and *C. D.* for the purposes of the
said concern during its continuance.

That such a capital as the said parties may
mutually consider necessary for the said concern
shall be provided and advanced by them, in
equal shares, and each of them shall receive
interest on his share of capital so advanced
at the rate of £5 per centum per annum; and
that if either of them shall (with the consent
of the other) advance into the concern more
money or capital than his proper proportion, or
suffer any of his profits to remain therein, he shall
receive interest for the same after the rate of £5
per centum per annum, for so long as he shall
be in advance as aforesaid, the same to be paid
half yearly, and that the stock in trade and
capital shall be a security for such advance and
interest, and if at any time they shall be found
insufficient, or not readily convertible into money,
the other partner shall, in his own proper person,
and from his own separate funds, be liable to
make good to the one in advance, a proportion

No. 84. of the same, as far as in equity he ought to be
Articles of Co- responsible.
partnership.

That the said parties shall be entitled to, and interested in the said business, stock in trade, and the profits, gains, and increase thereof, apprentice fees, and all goods and wares belonging to the said partnership concern, in equal shares, and that all debts, losses, outgoing, damage, bad debts, wages, taxes, and other expenses whatsoever, incident to the said concern, shall in like manner be sustained and borne by them in the aforesaid shares.

That the said *C. D.* shall inhabit the house now or recently occupied by, *and now in lease to* the said *A. B.* contiguous to the said shop, and that the apprentices of, or who may be employed by the said concern, shall be received and reside there, with the said *C. D.* during the said partnership, and that the said concern shall be debited with, and shall pay to the said *C. D.* at and after the rate or sum of per annum, for each of the said apprentices who shall board and lodge with him during the said partnership, as a compensation for the expense and trouble of boarding and lodging the said apprentices; and that the said *C. D.* shall and will board and lodge them accordingly in the said house.

That the said *C. D.* shall pay and discharge one-third of the taxes of or arising out of the said house, and the shop or warehouse belonging

thereto, and that the remaining two-thirds shall be borne and paid by the said parties equally.

No. 84.

Articles of Co-
partnership.

That proper books of account shall be kept at the shop of the said concern, or some other approved place, wherein shall be entered the accounts and transactions of the said partnership, to which and to all other books, papers, letters, and writings belonging to the said concern, each of the said parties, or his representatives, shall, at all reasonable times have free access to peruse, extract, and copy at pleasure.

That the said parties shall from time to time, at all reasonable times, when required, give to each other full information and explanation respecting the said concern, and produce and exhibit to each other, and permit copies or extracts to be made of all books, letters, papers, and documents, in their respective custodies, relating to the said concern.

That each of the said parties shall give his assistance and exertions in the management of the said business, and the improving and extending of the same; but it is hereby expressly agreed, that he, the said *C. D.* shall endeavour to be constantly on the spot, and that the said concern and business shall be principally conducted by him, and that he shall give his utmost endeavours for the advancement of the said concern; and that he shall and may, during the said term, constantly reside at, and occupy the house, and easements, with the appurtenances, in

No. 84. street, in L—— aforesaid, *in lease to and*
Articles of Co- now or lately occupied by the said *A. B.* and for
partnership. which he, the said *C. D.* shall pay unto the said
A. B. or be debited in account with the yearly
rent or sum of _____, which is estimated
and agreed as the fair annual value thereof;
and that the sum of _____, at which the fair
annual value of the shop, warehouse, vaults,
and remainder of the said hereditaments and
premises is estimated and agreed, shall be borne
and paid yearly by the said parties, in equal
shares and proportions.

That neither of the said parties shall, directly
or indirectly, carry on or engage in any trade
or business distinct or separate from the said
concern, either by himself or in partnership
with any other person or persons, *except that*
the said A. B. is hereby allowed to carry on or
engage in the business of a _____, either
alone or in partnership with any person.

That neither of the said parties shall, without
the previous consent of the other of them first had
and obtained, in writing, become bail or surety
for, or enter into any bond, obligation, guarantee,
or engagement, or become bound, or security or
surety for any debt, liability, or engagement,
with or for any person or persons, or vessel
whatsoever.

That all clerks and apprentices shall be bound
or indentured to both the said parties, and shall
be had and taken into the concern with the joint

consent, and for the joint and equal benefit of both the said parties.

No. 84.
Articles of Co-
partnership.

That neither of the said parties shall trust or deliver any goods whatsoever upon credit, to any person or persons, after the other of them shall have forewarned or requested him not so to trust or give such credit; and that in case either of them shall so trust or give such credit as aforesaid, after being forewarned as aforesaid, the party so trusting or giving such credit, shall sustain all loss or damage to arise thereby, and make the same good to the said partnership concern out of his own private monies, but the gains, if any there shall be, arising from such transaction, shall go to the said partnership account, and be included in the profits thereof.

That neither of the said parties, without the previous consent of the other, in writing, shall enter into any speculation, contract, or purchase, respecting the said joint trade, to the amount of _____ or upwards, nor release, discharge, or compound any debt exceeding the sum of _____, except for so much as shall be actually owing to the said concern.

That neither of the said parties shall, for his individual use, or for any other purpose than the immediate and proper use of the said concern, use the name of the said firm, or draw, indorse, or subscribe any bill of exchange, promissory note, guarantee, or other engagement, in the name of the said firm, or by means of which the said

No. 84. parties or the said firm shall become sued or
Articles of Co- bound, engaged or liable, nor pay nor apply any
partnership. of the said partnership monies or effects, except
on account of the said partnership, nor suffer the
joint stock to be in any way charged, or taken in
execution or extent for any private debt or liability
of his own, nor speculate nor gamble with the said
capital or joint funds, and that in any and every
such case, the one so offending shall forfeit to
the other of them treble the amount of such bill,
note, guarantee, or other engagement, or of the
money so mispaid or misapplied, or for which the
said partnership stock, or effects, may be taken in
execution or incumbered, the same to be paid by
or deducted from the share of capital or profits of
the offending party, or be recovered from him by
an action at law, or suit in equity at the suit of
the other.

That the cash book shall be balanced at the end
of every months , during the
said term, and the other books at the end of every
year, and in order to show the then true state
of the partnership, an account of stock shall be
then taken, and a balance sheet shall be then
prepared.

That if either of the said parties shall be de-
sirous of quitting or determining the said partner-
ship, at or at any time after the end of the
year of the said term, and if he shall give six
calendar months' previous notice, in writing, to
the other of them, or cause the same to be left

at his usual or last place of abode, of such intention or desire, the said partnership shall cease and determine at the end of the said six months.

No. 84.

Articles of Co-
partnership.

And that if the person who shall give such notice, and so quitting or determining the said concern, shall be the said *A. B.* and if he shall be desirous personally to resume, occupy, or have sole possession of the said house, warehouse, shop, easements, and premises, the said *C. D.* shall, at the end of the said six calendar months, withdraw from, and give absolute and uninterrupted possession of the said house, warehouse, shop, easements, and premises, to the said *A. B.* whenever required so to do.

That in case the one so quitting or determining the said partnership shall happen to be the said *A. B.* and in case he shall not choose personally to resume, occupy, and have sole possession of the said house, shop, warehouse, easements, and premises, then the said *A. B.* or his executors or administrators, shall and will, as far as can be legally done, assign and transfer all his or their term and interest in the said house, shop, warehouse, easements, and appurtenances, and in the lease thereof, unto the said *C. D.* his executors, administrators, and assigns, at his and their own proper request and expense, and in the usual form, upon being indemnified against rent and covenants reserved or contained in the said lease, and upon having one-half of the value of the good-will and benefit of the said

No. 84. trade or business paid or secured to him, the
Articles of Co. said *A. B.* or to his executors or administrators,
partnership. by a bond or obligation of the said *C. D.* and
one surety if required, in the manner hereinafter specified, with respect to the proportion of the stock, fixtures, and utensils, such value to be estimated and computed from the amount of profits arising from the said concern for the *two* preceding years, or if *two* years shall not then have elapsed, then for such period of time as may have actually elapsed; and that the like arrangements, assignments, and transfer, payment or security, as aforesaid, shall be made and take place, and be equally applicable, in case of the death of the said *A. B.* during the said partnership.

That if either of the said parties shall become permanently incapable, from sickness or any other cause, of actively attending to business, or insane, or insolvent, or enter into any composition with his creditors generally, then and in any such case the said partnership shall, at the option of the other, cease and determine; and also, that the same shall be determined and cease absolutely by the death of either of them.

That if either of the said parties shall sell or assign his share in the said partnership, or the stock or capital, or any part thereof, or attempt so to do, or commit any act whereby any legal or equitable interest therein may become vested in any other person, without the consent of

the other of them in writing, or if either of them shall do or commit any act, deed, or thing, contrary to the covenants and stipulations herein contained, by reason of which the said concern shall, in the judgment and opinion of the arbitrator or arbitrators, or the major part of them, duly appointed as hereinafter mentioned, be hurt or prejudiced, the said concern shall, at the option of such other of them, immediately, as to the offending party, cease and determine. No. 84.
Articles of Co-
partnership.

And that in any event provided for by these presents, where either of the said parties is hereby authorised to quit, determine, or dissolve the said partnership before the expiration of the said term, he is and shall also be at liberty, and empowered to advertise such determination or dissolution in the London Gazette, or in any other public prints or papers.

That within two calendar months next after the expiration of the said term of years, or upon the sooner determination of this partnership, by any of the events herein mentioned or provided for, the said parties, or their representatives, shall account together, and state, and adjust, a final account in writing, of the said concern, and take the value of the stock, so that it may appear what the state of the concern may then be; and the stock in trade, fixtures, and utensils belonging to the said concern, shall, in case of the death or resignation of either of them, or the dissolution, from the misconduct, bankruptcy, or insolvency of either

No. 84. of them, go to and become the absolute property
Articles of Co- of the survivor, who shall give his bond or obli-
partnership. gation in writing, with a surety, who cannot be
reasonably objected to, within the space of one
calendar month thereafter, to the assignees, exe-
cutors, or administrators of the party so dying,
or to the party so resigning or otherwise going
out of the said concern, for the payment of so
much money as his share of the stock, fixtures,
and utensils, amounts to, with interest at the
rate of five pounds per centum per annum ; the
same to be paid by equal half-yearly payments,
within two years after the determination of the
said partnership, the first payment to be made
within six calendar months next after such
determination ; and that in case of the parties
being in partnership together until the end of
the said term, then the said stock, and the debts
and effects, shall be equally divided between them ;
and upon any such dissolution or determination
as aforesaid, after payment or satisfaction of all
joint debts and liabilities, and of all costs and
expenses, division and distribution of the funds,
shall from time to time be made, as the same
may be realized, according to the respective
proportions of the parties ; and that after such
dissolution or determination, neither of them
shall, without the consent of the other in writing,
afterwards release, discharge, or compound any
debts or effects.

And lastly, that if during this partnership, or
after the end thereof, any variance or difference

shall arise between the said parties, or their representatives, concerning the said partnership, or any thing herein contained, then and so often as the case may occur, the said parties, or their respective representatives, shall, upon reasonable request made by the other, or his representatives, before the commencement of any action or suit, cause to be elected three indifferent persons, one to be chosen by each party, or his representatives, and a third by the two so chosen, the award of whom, or any two of whom, made in writing, within the space of three calendar months after the appointment of the last of them, and ready to be delivered to the said parties, or such of them as may require it, shall be final, and who shall have full power, in case of breach of any of the aforesaid stipulations by either party, to the prejudice of the concern, to declare the said partnership at an end, and thereupon the same shall cease and determine, and which award the said parties mutually agree to abide by, and hereby agree, that such submission and reference shall or may be made a rule of her Majesty's Court of Queen's Bench, or of any other of the Courts of Record, at Westminster.—In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first before written.

Signed, sealed, and delivered,
(being first duly stamped,) A. B. (Seal.)
by the within-named parties, C. D. (Seal.)
in the presence of

No. 84.

Articles of Co-
partnership.

DECLARATION, IN AN ACTION BROUGHT TO RECOVER PENALTIES, FOR PRACTISING AS A NOTARY, CONTRARY TO THE PROVISIONS OF THE ACT 41ST GEORGE 3RD, C. 79⁽¹⁾, IN THE FORM WHICH WAS USED BEFORE THE PROMULGATION OF THE NEW RULES OF PLEADING AND PRACTICE.

No. 85. In the King's Bench.

Declaration in
an Action
to Recover
Penalties.

Saturday next after the morrow of the Purification in Hilary Term, in the third and fourth years of the reign of King George the Fourth ;

Lancashire, to wit.

Abstract of the
Declaration, as
it appeared in
the margin of
the Brief, for
reference by
Counsel.

N. C. P. the plaintiff in this suit, complains of *T. W.* the defendant in this suit, being in the custody of the Marshall of the Marshalsea of our Lord the now King, before the King himself, of a plea, that he render to the said plaintiff the sum of one thousand pounds of lawful money of Great Britain, which he owes to and unjustly detains from him. For that, whereas, the said defendant, not regarding the statute in such case made and provided, heretofore and after the first day of August, in the year of our Lord one thousand eight hundred and one, and within the space of three calendar months next before the commencement of this suit, to wit, on the second day of November, in the year of our Lord one thousand eight hundred and _____, at L———, in the county of _____

2nd Nov. 18
Defendant did,
in his own
Name, for and
in expectation
of gain, fee,
and reward,
make, prepare,
and draw up
an Instrument
called a Ship
Protest, concern-
ing the

(1) This was before the passing of the Act of the 6th and 7th Victoria, c. 90.

L——, did, in his own name, for and in expectation of gain, fee, and reward, make, prepare, and draw up a certain instrument or document called a ship protest, touching and concerning a certain ship or vessel called the Spartan, for the purpose of and in order to the said instrument or document being signed and sworn to by one W. W. the said making, preparing, and drawing up of the said instrument or document being then and there an act, matter, and thing, appertaining and belonging to the office, function, and practice of a public notary, without his, the said defendant's being at the time he so made, prepared, and drew up the said instrument or document, admitted and inrolled as a public notary, as is directed in and by the statute in such case made and provided, contrary to the form of the statute⁽¹⁾ in such case made and provided, whereby, and by force of the said statute, he, the said defendant, forfeited for his said offence the sum of fifty pounds, and thereby and by force of the said statute an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of fifty pounds so forfeited as aforesaid, parcel of the said sum of money above demanded.

AND the said plaintiff further says, that the said defendant not regarding the statute in such

(1) The Act of the 6th and 7th Victoria, c. 90, had not then been passed.

- No. 85. case made and provided, heretofore and after
— the said first day of August, in the year of our
Lord one thousand eight hundred and one, and
within three calendar months next before the
2nd Nov. 18 . commencement of this suit, to wit, on the said
second day of November, in the year of our Lord
one thousand eight hundred and , at
L—— aforesaid, in the county aforesaid, did,
In the Name of in the name of one *J. D.* the said *J. D.* then and
J. D. the said there being a public notary, for and in expectation
J. D. then and of gain, fee, and reward, to him, the said defendant,
there being a of gain, fee, and reward, to him, the said defendant,
Public Notary, make, prepare, and draw up a certain other in-
as 1st. strument or document called a ship protest,
touching and concerning the said ship or vessel
Spartan. called the Spartan, for the purpose of, and in
order to the said last-mentioned instrument or
document being signed and sworn to by the said
W. W. the said making, preparing, and drawing
up of the said last-mentioned instrument or docu-
ment being then and there an act, matter, and
thing appertaining and belonging to the office,
function, and practice of a public notary, without
his, the said defendant's being at the time when he
so made, prepared, and drew up the said last-
mentioned instrument or document, admitted and
inrolled as a public notary, as is directed in
and by the statute in such case made and pro-
vided, contrary to the form of the statute in such
case made and provided, whereby, and by force
of the said statute, the said defendant forfeited for
his said last-mentioned offence the further sum of

fifty pounds, and thereby and by force of the said statute, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said last-mentioned sum of fifty pounds so forfeited as aforesaid, further parcel of the said sum of money above demanded.

No. 85.

AND the said plaintiff further says, that the said defendant not regarding the statute in such case made and provided, heretofore and after the first day of August, in the year of our Lord one thousand eight hundred and one, and within three calendar months next before the commencement of this suit, to wit, on the second day of November, in the year of our Lord one thousand eight hundred and _____, at L_____ aforesaid, in the county aforesaid, did, in the name of the said *J. D.* the said *J. D.* then and there being a public notary, for and in expectation of gain, fee, and reward, to him, the said defendant, sign and attest a certain other instrument or document called a ship protest, touching and concerning the said ship or vessel called the *Spartan*, the said signing and attestation of the said last-mentioned instrument or document being then and there an act, matter, and thing appertaining and belonging to the office, function, and practice of a public notary, without his, the said defendant's being at the time when he so signed and attested the said last-mentioned instrument or document, admitted and inrolled as a public notary, as is directed in and by the statute in such case made

3rd.

2nd Nov. 18 .

In Name of
*J. D.*Did sign and
attest a
Ship Protest
concerning the
Spartan.

K K K

No. 85.

—

and provided, contrary to the form of the statute in such case made and provided, whereby, and by force of the said statute, the said defendant forfeited for his said last-mentioned offence the further sum of fifty pounds, and thereby, and by force of the said statute, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said last-mentioned sum of fifty pounds so forfeited as aforesaid, further parcel of the said sum of money above demanded.

4th.

AND the said plaintiff further says, that the said defendant not regarding the statute in such case made and provided, heretofore and after the first day of August, in the year of our Lord one thousand eight hundred and one, and within three calendar months next before the commence-

2nd Nov. 18

ment of this suit, to wit, on the second day of November, in the year of our Lord one thousand eight hundred and _____, at L_____

Did seal with
the Notarial
Seal of J. D. a
Ship Protest
concerning the
Spartan.

aforesaid, in the county aforesaid, for and in expectation of gain, fee, and reward, to him, the said defendant, did seal with the notarial seal of the said J. D. so then and there being a public notary as aforesaid, a certain other instrument or document called a ship protest, touching and concerning the said ship or vessel called the Spartan, the said sealing the said last-mentioned instrument or document, being then and there an act, matter, and thing appertaining and belonging to the office, function, and practice of a public

notary, without his, the said defendant's being at the time when he so sealed the said last-mentioned instrument or document, admitted and inrolled as a public notary, as is directed in and by the statute in such case made and provided, contrary to the form of the statute in such case made and provided, whereby, and by force of the said statute, the said defendant forfeited for his said last-mentioned offence the further sum of fifty pounds, and thereby, and by force of the said statute, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said last-mentioned sum of fifty pounds so forfeited as aforesaid, further parcel of the said sum of money above demanded.

No. 85.

AND the said plaintiff further says, that the said defendant not regarding the statute in such case made and provided, heretofore and after the said first day of August, in the year of our Lord one thousand eight hundred and one, and within three calendar months next before the commencement of this suit, to wit, on the said second day of 2nd Nov. 18 . November, in the year of our Lord one thousand eight hundred and , at L—— aforesaid, in the county aforesaid, for and in expectation of gain, fee, and reward, did draw up and prepare a certain other instrument or document called a ship protest, touching and concerning the said ship or vessel called the Spartan, the said drawing up and preparing of the said last-mentioned instrument or document being

5th.

Did draw up
and prepare a
Ship Protest
concerning the
Spartan.

No. 85.

—

then and there an act, matter, and thing appertaining and belonging to the office, function, and practice of a public notary, without his, the said defendant's being at the time when he so drew up and prepared the said last-mentioned instrument or document, admitted and inrolled as a public notary, as is directed in and by the statute in such case made and provided, contrary to the form of the statute in such case made and provided, whereby, and by force of the said statute, the said defendant forfeited for his said last-mentioned offence, the further sum of fifty pounds, and thereby, and by force of the said statute, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said last-mentioned sum of fifty pounds, so forfeited as aforesaid, further parcel of the said sum of money above demanded.

6th.

AND the said plaintiff further says, that the said defendant not regarding the statute in such case made and provided, heretofore and after the said first day of August, in the year of our Lord one thousand eight hundred and one, and within three calendar months next before the commence-

22nd. Dec. 18

ment of this suit, to wit, on the twenty-second day of December, in the year of our Lord one thousand eight hundred and , at L——

In his own

Namedid make
and draw up a
certain entry,
note, or

aforesaid, in the county aforesaid, did, in his own name for and in expectation of gain, fee, and reward, make and draw up a certain entry, note, or memorandum of a protest, touching and con-

cerning a certain other ship or vessel called the *Rebecca*, for the purpose of and in order to the same being signed, and the same was then and there signed by one *G. T.* the said making and drawing up of the said entry, note, or memorandum, then and there being an act, matter, and thing appertaining and belonging to the office, function, and practice of a public notary, without his, the said defendant's being at the time when he so made and drew up the said entry, note, or memorandum, admitted and inrolled as a public notary, as is directed in and by the statute in such case made and provided, contrary to the form of the statute in such case made and provided, whereby, and by force of the said statute, the said defendant forfeited for his said last-mentioned offence the further sum of fifty pounds, and thereby, and by force of the said statute, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said last-mentioned sum of fifty pounds so forfeited as aforesaid, further parcel of the said sum of money above demanded.

AND the said plaintiff further says, that the said defendant not regarding the statute in such case made and provided, heretofore and after the said first day of August, in the year of our Lord one thousand eight hundred and one, and within three calendar months next before the commencement of this suit, to wit, on the twenty-second day of December, in the year of our Lord one thousand

memorandum,
of a Protest,
concerning the
Rebecca, in
order to its
being signed
by *G. T.* and
the same was
then and there
signed.

7th.

22nd Dec. 18 .

No. 85. eight hundred and aforesaid, at L———
 In Name of aforesaid, in the county aforesaid, did, in the
J. D. did name of the said *J. D.* the said *J. D.* then
 make and draw and there being a public notary, for and in
 up an entry, expectation of gain, fee, and reward to him, the
 &c. said defendant, make and draw up a certain
 other entry, note, or memorandum of a protest,
 touching and concerning the said ship or vessel
 called the Rebecca, for the purpose of and in
 In order to its order to the same being signed, and the same
 being signed, was then and there signed by the said *G. T.* the
 and it was said making and drawing up of the said last-
 signed by *G. T.* mentioned entry, note, or memorandum, then
 and there being an act, matter, and thing be-
 longing and appertaining to the office, function,
 and practice of a public notary, without his, the
 said defendant's being at the time when he so
 made and drew up the said last-mentioned entry,
 note, or memorandum, admitted and inrolled as
 a public notary, as is directed in and by the
 statute in such case made and provided, contrary
 to the form of the statute in such case made and
 provided, whereby, and by force of the said statute,
 the said defendant forfeited for his said last-
 mentioned offence the further sum of fifty pounds,
 and thereby, and by force of the said statute, an
 action hath accrued to the said plaintiff to demand
 and have of and from the said defendant the said
 last-mentioned sum of fifty pounds, further parcel
 of the said sum of money above demanded.

8th.

AND the said plaintiff further says, that the

said defendant not regarding the statute in such case made and provided, heretofore and after the first day of August, in the year of our Lord one thousand eight hundred and one, and within three calendar months next before the commencement of this suit, to wit, on the said twenty-second day of December, in the year of our Lord one thousand eight hundred and aforesaid, at L———

aforesaid, in the county aforesaid, did, for and in expectation of gain, fee, and reward, make and draw up a certain other entry, note, or memorandum of a protest, touching and concerning the said ship or vessel called the Rebecca, the said making and drawing up of the said last-mentioned entry, note, or memorandum, then and there being an act, matter, and thing appertaining and belonging to the office, function, and practice of a public notary, without his, the said defendant's being at the time when he so made and drew up the said last-mentioned entry, note, or memorandum, admitted and inrolled as a public notary, as is directed in and by the statute in such case made and provided, contrary to the form of the statute in such case made and provided, whereby, and by force of the said statute, the said defendant forfeited for his said last-mentioned offence the further sum of fifty pounds, and thereby, and by force of the said statute, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said last-mentioned sum of fifty pounds so forfeited

No. 85.

—

22nd Dec. 18 .

Did make
entry, &c. of a
Protest,
touching the
Ship Rebecca.

No. 85. as aforesaid, further parcel of the said sum of
— money above demanded.

9th. AND the said plaintiff further says, that the
said defendant not regarding the statute in such
case made and provided, heretofore and after the
said first day of August, in the year of our Lord
one thousand eight hundred and one, and within
three calendar months next before the commence-
22nd Dec. 18 . ment of this suit, to wit, on the twenty-second day
of December, in the year of our Lord one thousand
eight hundred and aforesaid, at L——

In the Name of aforesaid, in the county aforesaid, did, in the
J. D. did note name of the said *J. D.* the said *J. D.* then and
a Protest, there being a public notary, for and in expecta-
touching the tion of gain, fee, and reward, to him, the said
Ship Rebecca. defendant, note a protest, touching and concern-
ing the said ship or vessel called the Rebecca,
the said noting the said last-mentioned protest
then and there being an act, matter, and thing
belonging and appertaining to the office, function,
and practice of a public notary, without his, the
said defendant's being at the time when he so
noted the said last-mentioned protest, admitted
and inrolled as a public notary, as is directed
in and by the statute in such case made and
provided, contrary to the form of the statute in
such case made and provided, whereby, and by
force of the said statute, the said defendant
forfeited for his said last-mentioned offence the
further sum of fifty pounds, and thereby, and by
force of the said statute, an action hath accrued

to the said plaintiff to demand and have of and from the said defendant the said last-mentioned sum of fifty pounds, further parcel of the said sum of money above demanded.

No. 85.

—

AND the said plaintiff further says, that the said defendant not regarding the statute in such case made and provided, heretofore and after the first day of August, in the year of our Lord one thousand eight hundred and one, and within three calendar months next before the commencement of this suit, to wit, on the said twenty-second day of December, in the year of our Lord one thousand eight hundred and aforesaid, at L——

10th.

aforesaid, in the county aforesaid, did, in his own name, for and in expectation of gain, fee, and reward, note a certain other protest, touching and concerning the said ship or vessel called the Rebecca, the said noting the said last-mentioned protest, being then and there an act, matter, and thing appertaining and belonging to the office, function, and practice of a public notary, without his, the said defendant's being at the time when he so noted the said last-mentioned protest, admitted and inrolled as a public notary, as is directed in and by the statute in such case made and provided, contrary to the form of the statute in such case made and provided, whereby, and by force of the said statute, the said defendant forfeited for his said last-mentioned offence the further sum of fifty pounds, and thereby, and by force of the said statute, an action hath accrued

Did in his own
name note a
Protest,
touching the
Ship Rebecca.

L L L

No. 85. — to the said plaintiff to demand and have of and from the said defendant the said last-mentioned sum of fifty pounds so forfeited as aforesaid, further parcel of the said sum of money above demanded.

11th. AND the said plaintiff further says, that the said defendant not regarding the statute in such case made and provided, heretofore and after the said first day of August, in the year of our Lord one thousand eight hundred and one, and within three calendar months next before the commence-

22nd Dec. 18 . ment of this suit, to wit, on the twenty-second day of December, in the year of our Lord one thousand eight hundred and , at

Did note a Protest, touching the Ship Rebecca. L—— aforesaid, in the county aforesaid, did, for and in expectation of gain, fee, and reward, note a certain other protest, touching and concerning the said ship or vessel called the Rebecca, the said noting the said last-mentioned protest, being then and there an act, matter, and thing appertaining and belonging to the office, function, and practice of a public notary, without his, the said defendant's being at the time when he so noted the said last-mentioned protest, admitted and inrolled as a public notary, as is directed in and by the statute in such case made and provided, contrary to the form of the statute in such case made and provided, whereby, and by force of the said statute, the said defendant forfeited for his said last-mentioned offence the further sum of fifty pounds, and thereby, and by force of the said

statute, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said last-mentioned sum of fifty pounds so forfeited as aforesaid, further parcel of the said sum of money above demanded. No. 85.
—

AND the said plaintiff further says, that the said defendant not regarding the statute in such case made and provided, heretofore and after the first day of August, in the year of our Lord one thousand eight hundred and one, and within three calendar months next before the commencement of this suit, to wit, on the tenth day of January, in the year of our Lord one thousand eight hundred and , at L—— aforesaid, in the county aforesaid, did, in his own name, for and in expectation of gain, fee, and reward, make, prepare, and draw up a certain other instrument or document called a ship protest, touching and concerning the said ship or vessel called the Rebecca, for the purpose of and in order to the said last-mentioned instrument or document, being signed and sworn to by the said *G. T.* the said making, preparing, and drawing up of the said last-mentioned instrument or document, being then and there an act, matter, and thing appertaining and belonging to the office, function, and practice of a public notary, without his, the said defendant's being at the time when he so made, prepared, and drew up the said last-mentioned instrument or document, admitted and inrolled as a public notary, as is directed in and 12th.

10th Jan. 18 .

In his own name, make, &c. a Protest, touching the Ship Rebecca.

No. 85. — by the statute in such case made and provided, contrary to the form of the statute in such case made and provided, whereby, and by force of the said statute, the said defendant forfeited for his said last-mentioned offence the further sum of fifty pounds, and thereby, and by force of the said statute, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said last-mentioned sum of fifty pounds so forfeited as aforesaid, further parcel of the said sum of money above demanded⁽¹⁾.

Breach. Yet the said defendant, although often requested so to do, hath not yet paid to the said plaintiff the said sum of money above demanded, or any part thereof; but he, to do this, hath wholly refused, and still doth refuse, and therefore the said plaintiff brings this suit, &c.

Pledges to prosecute, &c.

(1) In the Declaration from which the above Form was taken, other Counts for various Notarial Acts done or solemnized by the Defendant were introduced, which it is not considered necessary to set out here.

APPENDIX.

STATUTES RELATING TO NOTARIES.

STATUTE 41ST GEO. III, CAP. 79,

*An Act for the better Regulation of Publick Notaries in
England.*

No. 1.

[27th June, 1801.]

41st Geo. III,
c. 79.

WHEREAS it is expedient, for the better prevention of Preamble.
illiterate and inexperienced persons being created to act as,
or admitted to the faculty of Publick Notaries, that the said
faculty should be regulated in England; be it therefore
enacted by the King's most excellent Majesty, by and with
the advice and consent of the Lords spiritual and temporal
and Commons, in this present Parliament assembled, and
by the authority of the same, that, from and after the first
day of August, one thousand eight hundred and one, no
person in England shall be created to act as a publick
notary, or use and exercise the office of a notary, or do any
notarial act, unless such person shall have been duly sworn,
admitted, and inrolled, in manner hereinafter directed, in
the Court wherein notaries have been accustomedly sworn,
admitted, and inrolled.

From Aug. 1,
1801, no person
in England
shall act as a
Publick
Notary, unless
duly admitted.

II. And be it further enacted, That, from and after the
said first day of August, one thousand eight hundred and
one, no person shall be sworn, admitted, and inrolled, as a
publick notary, unless such person shall have been bound,

No person shall
be admitted as
a Notary unless
he shall have
served as an
Apprentice for
Seven Years;

and if bound after Aug. 1, 1801, unless affidavit of certain particulars be made, which shall be inrolled in the proper Court.

by contract in writing or by indenture of apprenticeship, to serve as a clerk or apprentice, for and during the space of not less than seven years, to a publick notary, or a person using the art and mystery of a scrivener, (according to the privilege and custom of the city of London, such scrivener being also a publick notary), duly sworn, admitted, and inrolled, and that such person, for and during the said term of seven years, shall have continued in such service; and also unless every such person who shall, from and after the said first day of August, be bound by contract in writing or indenture of apprenticeship, to serve as a clerk or apprentice to any publick notary or scrivener, being also a publick notary, shall, within three months next after the date of every such contract or indenture of apprenticeship, cause an affidavit to be made and duly sworn by one of the subscribing witnesses, of the actual execution of every such contract or indenture of apprenticeship by such publick notary or scrivener (being also a publick notary,) and the person so to be bound to serve as a clerk or apprentice as aforesaid, and in every such affidavit shall be specified the names of every such publick notary or scrivener (being a publick notary), and of every such person so bound, and their places of abode respectively, together with the day of the date of such contract or indenture of apprenticeship; and every such affidavit shall be sworn and filed within the time aforesaid, in the Court where the publick notary, to whom every such person respectively shall be bound as aforesaid, shall have been inrolled as a notary, with the proper officer or officers, or his or their respective deputy or deputies, who shall make or sign a memorandum of the

day of filing every such affidavit on the back or at the bottom of such contract or indenture. 41st Geo. III, c. 79.

III. And be it further enacted, That no person who shall, after the said first day of August become bound as aforesaid, shall be admitted or inrolled a publick notary in the Court of Faculties for admitting and inrolling publick notaries, before such affidavit shall be produced and openly read in such Court, at the time of such person's admission and inrolment. No person bound after Aug. 1, 1801, shall be admitted in the Court of Faculties before such affidavit shall be openly read in Court.

IV. And be it further enacted, That the following persons shall be deemed and taken to be the proper officers for taking and filing such affidavits; (that is to say), the Master of Faculties of his Grace the Lord Archbishop of Canterbury in London, his surrogate or commissioners. Officers for taking and filing affidavits.

V. And be it further enacted, That the officer filing such affidavits as aforesaid, shall keep a book, wherein shall be entered the substance of such affidavit, specifying the names and places of abode of every such publick notary, and clerk or person bound as aforesaid, and of the person making such affidavit, with the date of the contract or indenture of apprenticeship in such affidavit to be mentioned, and the days of swearing and filing every such affidavit respectively; and such officer shall be at liberty to take, at the time of filing every such affidavit, the sum of five shillings, and no more, as a recompence for his trouble in filing such affidavit; and which book shall and may be searched, in office hours, by any person or persons whomsoever, upon payment of one shilling for such search. Officer filing affidavits to enter the substance in a book, for which he may take 5s. Book may be searched for 1s.

VI. And be it further enacted, That from and after the said first day of August, no publick notary or scrivener, No Publick Notary to have any Appren-

being also a publick notary, shall take, have, or retain any clerk or apprentice who shall become bound as aforesaid, after such publick notary or scrivener, being also a publick notary, shall have discontinued or left off, or during such time as he shall not actually practise or carry on the business of a publick notary.

Apprentice to be actually employed Seven Years in the business.

VII. And be it further enacted, That every person who shall, from and after the said first day of August, become bound by contract in writing or indenture of apprenticeship to serve any publick notary as hereby directed, shall, during the whole time and term of service to be specified in such contract or indenture of apprenticeship, or during the time and space of seven years thereof at least (if bound for a longer term than seven years) continue and be actually employed by such publick notary or scrivener, (being also a publick notary,) in the proper business, practice, or employment of a publick notary.

If any Master shall die, or leave off practice, or any Indenture shall be cancelled by mutual consent, or any Apprentice shall be legally discharged, in such cases if Apprentices serve the residue of seven years with other Masters, it shall be effectual, if an affidavit be filed of the second contract.

VIII. Provided always, and be it further enacted, That if any such publick notary or scrivener, being also a publick notary, to or with whom any such person shall be bound, shall happen to die before the expiration of such term, or shall discontinue or leave off such his practice as aforesaid; or if such contract or indenture of apprenticeship shall, by mutual consent of the parties, be cancelled; or in case such clerk or apprentice shall be legally discharged before the expiration of such term, and such clerk or apprentice shall in any of the said cases, be bound by another contract or contracts, indenture or indentures in writing, to serve, and shall accordingly serve in manner herein-before mentioned, as clerk or apprentice to any such publick

notary or scrivener, (being also a publick notary) as aforesaid, during the residue of the said term of seven years, then such service shall be deemed and taken to be as good, effectual, and available, as if such clerk or apprentice had continued to serve as a clerk or apprentice for the said term of seven years to the same person to whom he was originally bound; so as an affidavit be duly made and filed of the execution of such second or other contract or contracts, within the time and in like manner as is hereinbefore directed concerning such original contract.

IX. And be it further enacted, That every person who, from and after the said first day of August, shall become bound as clerk or apprentice as aforesaid, shall, before he be admitted and inrolled a publick notary according to this act, make before, and file with, the proper officer hereinbefore for that purpose mentioned, or cause the publick notary, to whom he was bound, to make and file an affidavit that he hath actually and really served and been employed by such practising publick notary, to whom he was bound as aforesaid, during the whole term of seven years, according to the true intent and meaning of this act.

X. And be it further enacted, That from and after the said first day of August, if any publick notary shall act as such, or permit or suffer his name to be in any manner used for or on account, or for the profit and benefit, of any person or persons not entitled to act as a publick notary, and complaint shall be made in a summary way to the Court of Faculties wherein he hath been admitted and inrolled upon oath, to the satisfaction of the said Court, that such notary hath offended therein as aforesaid, then

No. 1.

41st Geo. III,
c. 79.Apprentices
bound after
Aug. 1, 1801,
before admis-
sion, to file
affidavits that
they have really
served Seven
Years.If any Notary
shall act as
such, or permit
his name to be
used for the
profit of any
person not
entitled to act
as a Notary, he
shall be struck
off the Roll.

M M M

No. 1.

—
41st Geo. III,
c. 79.

and in such case every such notary so offending shall be struck off the Roll of Faculties, and be for ever after disabled from practising as a publick notary, or doing any notarial act; save and except as to any allowance or allowances, sum or sums of money, that are or shall be agreed to be made or paid to the widows or children of any deceased publick notary or notaries, by any surviving partner or partners of such deceased notary or notaries.

Any person doing any thing belonging to the office of a Notary without being admitted, shall forfeit £50.

XI. And be it further enacted, That, from and after the said first day of August, in case any person shall, in his own name or in the name of any other person, make, do, act, exercise, or execute and perform, any act, matter, or thing whatsoever, in anywise appertaining or belonging to the office, function, and practice of a publick notary, for or in expectation of any gain, fee, or reward, without being admitted and inrolled, every such person for every such offence, shall forfeit and pay the sum of fifty pounds, to be sued for and recovered in manner hereinafter mentioned.

Act not to exclude any person from admission who hath been bound on or before Jan. 1, 1801, for seven years, to any Notary or person who has actually served as clerk or apprentice seven years, though not bound by contract, &c.

XII. Provided always, and be it further enacted, That this act, or any thing herein contained, shall not be taken or construed to exclude any person from being sworn, admitted, and inrolled a publick notary, in the accustomed Court aforesaid, who hath, on or before the first day of January one thousand eight hundred and one, been bound by contract in writing or indenture of apprenticeship, to serve as a clerk or apprentice to any publick notary or scrivener, being also a publick notary, or any person who shall have actually served in the capacity of clerk or apprentice to any publick notary or scrivener, being also a publick notary, for the term commencing before the first

day of January one thousand eight hundred and one, for the term of not less than seven years, notwithstanding such person shall not have been bound by contract in writing or indenture of apprenticeship, or that such term of seven years shall not expire till after the said first day of August; and provided that such clerk or apprentice shall, within six months after the passing of this act, enter into and become bound by contract in writing or indenture of apprenticeship, to any such publick notary, and shall actually serve for the remainder of the term of seven years: Provided always, That an affidavit shall be previously made and filed, in manner hereinbefore directed, of such actual service for any term not less than seven years, to any such qualified notary or scrivener: and every such person may, after the expiration of such term of seven years, and affidavit of such service having been previously made and filed as before directed, be sworn, admitted, and inrolled, to be a publick notary, in the same manner as persons to be admitted, sworn, and inrolled publick notaries, are hereby required to be sworn, admitted, and inrolled respectively; any thing in this act contained to the contrary notwithstanding.

XIII. And whereas the incorporated Company of Scriveners of London, by virtue of its charter, hath jurisdiction over its members being resident within the city of London, the liberties of Westminster, the borough of Southwark, or within the circuit of three miles of the said city, and hath power to make good and wholesome laws and regulations for the government, and controul of such members, and the said Company of Scriveners practising within the

No. 1.

41st Geo. III,
c. 79.

Persons applying for a Faculty to become Notaries within the jurisdiction of the Company of Scriveners, shall previously take their freedom of the Company.

No. 1.
—
41st Geo. III,
c. 79.

aforesaid limits, and it is therefore expedient that all notaries resident within the limits of the said charter, should come into and be under the jurisdiction of the said company; be it therefore enacted, That all persons who may hereafter apply for a faculty to become a publick notary, and practise within the city of London and the liberties thereof, or within the circuit of three miles of the same city, shall come into and become members, and take their freedom of the said Company of Scriveners, according to the rules and ordinances of the said Company, on payment of such and the like fine and fees as are usually paid and payable upon the admission of persons to the freedom of the said Company; and shall, previous to the obtaining such faculty, be admitted to the freedom of the said Company, and obtain a certificate of such freedom, duly signed by the clerk of the same Company for the time being, which certificate shall be produced to the Master of Faculties, and filed in his office prior to or at the time of issuing any faculty to such person to enable him to practise within the jurisdiction of the said Company.

Act not to
extend to
Proctors in
Ecclesiastical
Courts, Secre-
taries to
Bishops, &c.

XIV. Provided nevertheless, and it is hereby enacted, That nothing in this act contained shall extend, or be construed to extend, to any proctor in any Ecclesiastical Court in England; nor to any secretary or secretaries to any bishop or bishops, merely practising as such secretary or secretaries; or to any other person or persons necessarily created a notary publick for the purpose of holding or exercising any office or appointment, or occasionally performing any publick duty or service under Government, and not as general practitioner or practitioners; any thing

hereinbefore contained to the contrary notwithstanding : No. 1.
 Provided always, that nothing herein contained shall 41st Geo. III,
c. 79.
 extend or be construed to exempt any proctor, being also a
 publick notary, from the pains, penalties, forfeitures, and
 disabilities, by this act imposed upon any publick notary,
 who shall permit or suffer his name to be, in any manner,
 used for, or on account, or for the profit and benefit, of any
 person or persons, not entitled to act as a publick notary.

XV. And be it further enacted, That nothing in this act Nor to persons
who on or
before passing
this Act, have
been admitted
as Notaries.
 contained shall extend, or be construed to extend, to pre-
 vent any person who, on or before the passing of this act
 shall have been admitted as a publick notary, from acting
 as a publick notary, or using or exercising the office of a
 notary in any manner, or doing any notarial acts whatever.

XVI. And be it further enacted, That all pecuniary Recovery and
application of
Penalties.
 forfeitures and penalties imposed on any person or persons,
 for offences committed against this act, shall and may be
 sued for and recovered in any of his Majesty's Courts of
 Record at Westminster, by action of debt, bill, plaint, or
 information, wherein no essoign, protection, privilege,
 wager of law, or more than one imparlance shall be allowed,
 and wherein the plaintiff, if he or she shall recover any
 penalty or penalties, shall recover the same for his or her
 own use, with full costs of suit.

XVII. And be it further enacted, That if any action or Limitation of
Actions.
 suit shall be brought or commenced for any thing done in
 pursuance of this act, every such action or suit shall be
 commenced within three calendar months next after the
 fact committed, and not afterwards, and shall be laid and
 tried in the county wherein the cause of action shall have

- No. 1.** arisen, and not elsewhere; and the defendant or defendants
41st Geo. III, in such action or suit, shall and may plead the general
c. 79. issue, and give this act, and the special matter, in evidence
- General Issue.** at any trial to be had thereupon, and that the same was
 done in pursuance and by the authority of this act; and if
 the same shall appear to have been so done, or if any
 action or suit shall be brought after the time limited for
 bringing the same, or shall be laid in any other county or
 place than as aforesaid, then the jury shall find for the
 defendant or defendants; and upon such verdict, or if the
 plaintiff or plaintiffs shall be nonsuited, or suffer a discon-
 tinuance of his, her, or their action or suit, after the
 defendant or defendants shall have appeared, or if upon
 demurrer judgment shall be given against the plaintiff or
- Treble Costs.** plaintiffs, the defendant or defendants shall have treble
 costs, and shall have such remedy for the same as any
 defendant or defendants hath or have for costs of suit in
 any other case by law.
- Publick Act.** XVIII. And be it further enacted, That this act shall
 be deemed, adjudged, and taken to be a publick act, and
 shall be judicially taken notice of as such by all judges,
 justices, and other persons whomsoever, without specially
 pleading the same.

SECTION 20TH OF THE STATUTE 6TH GEORGE IV, c. 87,
RELATIVE TO NOTARIAL ACTS PERFORMED BY BRITISH
CONSULS ABROAD.

*An Act to regulate the Payment of Salaries and Allowances
to British Consuls at Foreign Ports, and the Disburse-
ments at such Ports for certain Publick Purposes.*

[5th July, 1825.]

No. 2.

Sec. 20.

AND WHEREAS it is expedient that every consul-general, or consul, appointed by his Majesty at any foreign port or place should; in all cases, have the power of administering an oath or affirmation whenever the same shall be required; and should also have power to do all such notarial acts as any notary public may do: be it therefore enacted, that from and after the passing of this act it shall and may be lawful for any and every consul-general, or consul, appointed by his Majesty at any foreign port and place, whenever he shall be thereto required, and whenever he shall see necessary to administer at such foreign port or place any oath, or take any affidavit or affirmation from any person or persons whomsoever, and also to do and perform at such foreign port or place all and every notarial acts or act which any notary public could or might be required, and is by law empowered to do, within the united kingdom of Great Britain and Ireland; and every such oath, affidavit, or affirmation, and every such notarial act administered, sworn, affirmed, had or done by or before such consul-general, or consul, shall be as good,

- No. 2. valid, and effectual, and shall be of like force and effect
6th George IV, to all intents and purposes as if any such oath, affidavit,
c. 87, sec. 20. or affirmation, or notarial act respectively, had been administered, sworn, affirmed, had or done before any justice of the peace or notary public in any part of the United Kingdom of Great Britain or Ireland, or before any other legal or competent authority of the like nature.

STATUTE 3RD AND 4TH WILLIAM IV, c. 70.

No. 3.

*An Act to alter and amend an Act of the forty-first year
of his Majesty King George the Third, for the better
regulation of Public Notaries in England.*

3rd and 4th
Wm. IV, c. 70.

[28th August, 1833.]

“WHEREAS by an act passed in the forty-first year of the 41st Geo. III,
reign of his late Majesty King George the Third, intituled c. 79.
an Act for the better regulation of Public Notaries in
England, it is enacted, that after the first day of August,
one thousand eight hundred and one, no person shall be
sworn, admitted, and inrolled as a public notary unless such
person shall have been bound by contract in writing or by
indenture of apprenticeship to serve as a clerk or appren-
tice for the term of not less than seven years to a public
notary, or a person using the art and mystery of a scri-
vener (according to the privilege and custom of the city of
London, such scrivener being also a public notary,) duly
sworn, admitted, and inrolled, and shall have continued in
such service for the said term of seven years; and certain
other enactments are contained in the said act, regulating
the admission and practice of notaries public: and whereas
the provisions of the said act are in their operation found
to be extremely inconvenient in some places distant from
the city of London;” be it therefore enacted by the King’s
most excellent Majesty, by and with the advice and con-
sent of the Lords Spiritual and Temporal, and Commons,
in this present Parliament assembled, and by the authority

N N N

No. 3. of the same, That from and after the passing of this act
 — so much of the said recited act as requires that persons to
 3rd and 4th Wm. IV, c. 70. be admitted notaries public shall have served a clerkship
 Recited act or apprenticeship for seven years, as hereinbefore men-
 limited to tioned, shall, so far as the same affects persons being
 London and ten miles attorneys, solicitors, or proctors admitted as hereinafter
 thereof. mentioned, be limited and confined to the city of London
 and liberties of Westminster, the borough of Southwark,
 and the circuit of ten miles from the Royal Exchange in
 the said city of London.

Attornies may
 be admitted as
 Notaries out of
 those limits.

II. And be it further enacted, That from and after the
 passing of this act it shall and may be lawful for the Master
 of the Court of Faculties of his Grace the Lord Arch-
 bishop of Canterbury in London from time to time, upon
 being satisfied as well of the fitness of the person as of
 the expediency of the appointment, to appoint, admit, and
 cause to be sworn and inrolled in the said Court of Facul-
 ties any person or persons residing at any place distant
 more than ten miles from the Royal Exchange in the said
 city of London who shall have been previously admitted,
 sworn, and inrolled an attorney or solicitor in any of the
 Courts at Westminster, or who shall be a proctor practising
 in any Ecclesiastical Court, to be a notary public or nota-
 ries public to practise within any district in which it shall
 have been made to appear to the said Master of the Court
 of Faculties that there is not (or shall not hereafter be) a
 sufficient number of such notaries public admitted or to
 be admitted under the provisions of the said recited act
 for the due convenience and accommodation of such dis-
 trict, as the said Master of the Court of Faculties shall

think fit, and not elsewhere ; any law or usage to the contrary notwithstanding.

No. 3.

3d and 4th
Wm. IV, c. 70.

III. Provided always, and be it further enacted, That nothing herein contained shall extend to authorize any notary who shall be admitted by virtue of this act to practise as a notary, or to perform or certify any notarial act whatsoever, within the said city of London, the liberties of Westminster, the borough of Southwark, or within the circuit of ten miles from the Royal Exchange in the said city of London.

Not to authorize Notaries appointed thereby to act in London or within ten miles thereof.

IV. Provided always, and be it further enacted, That if any notary admitted by virtue of this act shall practise as a notary, or perform or certify any notarial act whatsoever, out of the district specified and limited in and by the faculty to be granted to him by virtue of this act, or within the city of London, the liberties of Westminster, the borough of Southwark, or the circuit of ten miles from the Royal Exchange in London aforesaid, then and in every such case it shall be lawful for the said Court of Faculties, on complaint made in a summary way, and duly verified on oath, to cause every such notary so offending to be struck off the Roll of Faculties, and every person so struck off shall thenceforth for ever after be wholly disabled from practising as a notary or performing or certifying any notarial act whatsoever; any thing herein contained to the contrary notwithstanding.

Notary admitted under this Act, practising out of his district to be struck off the Roll of Faculties.

STATUTE 6TH AND 7TH VICTORIA, c. 90.

An Act for removing doubts as to the Service of Clerks or Apprentices to Public Notaries, and for Amending the Laws regulating the Admission of Public Notaries.

No. 4.

[24th August, 1843.]

41st Geo. III.
c. 79.

WHEREAS by an act passed in the forty-first year of the reign of his late Majesty King George the Third, intituled an Act for the better Regulation of Public Notaries in England, it was amongst other things enacted, That from and after the first day of August one thousand eight hundred and one, no person should be sworn, admitted, and inrolled as a public notary in England, unless such person should have been bound by contract in writing, or by indenture of apprenticeship, to serve as a clerk or apprentice for and during the space of not less than seven years to a public notary or person using the art and mystery of a scrivener (according to the privilege and custom of the city of London, such scrivener being also a public notary), duly sworn, admitted, and inrolled: and whereas doubts have arisen whether a public notary, being also an attorney, solicitor, or proctor, can have and retain any person to serve him as a clerk or apprentice in his profession or business of a public notary, and also at the same time in that of an attorney, solicitor, or proctor, and whether such service is in conformity with the provisions of the said recited act: and whereas it is expedient to remove all such doubts with regard to persons who have

served, or are now serving, or may hereafter serve as a clerk or apprentice in manner aforesaid : be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act every person who has been duly admitted, sworn, and inrolled a public notary in England may take, have, and retain any clerk or apprentice to serve him under the provisions of the said recited act, or of this act, in the proper business of a public notary ; or if such person is also an attorney or solicitor in any of the courts of law or equity, or a proctor in any ecclesiastical court in England or Wales, to serve him at the same time in the general business of a notary, as well as that of an attorney, solicitor, or proctor : and that no person who shall have regularly and duly served any such public notary, being also an attorney, solicitor, or proctor for the time required by the said recited act, or this act, and be otherwise entitled to be admitted a public notary, shall be prevented or disqualified from being so admitted a public notary by reason of his having also served a clerkship to such public notary, or his partner as an attorney, solicitor, or proctor, during the same time, or any part thereof.

No. 4.

6th & 7th Vict.
c. 90.Public Notaries
may retain
Clerks or
Apprentices in
their business
as such, or as
Attorneys and
Notaries if so
practising, and
persons serving
them not
disqualified.

II. Provided always, and be it enacted, That no public notary may have and retain any such clerk or apprentice to serve him under the provisions of the said act, or of this act, if he has been admitted, sworn, and inrolled a public notary, for the purpose only of carrying on any business

No Public
Notary to retain
a Clerk or
Apprentice
unless in
actual practice.

No. 4. or holding or exercising any office or appointment, and
 6th & 7th Vict. not as a general practitioner: nor shall any public notary
 c. 90. be allowed to have and retain such clerk or apprentice
 after he shall have discontinued or left off, or during such
 time as he shall not actually practise and carry on the
 profession or business of a public notary.

Persons serv-
 ing five years
 to a Notary to
 be entitled to
 admission as
 Notaries.

III. And whereas it is expedient to shorten the period
 of the service required by the said recited act: be it there-
 fore enacted, That from and after the passing of this act,
 in case any person shall have been or shall be bound by
 any contract to serve, and shall have actually served, as a
 clerk or apprentice, for the term of five years, any public
 notary as aforesaid, and shall have caused an affidavit to
 be made and filed as to the due execution of such contract,
 and shall have complied with the other provisions of the
 said recited act, save as to the length of service, then and
 in such case every such person shall be qualified and en-
 titled to be sworn, admitted, and inrolled a public notary,
 to practise in England, as fully and effectually as any
 person having been bound and having served seven years,
 as required by the said recited act, would be qualified and
 entitled to be sworn, admitted, and inrolled a public notary
 under and by virtue of the said recited act: Provided
 always, that no person shall be entitled to be admitted
 and inrolled a public notary at the expiration of the term
 of five years if bound for a longer time, without the con-
 sent in writing of the public notary, if living, to whom he
 shall have been so bound being first obtained and pro-
 duced at the time of his admission, and filed with the other
 papers relating thereto: and provided also, that in case

Proviso as to
 consent of
 Notary if bound
 for a longer
 time.

the affidavit required by the said recited act as to the execution of any contract be not filed within the time required by the said act, the same may be filed by the proper officer after the expiration thereof, but the service of such clerk shall be reckoned to commence and be computed from the day of filing such affidavit, unless the Master of the Faculties shall otherwise order: and such service shall be as effectual, and the public notary and clerk shall be equally bound for and during the term, reckoning as aforesaid, as if such term had been originally intended and mentioned in the contract.

No. 4.

—
If Affidavit as to Execution of Contract be not filed within time required, the service to reckon from the day of filing, unless otherwise ordered.

IV. And be it enacted, That the Master of the Faculties for the time being may make any general rule or rules, requiring testimonials, certificates, or proofs as to the character, integrity, ability, and competency of any person who shall hereafter apply for admission or re-admission as a public notary, to practise either in England or in any of her Majesty's foreign territories, colonies, settlements, dominions, forts, factories, or possessions, whether such person shall have served a clerkship or not, and from time to time alter and vary such rules as to the Master of the Faculties shall seem meet, and may admit or reject any person so applying at his discretion, any law, custom, usage, or prescription to the contrary notwithstanding.

Master of the Faculties may require Testimonials of Ability, &c.

V. Provided always, and be it enacted, That if the Master of the Faculties shall refuse to grant any faculty to practise as a public notary to any person without just and reasonable cause, then the Chancellor of England or the Lord Keeper of the Great Seal for the time being, upon complaint thereof being made, shall direct the Queen's

No. 4. Writ to the said Master of the Faculties to the effect,
 6th & 7th Vict. and shall proceed thereon, according to the intent and
 c. 90. meaning of the Act of Parliament of the twenty-fifth year
 25th Hy. VIII, of the reign of King Henry the Eighth, intituled, an Act
 c. 21. concerning Peter-pence and Dispensations, and in manner
 and form as is therein provided and set forth in case of the
 refusal of any licenses, dispensations, faculties, instru-
 ments, or other writings, as fully and effectually, and with
 the same powers and authority, as if the same were here
 inserted and re-enacted.

Saving the
 Rights of
 Scriveners'
 Company.

VI. Provided always, and be it enacted, That nothing
 herein contained, nor any service under this act, shall
 authorize any person to be admitted a public notary to
 practise within the jurisdiction of the incorporated Com-
 pany of Scriveners of London.

Oath on
 admission of
 Notary.

VII. And be it enacted, That from and after the passing
 of this act every person to be admitted and inrolled a
 public notary shall, before a faculty is granted to him
 authorizing him to practise as such, in addition to the
 oaths of allegiance and supremacy, make oath before the
 said Master of the Faculties, his surrogate, or other proper
 officer, in substance and to the effect following :—

“ I, *A. B.* do swear, that I will faithfully exercise the
 office of a public notary ; I will faithfully make contracts
 or instruments for or between any party or parties requiring
 the same, and I will not add nor diminish any thing, with-
 out the knowledge and consent of such party or parties,
 that may alter the substance of the fact ; I will not make
 or attest any act, contract, or instrument in which I shall
 know there is violence or fraud ; and in all things I will

act uprightly and justly in the business of a public notary, according to the best of my skill and ability. So help me God."

No. 4.
—
6th & 7th Vict.
c. 90.

And that such oath shall be received and taken instead of the oath of office now in use on the admission of a notary public, which oath shall, from and after the passing of this act, be wholly discontinued: Provided always, that in such cases where by any act an affirmation or declaration is allowed to be received instead of an oath, or any form of oath or declaration substituted instead of the oaths of allegiance and supremacy, the said Master of the Faculties, his surrogate, or other proper officer, is hereby authorized and empowered to receive a declaration or affirmation instead of any oath required by this act, or such form of oath or declaration instead of the oaths of allegiance or supremacy as by any Act of Parliament is authorized and allowed.

VIII. And be it enacted, That the Master of the Faculties for the time being, or his surrogate, shall and he is hereby authorized and empowered to issue commissions to take any oaths, affidavits, affirmations, or declarations required by law to be taken before the grant of any faculty, marriage license, or other instrument issuing from the said office of faculties: and that all oaths, affidavits, affirmations, or declarations taken before the commissioner so appointed, and the faculty, marriage license, or other instrument granted in pursuance thereof, shall be as valid and effectual as if such oath, affidavit, affirmation, or declaration was taken before the said master or his surrogate; any thing in any act or law to the contrary thereof notwithstanding.

Oaths, &c. may
be taken by
Commission.

o o o

No. 4.

Application to
strike a Notary
off the Roll for
defect in Arti-
cles, &c. to be
made within
twelve Months.

IX. And be it enacted, That no person who has been admitted and inrolled a public notary shall be liable to be struck off the rolls for or on account of any defect in the articles of clerkship, or in the registry thereof, or in his service under such articles, or in his admission and inrolment, unless the application for striking him off the roll be made within twelve months from the time of his admission and inrolment: provided that such articles, registration, service, admission, or inrolment be without fraud.

Persons
practising as
Notaries not
being duly
authorized to
forfeit £50.

X. And be it enacted, That from and after the passing of this act, in case any person shall, in his own name or in the name of any other person, make, do, act, exercise, or execute or perform, any act, matter, or thing whatsoever of or in anywise appertaining or belonging to the office, function, or practice of a public notary, for or in expectation of any gain, fee, or reward, without being able to prove, if required, that he is duly authorized so to do, every such person for every such offence shall forfeit and pay the sum of fifty pounds, to be sued for and recovered by action of debt, plaint, or information, in any of her Majesty's superior Courts of Record at Westminster, or if the cause of action shall have arisen in any colony or place to her Majesty belonging out of England, then the supreme court of law of such colony or place, provided the action for the recovery thereof shall be commenced within twelve months next after the fact committed: and that, save so far as they are altered or repealed, or repugnant to the provisions of this act, the like remedies for recovering thereof, and all other the rules, directions,

Like For-
feitures and
Provisions as
in former Act,
and all the
powers thereof,
and of 3rd and

powers, and provisions contained in the said recited act, 4th Wm. IV, and also in the act passed in the third and fourth years of c. 70, not hereby varied, the reign of his late Majesty King William the Fourth, in- to be in force as if re-enacted.

tituled, "An Act to alter and amend an Act of the forty-first year of his Majesty King George the Third, for the better Regulation of Public Notaries in England," shall and may severally and respectively attach and be in force as fully and effectually as if the said penalties were imposed, or the said remedies were given, or the same powers, rules, directions, and provisions were particularly enacted in or by this act, or repealed and re-enacted.

STATUTES RELATING TO BILLS OF EXCHANGE
AND PROMISSORY NOTES.

STATUTE 9TH AND 10TH WILLIAM III, c. 17.

No. 5.

An Act for the better payment of Inland Bills of Exchange.

Statute 9th and
10th Wm. III,
c. 17.

In what case
Bills of Ex-
change drawn
in England, &c.
of £5 or up-
wards may be
protested.

“ WHEREAS great damages and other inconveniences do frequently happen in the course of trade and commerce by reason of delays of payment and other neglects on Inland Bills of Exchange in this kingdom;” Be it therefore enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, that from and after the four and twentieth day of June next, which shall be in the year one thousand six hundred ninety-eight, all and every bill or bills of exchange drawn in, or dated at and from any trading city or town, or any other place in the kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, of the sum of five pounds sterling or upwards upon any person or persons of or in London, or any other trading city, town or any other place (in which said bill or bills of exchange shall be acknowledged and expressed the said value to be received) and is and shall be drawn payable at a certain number of days, weeks, or months after date thereof, that from and after presentation and acceptance of the said bill or bills of

exchange (which acceptance shall be by the underwriting the same under the party's hand so accepting) and after the expiration of three days after the said bill or bills shall become due, the party to whom the said bill or bills are made payable, his servant, agent or assigns, may and shall cause the said bill or bills to be protested by a notary publick, and in default of such notary publick, by any other substantial person of the city, town, or place, in the presence of two or more credible witnesses, refusal or neglect being first made of due payment of the same ; which protest shall be made and written under a fair written copy of the said bill of exchange, in the words or form following :

No. 5.

—
Statute 9th and
10th Wm. III,
c. 17.

“ Know all men that I, *A. B.* on the day of
at the usual place of abode of the said have
demanded payment of the bill, of the which the above is
the copy, which the said did not pay, wherefore
I the said do hereby protest the said bill,
Dated this day of ”

Form of
Protest.

II. Which protest so made as aforesaid, shall within fourteen days after making thereof, be sent, or otherwise due notice shall be given thereof, to the party from whom the said bill or bills were received, who is, upon producing such protest, to repay the said bill or bills, together with all interest and charges from the day such bill or bills were protested ; for which protest shall be paid a sum not exceeding the sum* of sixpence ; and in default or neglect

Protest or
notice thereof
to be given in
14 days.

In default of
Protest.

* The fee for noting a Bill or Note is not mentioned or limited by either the Act 9th and 10th William III, c. 17, nor the act 3rd and 4th

No. 5. of such protest made and sent, or due notice given within
 Statute 9th and 10th Wm. III, the days before limited, the person so failing or neglecting
 c. 17. thereof, is and shall be liable to all costs, damages and
 Costs. interest, which do and shall accrue thereby.

Bills lost or miscarried,
 Drawer to give another. III. Provided nevertheless, That in case any such inland
 bill or bills of exchange shall happen to be lost or mis-
 carried within the time limited for the payment of the
 same, then the drawer of the said bill or bills is and
 shall be obliged to give another bill or bills of the same
 tenour with those first given, the person or persons to whom
 they are and shall be so delivered giving security, if
 demanded, to the said drawer, to indemnify him against all
 persons whatsoever, in case the said bill or bills of exchange
 so alleged to be lost or miscarried, shall be found again.

Anne, c. 9, but the amount of it is regulated by custom, and by what
 is considered fair and reasonable. The fee named in section 2nd of the
 former Act, and that in section 4th of the latter Act, for a *Protest*, of
 an *Inland Bill of the particular class* mentioned in those Acts, are so
 paltry, that no Notary would undertake the business and make a Pro-
 test on such terms. Such fees are never received, and the enactments
 respecting them are considered as virtually repealed by the Acts im-
 posing a Stamp Duty on Protests; indeed, since the decision in *Windle*
v. Andrews, 2 Barnwall and Adol. 696, and 2 Starkie N. P. 425, Protests
 of that *particular class* of Bills have, except in some extraordinary
 cases, ceased to be made.

STATUTE 3RD AND 4TH ANNE, CHAP. 9.

No. 6.

An Act for giving like remedy upon Promissory Notes, as is now used upon Bills of Exchange; and for the better payment of Inland Bills of Exchange. (1704.)

3rd and 4th
Anne, c. 9.

[*Made perpetual by the Act of the 7th Anne, c. 25, s. 3. (1708.)*]

“WHEREAS it hath been held, that notes in writing, signed by the party who makes the same, whereby such party promises to pay unto any other person, or his order, any sum of money therein mentioned, are not assignable or indorsable over, within the custom of merchants, to any other person; and that such person to whom the sum of money mentioned in such note is payable, cannot maintain an action, by the custom of merchants, against the person who first made and signed the same; and that any person to whom such note should be assigned, indorsed or made payable, could not, within the said custom of merchants, maintain any action upon such note against the person who first drew and signed the same:” Therefore, to the intent to encourage trade and commerce, which will be much advanced, if such notes shall have the same effect as inland bills of exchange, and shall be negotiated in like manner; Be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that all notes in writing, that after the first day of May in the year of our Lord one thousand seven hundred and five,

Promissory
Notes may be
assigned or
indorsed, and
action main-
tained thereon,
as on Inland
Bills of
Exchange.

No. 6.
—
3rd and 4th
Anne, c. 9.

shall be made and signed by any person or persons, body politick or corporate, or by the servant or agent of any corporation, banker, goldsmith, merchant or trader, who is usually entrusted by him, her or them, to sign such promissory notes for him, her or them, whereby such person or persons, body politick and corporate, his, her or their servant or agent as aforesaid, doth or shall promise to pay to any other person or persons, body politick and corporate, his, her or their order, or unto bearer, any sum of money mentioned in such note, shall be taken and construed to be, by virtue thereof, due and payable to any such person or persons, body politick and corporate, to whom the same is made payable; and also every such note payable to any person or persons, body politick and corporate, his, her or their order, shall be assignable or indorsable over, in the same manner as inland bills of exchange are or may be, according to the custom of merchants; and that the person or persons, body politick and corporate, to whom such sum of money is or shall be by such note made payable, shall and may maintain an action for the same, in such manner as he, she or they might do, upon any inland bill of exchange, made or drawn according to the custom of merchants, against the person or persons, body politick and corporate, who or whose servant or agent as aforesaid, signed the same; and that any person or persons, body politick and corporate, to whom such note that is payable to any person or persons, body politick and corporate, his, her or their order, is endorsed or assigned, or the money therein mentioned ordered to be paid by indorsement thereon, shall and may maintain his, her or their

action for such sum of money, either against the person or persons, body politick and corporate, who or whose servant or agent as aforesaid, signed such note, or against any of the persons that indorsed the same, in like manner as in cases of inland bills of exchange; and in every such action the plaintiff or plaintiffs shall recover his, her or their damages and costs of suit; and if such plaintiff or plaintiffs shall be non-suited, or a verdict be given against him, her or them, the defendant or defendants shall recover his, her or their costs against the plaintiff or plaintiffs; and every such plaintiff or plaintiffs, defendant or defendants, respectively recovering, may sue out execution for such damages and costs by *capias, fieri facias or elegit*.

No. 6.

3rd and 4th
Anne, c. 9.

Costs.

II. And be it further enacted by the authority aforesaid, That all and every such actions shall be commenced, sued and brought within such time as is appointed for commencing or suing actions upon the case, by the statute made in the one and twentieth year of the reign of King James the First, intituled, *An Act for limitation of Actions, and for avoiding of Suits in Law*.

How Actions
shall be
brought,
21st Jac. I,
c. 16.

III. Provided, that no body politic or corporate shall have power, by virtue of this act, to issue or give out any notes, by themselves or their servants, other than such as they might have issued, if this act had never been made.

Proviso.

IV. "And whereas by an Act of Parliament made in the ninth year of the reign of his late Majesty King William the Third, intituled, *An Act for the better payment of Inland Bills of Exchange*, it is among other things enacted, That from and after presentation and acceptance of the said bill or bills of exchange (which acceptance shall

9th and 10th
Wm. III, c. 17,
s. 1.

No. 6.

—
3rd and 4th
Anne, c. 9.

Refusing to
underwrite Bill
of Exchange,
Bill may be
protested.

be by the underwriting the same under the party's hand so accepting) and after the expiration of three days after the said bill or bills shall become due, the party to whom the said bill or bills are made payable, his servant, agent or assigns, may and shall cause the same bill or bills to be protested in manner as in the said act is enacted; and whereas by there being no provision made therein for protesting such bill or bills, in case the party, on whom the same are or shall be drawn, refuse to accept the same, by underwriting the same under his hand, all merchants and others do refuse to underwrite such bill or bills, or make any other than a promissory acceptance, by which means the effect and good intent of the said act in that behalf is wholly evaded, and no bill or bills can be protested before or for want of such acceptance by underwriting the same as aforesaid;" For remedy whereof, Be it enacted by the authority aforesaid, that from and after the first day of May which shall be in the year of our Lord one thousand seven hundred and five, in case, upon presenting of any such bill or bills of exchange, the party or parties on whom the same shall be drawn, shall refuse to accept the same, by underwriting the same as aforesaid, the party to whom the said bill or bills are made payable, his servant, agent or assigns, may and shall cause the said bill or bills to be protested for non-acceptance, as in case of foreign bills of exchange; any thing in the said act, or any other law to the contrary notwithstanding; For which protest there shall be paid two shillings, and no more.

In what case
only accept-
ance of inland

V. Provided always, That from and after the said first day of May no acceptance of any such inland bill of

exchange shall be sufficient to charge any person whatsoever, unless the same be underwritten or indorsed in writing thereupon; and if such bill be not accepted by such underwriting or indorsement in writing, no drawer of any such inland bill shall be liable to pay any costs, damages or interest thereupon, unless such protest be made for non-acceptance thereof, and within fourteen days after such protest, the same be sent, or otherwise notice thereof be given to the party from whom such bill was received, or left in writing at the place of his or her usual abode; and if such bill be accepted, and not paid before the expiration of three days after the said bill shall become due and payable, then no drawer of such bill shall be compellable to pay any costs, damages or interest thereupon, unless a protest be made and sent, or notice thereof be given, in manner and form above mentioned: nevertheless, every drawer of such bill shall be liable to make payment of costs, damages and interest upon such inland bill, if any one protest be made of non-acceptance or non-payment thereof, and notice thereof be sent, given or left as aforesaid.

No. 6.

Bills of Exchange to be sufficient.

VI. Provided, That no such protest shall be necessary, either for non-acceptance or non-payment of any inland bill of exchange, unless the value be acknowledged and expressed in such bill to be received, and unless such bill be drawn for the payment of twenty pounds sterling or upwards; and that the protest, hereby required for non-acceptance, shall be made by such persons as are appointed by the said recited act to protest inland bills of exchange for non-payment thereof.

Proviso for Protest.

No. 6. VII. And be it further enacted, That from and after the
If Protest not
made. said first day of May, if any person doth accept any such
bill of exchange for and in satisfaction of any former debt,
or sum of money formerly due unto him, the same shall
be accounted and esteemed a full and complete payment
of such debt, if such person, accepting of any such bill for
his debt, doth not take his due course to obtain payment
thereof, by endeavouring to get the same accepted and
paid, and make his protest as aforesaid, either for non-
acceptance or non-payment thereof.

Proviso. VIII. Provided, that nothing herein contained shall
extend to discharge any remedy, that any person may
have against the drawer, acceptor or indorser of such bill.

Continuance
of Act. IX. And be it further enacted by the authority afore-
said, That this act shall continue and be in force for the
space of three years, from the said first day of May, and
from thence to the end of the next session of parliament,
and no longer.

[*Made perpetual by 7th Anne, c. 25, s. 3.*]

STATUTE 39TH AND 40TH GEORGE III, c. 42.

An Act for the better observance of Good Friday in certain cases therein mentioned.

[16th May, 1800.]

No. 7.

“ WHEREAS the Bank of England and bankers in general are often under the necessity of transacting business on Good Friday, for the purpose of receiving money for bills of exchange and promissory notes becoming payable on that day, in consequence whereof many persons are prevented observing the same with due solemnity;” Now, therefore, for the better observance of Good Friday, be it enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and of the Commons, in this present parliament assembled, and by the authority of the same, That where bills of exchange and promissory notes become due and payable on Good Friday, the same shall, from and after the first day of June next ensuing, be payable on the day before Good Friday; and the holder or holders of such bills of exchange or promissory notes, may note and protest the same for non-payment on the day preceding Good Friday, in like manner as if the same had fallen due and become payable on the day preceding Good Friday; and such noting and protests shall have the same effect and operation at law as if such bills and promissory notes had fallen due and become payable on the day preceding Good

39th and 40th
George III,
c. 42.

- No. 7. Friday, in the same manner as is usual in the cases of bills
39th and 40th of exchange and promissory notes coming due on the day
Geo. III, c. 42. before any Lord's Day, commonly called Sunday, and
before the Feast of the Nativity or Birth of our Lord,
commonly called Christmas Day.

STATUTE 1ST AND 2ND GEO. IV, c. 78.

An Act to regulate Acceptances of Bills of Exchange.

[2nd July, 1821.]

No. 8.

“WHEREAS according to law as hath been adjudged, where a bill is accepted payable at a banker’s, the acceptance thereof is not a general but a qualified acceptance: And whereas a practice hath very generally prevailed among merchants and traders so to accept bills, and the same have, among such persons, been very generally considered as bills generally accepted, and accepted without qualification: And whereas many persons have been and may be much prejudiced and misled by such practice and understanding, and persons accepting bills may relieve themselves from all inconvenience, by giving such notice as hereinafter mentioned of their intention to make only a qualified acceptance thereof;” Be it therefore enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of August now next ensuing, if any person shall accept a bill of exchange, payable at the house of a banker or other place, without further expression in his acceptance, such acceptance shall be deemed and taken to be, to all intents and purposes, a general acceptance of such bill; but if the acceptor shall in his acceptance express that he

—
1st and 2nd
Geo. IV, c. 78.

Bills accepted payable at a Banker’s or other place, deemed a general acceptance. Bills accepted payable at a Banker’s or other place only, deemed a qualified acceptance.

No. 8. accepts the bill, payable at a banker's house or other place only, and not otherwise or elsewhere, such acceptance shall be deemed and taken to be, to all intents and purposes, a qualified acceptance of such bill, and the acceptor shall not be liable to pay the said bill, except in default of payment when such payment shall have been first duly demanded at such banker's house or other place.

Acceptance to
be in writing
on the Bill.

II. And be it further enacted, That from and after the said first day of August, no acceptance of any inland bill of exchange shall be sufficient to charge any person, unless such acceptance be in writing on such bill, or if there be more than one part of such bill, on one of the said parts.

STATUTE 7TH AND 8TH GEO. IV, c. 15.

No. 9.

An Act for declaring the Law in relation to Bills of ^{7th and 8th}
Exchange and Promissory Notes becoming payable on ^{Geo. IV, c. 15.}
Good Friday or Christmas Day.

[12th April, 1827.]

“ WHEREAS an act was passed in the thirty-ninth and fortieth years of the reign of his late Majesty King George the Third, intituled an Act for the better observance of Good Friday in certain cases therein mentioned; and it was thereby enacted, that where bills of exchange and promissory notes became due and payable on Good Friday, the same should, from and after the first day of June then next ensuing, be payable on the day before Good Friday; and that the holder or holders of such bills of exchange or promissory notes might note and protest the same for non-payment on the day preceding Good Friday, in like manner as if the same had fallen due and become payable on the day preceding Good Friday; and that such noting and protest should have the same effect and operation at law as if such bills and promissory notes had fallen due and become payable on the day preceding Good Friday, in the same manner as was usual in the cases of bills of exchange and promissory notes coming due on the day before any Lord's day, commonly called Sunday, and before the Feast of the Nativity or Birth-day of our Lord, commonly called

Q Q Q

No. 9.
—
7th and 8th
Geo. IV, c. 15.

Christmas Day : And whereas notwithstanding the said recited act, and notwithstanding the general custom of merchants, doubts have arisen whether notice of the dishonour of bills of exchange and promissory notes falling due on any Good Friday or on any Christmas Day, should not be given on such Good Friday or Christmas day respectively, and whether in cases where bills of exchange and promissory notes fall due on the day preceding any Good Friday or Christmas Day, notice of the dishonour thereof should not be given on the Good Friday or the Christmas Day next after the same bills of exchange and promissory notes so fall due : and it is expedient that such doubts should be removed ;" Be it therefore declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled,

Where Bills of Exchange, becoming due on the day preceding Good Friday or Christmas Day, are dishonoured, notice thereof may be given on the day after such Good Friday, &c.

and by the authority of the same, That from and immediately after the tenth day of April one thousand eight hundred and twenty-seven, in all cases where bills of exchange or promissory notes shall be payable, either under or by virtue of the said recited act, or otherwise, on the day preceding any Good Friday, or on the day preceding any Christmas Day, it shall not be necessary for the holder or holders of such bills of exchange or promissory notes to give notice of the dishonour thereof until the day next after such Good Friday or Christmas Day ; and that whenever Christmas Day shall fall on a Monday, it shall not be necessary for the holder or holders of such bills of exchange or promissory notes as shall be payable on the preceding Saturday, to give notice of the dishonour thereof

until the Tuesday next after such Christmas Day; and that every such notice given as aforesaid, shall be valid and effectual to all intents and purposes.

No. 9.

7th and 8th
Geo. IV, c. 15.

II. "And whereas similar doubts have existed with respect to bills of exchange and promissory notes falling due upon days appointed by his Majesty's proclamation for solemn fasts or days of thanksgiving, or upon the day next preceding such days respectively, and it is expedient that such doubts should be removed;" Be it therefore

Bills of Exchange becoming due on Fast or Thanksgiving Days, to be payable on the day next preceding such Fast or Thanksgiving Day.

further declared and enacted, That from and after the said tenth day of April one thousand eight hundred and twenty-seven, in all cases where bills of exchange or promissory notes shall become due and payable on any day appointed by his Majesty's proclamation for a day of solemn fast or a day of thanksgiving, the same shall be payable on the day next preceding such day of fast or day of thanksgiving, and in case of non-payment, may be noted and protested on such preceding day; and that as well in such cases, as in the cases of bills of exchange and promissory notes becoming due and payable on the day preceding any such day of fast or day of thanksgiving, it shall not be necessary for the holder or holders of such bills of exchange and promissory notes to give notice of the dishonour thereof until the day next after such day of fast or day of thanksgiving; and that whensoever such day of fast or day of thanksgiving shall be appointed on a Monday, it shall not be necessary for the holder or holders of such bills of exchange or promissory notes as shall be payable on the preceding Saturday, to give notice of the dishonour thereof until the Tuesday next after such day of

No. 9.

7th and 8th
Geo. IV, c. 15.

Good Friday,
Christmas Day,
&c. as regards
Bills of Ex-
change, to be
treated as the
Lord's Day.

Act not to
extend to
Scotland.

fast or day of thanksgiving respectively, and that every such notice, so given as aforesaid, shall be valid and effectual to all intents and purposes.

III. And be it further enacted, That from and after the said tenth day of April one thousand eight hundred and twenty-seven, Good Friday and Christmas Day, and every such day of fast or thanksgiving so appointed by his Majesty, is and shall, for all other purposes whatever, as regards bills of exchange and promissory notes, be treated and considered as the Lord's Day, commonly called Sunday.

IV. Provided always, and be it further enacted, That nothing in this act contained shall extend or be construed to extend to that part of the United Kingdom called Scotland.

STATUTE 2ND AND 3RD WILLIAM IV, c. 98.

No. 10.

An Act for regulating the protesting for non-payment of Bills of Exchange drawn payable at a Place not being the Place of the Residence of the Drawee or Drawees of the same.

2nd and 3rd
Wm. IV, c. 98.

[9th August, 1832.]

“ WHEREAS doubts having arisen as to the place in which it is requisite to protest for non-payment bills of exchange, which on the presentment for acceptance to the drawee or drawees shall not have been accepted, such bills of exchange being made payable at a place other than the place mentioned therein to be the residence of the drawee or drawees thereof, and it is expedient to remove such doubts;” Be it therefore enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act all bills of exchange wherein the drawer or drawers thereof shall have expressed that such bills of exchange are to be payable in any place other than the place by him or them therein mentioned to be the residence of the drawee or drawees thereof, and which shall not on the presentment for acceptance thereof be accepted, shall or may be, without further presentment to the drawee or drawees, protested for non-payment in the place in which such bills

Bills of Exchange expressed to be paid in any place other than the Residence of the Drawee, if not accepted on presentment, may be protested in that place unless amount paid to the Holder.

No. 10.
—
2nd and 3rd
Wm. IV, c. 98.

of exchange shall have been by the drawer or drawers expressed to be payable, unless the amount owing upon such bills of exchange shall have been paid to the holder or holders thereof on the day on which such bills of exchange would have become payable had the same been duly accepted.

STATUTE 6TH AND 7TH WILLIAM IV, c. 58.

No. 11.

An Act for declaring the Law as to the day on which it is requisite to present for payment to the Acceptors or Acceptor supra Protest for Honour, or to the Referees or Referee in case of need, Bills of Exchange which had been dishonoured.

6th and 7th
Wm. IV, c. 58.

[13th August, 1836.]

“ WHEREAS bills of exchange are occasionally accepted supra protest for honour, or have a reference thereon in case of need : and whereas doubts have arisen when bills have been protested for want of payment as to the day on which it is requisite that they should be presented for payment to the acceptors or acceptor for honour, or to the referees or referee, and it is expedient that such doubts should be removed ;” be it therefore declared and enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall not be necessary to present such bills of exchange to such acceptors or acceptor for honour, or to such referees or referee, until the day following the day on which such bills of exchange shall become due ; and that if the place of address on such bill of exchange of such acceptors or acceptor for honour, or of such referees or referee, shall be in any city, town, or place other than in the city, town, or place where such bill shall be therein made payable, then

Bills of Exchange need not be presented to Acceptors for Honour or Referees till the day following the day on which they become due.

No. 11. it shall not be necessary to forward such bill of exchange for presentment for payment to such acceptors or acceptor for honour, or referees or referee, until the day following the day on which such bill of exchange shall become due.

If the following day be a Sunday, &c. then on the day following such Sunday, &c.

II. And be it further enacted and declared, That if the day following the day on which such bill of exchange shall become due shall happen to be a Sunday, Good Friday, or Christmas Day, or a day appointed by his Majesty's proclamation for Solemn Fast or of Thanksgiving, then it shall not be necessary that such bill of exchange shall be presented for payment, or be forwarded for such presentment for payment, to such acceptors or acceptor for honour, or referees or referee, until the day following such Sunday, Good Friday, Christmas Day, or Solemn Fast or day of Thanksgiving.

STATUTE REPEALING CERTAIN STAMP DUTIES.

STATUTE 5TH GEORGE IV, c. 41.

No. 12.

An Act to repeal certain Duties on Law Proceedings in the Courts in Great Britain and Ireland respectively; and for better protecting the Duties payable upon Stamped Vellum, Parchment, or Paper.

[28th May, 1824.]

“WHEREAS it is expedient to repeal the several stamp duties payable for or in respect of the several instruments herein-after mentioned; be it therefore enacted by the King’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the tenth day of October one thousand eight hundred and twenty-four, the several stamp duties or sums of money now payable in Great Britain and Ireland respectively, upon or for or in respect of the several instruments, matters or things mentioned, described and set forth in the schedule to this act annexed; and also upon or for or in respect of any bond to be given to the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal of Great Britain or Ireland respectively, for the time being, by any creditor or creditors petitioning for a commission of bankrupt; and also upon or for or in respect of any bond to be given in Great Britain or Ireland

From Oct. 10, 1824, Duties mentioned in Schedule annexed to cease; as also the Duties on Bonds on Commissions of Bankrupt; on Bonds or Replevy of Goods; and also on Copy of Wills or Power of Attorney, deposited in any Ecclesiastical Court.

No. 12. to any sheriff or other person upon the replevy of any
 5th George IV, goods or chattels : and also for or upon or in respect of the
 c. 41. assignment of any of such bonds ; and also for or upon or in
 respect of any copy or extract of any will or codicil depo-
 sited in any Ecclesiastical Court in Great Britain or Ire-
 land ; and also for or upon or in respect of any letter or
 power of attorney or proxy filed in any such Ecclesiastical
 Court ; and also for or in respect of the vellum, parchment,
 or paper upon which any such instrument, matter or thing,
 bond, assignment, copy or extract, letter or power of attor-
 ney or proxy, shall be written or printed, shall cease and
 determine ; save and except such of the said respective
 duties or sums of money, or so much and such part or
 parts thereof, as shall have become or shall or may be
 payable or become due before or upon the said tenth day
 of October one thousand eight hundred and twenty-four,
 and remain in arrear or unpaid afterwards ; all which
 duties and sums of money, or any part or parts which shall
 remain so in arrear or unpaid as aforesaid, shall be reco-
 verable by the same ways and means, and with such and
 the same penalties, and in such and the same manner in
 all respects, as if this act had not been made.

Arrears
 excepted.

Stamps ren-
 dered useless
 may be sent
 to the Stamp
 Office to be
 exchanged for
 others within
 Six Months
 after Oct. 10,
 1824, and if
 necessary
 Commissioners
 may pay the
 difference.

II. And be it further enacted, That it shall be lawful for
 all persons having in their possession any stamped vellum,
 parchment or paper not made use of, and which by the
 operation of this act shall have been or shall be rendered
 unfit for the instruments, proceedings, matters or things,
 for which the same was originally intended, to send such
 stamped vellum, parchment or paper to the Head Office
 of Stamps in England, Scotland or Ireland respectively,

at any time within six calendar months from and after the said tenth day of October one thousand eight hundred and twenty-four; and it shall be lawful for the Commissioners of Stamps in Great Britain and Ireland respectively to cause the stamps upon such vellum, parchment or paper to be cancelled, and to deliver out in lieu thereof other stamps, as near as may be of equal value in the whole with the stamps so cancelled, and, if necessary, to pay the difference out of any monies in the hands of the Receiver General of the Stamp Duties in Great Britain or Ireland respectively.

No. 12.

5th George IV,
c. 41.

III. "And whereas it is expedient to make provision for the better protecting the duties payable to his Majesty, his heirs and successors, upon stamped vellum, parchment or paper;" be it therefore further enacted, That in any suit, prosecution or proceeding to be brought against any person or persons, or body or bodies politic or corporate, for the taking or detaining, or for the losing, damaging or destroying of any vellum, parchment or paper upon which any stamp or stamped mark or marks denoting any duty or duties imposed by law hath been impressed or put, or for any other cause of action or proceeding relating to the same respectively, such suit, prosecution or proceeding shall and may be commenced, instituted, and proceeded in in the name of his Majesty, his heirs and successors or in the name of the Attorney or Solicitor General in England or Ireland, or of the Advocate or Solicitor General in Scotland respectively for the time being, for and on behalf of his said Majesty, his heirs and successors; and that in all such suits, prosecutions or proceedings, the property in

How Suits for
the Protection
of Stamp
Duties may be
brought.

No. 12. such vellum, parchment or paper so stamped, marked and
 5th George IV, c. 41. impressed as aforesaid, shall be described to be and shall
 be deemed and taken to be in his Majesty, his heirs and
 successors, and that the value of the same respectively shall
 be deemed and taken to be the amount of the value of the
 vellum, parchment and paper, and of the stamp duty or
 stamp duties denoted by the stamp or stamps, mark or
 marks so impressed and put upon the same respectively;
 and further, that in every prosecution for embezzling or
 stealing such vellum, parchment or paper so stamped,
 marked and impressed as aforesaid, or for any other offence
 for or relating to the same respectively, it shall be sufficient
 in the indictment or information to state and describe the
 property in the same to be in his Majesty, his heirs and
 successors, which property shall be deemed and taken to
 be vested in his said Majesty, his heirs and successors
 accordingly.

What consi-
 dered as
 sufficient
 description of
 Property in
 Indictment,
 &c.

THE SCHEDULE TO WHICH THIS ACT REFERS.

I. PROCEEDINGS in the High Court of Admiralty, and
 in the Courts of the Cinque Ports exercising Admi-
 ralty Jurisdiction, the High Court of Appeals in Prize
 Causes, and the High Court of Delegates in Admiralty
 Matters in England.

				Duty.		
				£.	s.	d.
AFFIDAVIT	- -	to be filed, read, or used in any Suit in				
		any of the said Courts	- - -	0	5	0
Allegation	- -	in any of the said Courts	- - -	0	5	0
Answer	- -	in any of the said Courts	- - -	0	5	0
Appeal	- -	from any definitive Sentence or final Decree, or from any Interlocutory Decree or Order of any of the				

	Duty. £. s. d.			No. 12. — 5th George IV, c. 41.
said Courts, or from the Court of Vice Admiralty, when interposed before a Notary Public in England - -	15	0	0	
Attachment - - issuing out of any of the said Courts -	1	10	0	
Bail Bond or Recognizance - - taken in any Suit in any of the said Courts, or by Commission from the same.....	1	0	0	
Citation - - issuing out of any of the said Courts -	1	0	0	
Commission - - issuing out of any of the said Courts in any Suit - - - - -	0	5	0	
Copy (<i>i. e.</i> Office Copy) - - of any Affidavit filed, read, or used in any of the said Courts - - -	0	5	0	
Copy (<i>i. e.</i> Office Copy) - - of any Citation, Monition, or Warrant issued out of any of the said Courts - -	0	5	0	
Copy (<i>i. e.</i> Office Copy) - - of any Libel, Allegation, Answer, Interrogatories, Depositions, or Inventory filed or exhibited in any of the said Courts - -	0	5	0	
Copy (<i>i. e.</i> Office Copy) - - of any Interlocutory Decree or Order, or of any definitive Sentence or final Decree made in any of the said Courts - - -	0	5	0	
Decree or Order Interlocutory - - made in any of the said Courts - - - - -	1	0	0	
Depositions - - taken in any of the said Courts, or by Commission from the same - - - - -	0	5	0	
Inhibition - - issuing out of any of the said Courts -	1	0	0	
Interrogatories - - filed or exhibited in any of the said Courts - - - - -	0	5	0	
Inventory - - filed or exhibited in any of the said Courts - - - - -	0	5	0	
Libel - - filed or exhibited in any of the said Courts -	0	5	0	
Monition - - issuing out of the said Courts - -	1	0	0	
Relaxation - - of any Attachment or Inhibition issued out of any of the said Courts - - -	1	10	0	
Sentence - - definitive or final Decree of any of the said Courts - - - - -	1	10	0	
Warrant - - issuing out of any of said Courts - -	0	15	0	
Warrant, Mandate, or Authority - - given to any Proctor to commence, carry on, or defend any Action, Suit, or Prosecution in any of the said Courts, for the Memo- randum or Minute thereof, to be entered or filed of Record - - - - -	0	5	0	

No. 12. II. PROCEEDINGS in the Ecclesiastical Courts, and in
 5th George IV, the High Court of Delegates in Ecclesiastical Matters
 c. 41. in England.

	Duty. £. s. d.		
Affidavit - - to be filed, read, or used in any Suit in any of the said Courts - - - - -	0	5	0
Allegation - - in any of the said Courts - - - - -	0	5	0
Answer - - in any of the said Courts - - - - -	0	5	0
Appeal - - from any definitive Sentence or final Decree, or from any Interlocutory Decree, or Order of the Court of Archies, or the Prerogative Court of Canterbury or York	15	0	0
Citation - - issuing out of any of the said Courts - - - - -	0	5	0
Commission - - issuing out of the said Courts in any Suit	0	5	0
Copy (<i>i. e.</i> Office Copy) - - of any Affidavit filed, read, or used in any of the said Courts - - - - -	0	5	0
Copy (<i>i. e.</i> Office Copy) - - of any Citation or Monition issued out of any of the said Courts - - - - -	0	5	0
Copy (<i>i. e.</i> Office Copy) - - of any Libel, Allegation, Answer, Interrogatories, Depositions, or Inventory, filed or exhibited in any of the said Courts - - - - -	0	5	0
Copy (<i>i. e.</i> Office Copy) - - of any Interlocutory Decree or Order, or of any definitive Sentence or final Decree of any of the said Courts - - - - -	0	5	0
Decree - - final or definitive Sentence in any of the said Courts - - - - -	0	5	0
Depositions - - taken in any of the said Courts, or by Commission from the same - - - - -	0	5	0
Inhibition - - issuing out of any of the said Courts - - - - -	0	5	0
Interrogatories - - filed or exhibited in any of the said Courts - - - - -	0	5	0
Inventory - - filed or exhibited in any Suit in any of the said Courts - - - - -	0	5	0
Libel - - filed or exhibited in any of the said Courts - - - - -	0	5	0
Monition - - issuing out of any of the said Courts - - - - -	0	5	0
Sentence - - definitive or final Decree of any of the said Courts - - - - -	0	5	0
Warrant, Mandate, or Authority - - given to any Proctor to commence, carry on, or defend any Suit or Prosecu- tion in any of the said Courts, for the Memorandum or Minutes thereof to be entered or filed of Record - - - - -	0	5	6

III. PROCEEDINGS in the Courts of Law and Equity at No. 12.

Westminster, including the Court of the Duchy of Lancaster, and in other Courts in England, and the Offices belonging thereto; and also before the Lord High Chancellor, or the Keeper, or Commissioners for the Custody of the Great Seal, in Matters of Bankruptcy and Lunacy.

Duty.
£. s. d.

Actions - - in the Courts of the Lord Mayor and Sheriffs of London, and in the Courts of all Corporations, and other Courts whatsoever in England holding Pleas, where the Debt or Damage amounts to Forty Shillings or above, and out of which no Writs, Processes, or Mandates issue in the first Instance, for the Entry of every Action or Plaint, except where the Debt or Damage claimed or demanded shall not amount to Forty Shillings - -	0	2	6
Affidavit - - to be filed read, or used in any Action or Suit in any of the Courts of Law or Equity at Westminster, or of the Great Sessions in Wales, or of the Counties Palatine of Chester, Lancaster, and Durham, or before any Judge or Master, or other Officer of any of the said Courts, or before the Lord High Chancellor, or the Lord Keeper, or Commissioners of the Great Seal, sitting in Matters of Bankruptcy or Lunacy -	0	2	6
Affidavit - - to be filed, read, or used in any other Court of Law or Equity in England, except in Actions or Suits where the Debt or Damage, or Thing claimed or demanded, shall be under the Amount or Value of Forty Shillings - - - - -	0	1	6
Answer - - in any Court of Equity - - - - -	0	5	0
Appearance - - filed or entered in any Action at Law wherein no Bail shall be filed or put in - -	0	2	6
Assignment - - of a Bail Bond - - - - -	0	2	6
Bail, Common - - to be filed in any Court of Law - -	0	2	6
Bail, Special - - to be filed in any Court of Law - -	0	2	6
Bail Bond - - in any Action in any Court of Law - -	0	2	6
Bankrupt's Certificate - - the Confirmation thereof by the Lord Chancellor, or by the Lord Keeper, or Commissioners for the Custody of the Great Seal - -	0	2	6

		Duty.		
		£.	s.	d.
No. 12. — 5th George IV, c. 41.	Bill - - filed in any Court of Equity - - -	0	5	0
	Certificate - - by any Master of the High Court of Chancery, or by his Majesty's Remembrancer of the Court of Exchequer or his Deputy, or of any Default of any Person in any Suit or Proceeding before them - -	0	5	0
	Commission - - out of any Court of Law or Equity in any Suit - - - - -	0	10	0
	Commission - - out of any Court of Law or Equity for the Examination of Witnesses, or taking Depositions -	0	5	0
	Commission - - of any other Kind, out of any Courts of Law or Equity, in any Suit - - - - -	0	5	0
	Copy (<i>i. e.</i> Office Copy) - - of any Affidavit filed, read, or used in any of the Courts of Law or Equity at Westminster, or of the Great Sessions in Wales, or of the said Counties Palatine, or before any Judge or Master, or other Officer of any of the said Courts, or before the Lord Keeper, or Commissioners of the Great Seal, sitting in Matters of Bankruptcy or Lunacy - -	0	2	6
	Copy (<i>i. e.</i> Office Copy) - - of any Affidavit, filed, read, or used in any other Court of Law or Equity, except in Actions or Suits where the Debt or Damage, or Thing claimed and demanded, shall be under the Amount or Value of Forty Shillings - - - - -	0	1	6
	Copy (<i>i. e.</i> Office Copy) - - of any Bill, Answer, Demurrer, Exceptions, Plea, Replication, Rejoinder, or other Proceedings, or of any Interrogatories or Depositions taken by Commission or otherwise in any Court of Equity ;			
	Where any such Copy shall be written wide, according to the Usage and Practice of the Court, and not contain more than Ninety Words in a Sheet one with another, then for every Sheet or Piece of Paper on which the same shall be written - - -	0	0	4
	And where any such Copy shall be written close Copywise, according to the Usage and Practice of the Court, or in any other Manner than above mentioned, then for every Sheet or Piece of Paper on which the same shall be written - - -	0	2	6
	Copy - - of any Declaration, Plea, Replication, Rejoinder, Demurrer, or other Pleading whatsoever, in any Court of Law - - - - -	0	0	4

	Duty. £. s. d.	No. 12. — 5th George IV, c. 41.
Copy (<i>i. e.</i> Office Copy) - - of Interrogatories, and the Depositions or Answers thereto, in any Court of Law, containing not more than Seventy-two Words in a Sheet, one Sheet with another - - - - -	0 0 4	
Copy (<i>i. e.</i> Office Copy) - - of any Rule or Order made or given in or by any Court of Law at Westminster, or by any Judge of any such Court - - - - -	0 2 6	
Copy (<i>i. e.</i> Office Copy) - - of any Decree, Dismission, or Order made in or by the High Court of Chancery at Westminster, or by the Lord High Chancellor, or the Lord Keeper or Commissioners of the Great Seal, sitting in Matters of Bankruptcy or Lunacy - - - - -	0 3 0	
And for every Sheet or Piece of Paper on which any such Copy shall be written, after the first, a further progressive duty of - - - - -	0 1 6	
Copy (<i>i. e.</i> Office Copy) - - of any Decree, Dismission, or Order made in or by the Court of Exchequer, or the Court of the Duchy of Lancaster at Westminster, or in or by any of the Courts of Great Sessions in Wales, or of the said Counties Palatine - - - - -	0 2 6	
Copy (<i>i. e.</i> Office Copy) - - or Extract of any Record, Report, or Proceeding whatsoever, in any Court of Law or Equity at Westminster, not otherwise charged in this Schedule - - - - -	0 2 0	
Declaration - - in any Court of Law - - - - -	0 0 4	
Decree of Dismission - - made in or by the High Court of Chancery at Westminster - - - - -	0 3 0	
And for every Sheet or Piece of Paper on which the same shall be written, after the first, a further progressive Duty of - - - - -	0 1 6	
Decree of Dismission - - made in or by the Court of Exchequer, or the Court of the Duchy of Lancaster at Westminster, or in or by any of the Courts of the Great Sessions in Wales, or of the said Counties Palatine, or in or by any other Court of Equity whatsoever - - - - -	0 2 6	
Demurrer - - in any Court of Law - - - - -	0 0 4	
Demurrer - - in any Court of Equity - - - - -	0 5 0	
Depositions - - taken by virtue of a Commission out of any Court of Equity - - - - -	0 5 0	
Depositions - - in any Court of Equity taken by the		

No. 12.	Duty. £. s. d.		
5th George IV, c. 41.	Examiner, or other proper Officer, and not by Commission - - - - -	0	4
	Depositions - - or Answers to any Interrogatories in any Court of Law - - - - -	0	4
	Deputation, Special or Warrant - - by the Sheriff of any County to any Person to take an Inquisition under a Court of Inquiry - - - - -	0	10
	Exceptions - - filed in any Court of Equity, or in any Matter of Bankruptcy or Lunacy - - - - -	0	5
	Inquisition - - taken by or before any Sheriff or his Deputy, or Under Sheriff, or by or before any Person specially deputed or authorized by the Sheriff to take the same, or by or before any Coroner in any Action of Law - - - - -	0	10
	Interrogatories - - in any Court of Law - - - - -	0	5
	Interrogatories - - in any Court of Equity, or in any Matter of Bankruptcy or Lunacy - - - - -	0	5
	Judgment (not Interlocutory) - - signed by the Master of any Office, or his Deputy or Secondary, or by any Prothonotary, or his Secondary, Deputy, or Clerk, or by any other Officer belonging to any of the Courts at Westminster, who is or shall be authorized to sign Judgments - - - - -	0	10
	Order - - made in or by the High Court of Chancery at Westminster, or by the Lord High Chancellor, or the Lord Keeper or Commissioners of the Great Seal, sitting in Matters of Bankruptcy or Lunacy - - - - -	0	3
	And for every Sheet or Piece of Paper on which the same shall be written, after the first, a further progressive Duty of - - - - -	0	1
	Order - - made or given in or by the Court of Exchequer, or the Court of the Duchy of Lancaster, at Westminster, or in or by any of the Courts of the Great Sessions in Wales, or of the said Counties Palatine - - - - -	0	2
	Order - - made or given by any Judge of any of the Courts of Law at Westminster - - - - -	0	2
	Petition - - in any Suit or Matter in any of the Courts of Equity at Westminster, and Petition to the Lord High Chancellor, or the Lord Keeper, or Commissioners of the Great Seal, in any Matter of Bankruptcy or Lunacy	0	2

	Duty.	No. 12.
	£. s. d.	—
Plea - - in any Court of Law - - - - -	0 0 4	5th George IV, c. 41.
Plea - - in any Court of Equity - - - - -	0 5 0	
Pleading - - of any Kind in any Court of Law - - - - -	0 0 4	
Pleading - - of any Kind in any Court of Equity - - - - -	0 5 0	
Postea - - - - -	0 10 0	
Record - - of Nisi Prius - - - - -	0 10 0	
Rejoinder - - in any Court of Law - - - - -	0 0 4	
Rejoinder - - in any Court of Equity - - - - -	0 5 0	
Replication - - in any Court of Law - - - - -	0 0 4	
Replication - - in any Court of Equity - - - - -	0 5 0	
Report - - made by the Master of the High Court of Chancery, or by his Majesty's Remembrancer in the Court of Exchequer, or his Deputy - - - - -	0 2 6	
Rule - - or Order made or given in or by any of the Courts of Law at Westminster, which shall be issued or delivered out by the Clerk of the Rules, or other Officer, to the Party obtaining it - - - - -	0 2 6	
And for the Entry of every such Rule or Order in the Book kept by the Clerk of the Rules, or other Officer for that purpose, whether written on One or more Sheets or Leaves - - - - -	0 2 6	
Rules - - to plead and reply, and all other Rules of any of the said Courts of Law at Westminster, not issued as above mentioned, but which shall be entered in the Books kept by the Clerk of the Rules, or other Officer for that purpose, for the Entry of every such Rule - - - - -	0 2 6	
Summons - - issued by any Judge of any of the Courts of Law at Westminster - - - - -	0 1 0	
Warrant - - Mandate, or Authority, given to any Attorney or Solicitor, to commence, carry on, or defend any Action, Suit, or Prosecution, in any of the Courts at Westminster, or of the Great Sessions in Wales, or of the said Counties Palatine, or in any other Court what- soever holding Pleas, where the Debt or Damage amounts to Forty Shillings, for the Memorandum or Minute thereof to be entered or filed of Record - - - - -	0 5 0	
Warrant or Summons - - issued by any Master of the High Court of Chancery, or by his Majesty's Remem- brancer of the Court of Exchequer, or his Deputy - - - - -	0 1 0	
Writ of Appeal - - - - -	1 0 0	

No. 12.		Duty.		
		£.	s.	d.
5th George IV,	Writ of Certiorari	-	-	-
c. 41.	Writ of Supersedeas, of a Commission of Bankrupt	-	0	2
	Writ - - Mandate, or other Process whatsoever, which shall issue out of or pass the Seal of any of the Courts at Westminster, or of the Great Sessions in Wales, or of the said Counties Palatine, or of any other Court in England holding Pleas, where the Debt or Damage amounts to Forty Shillings, except in Actions or Suits where the Debt, Damage, or Thing claimed or demanded shall be under the Amount or Value of Forty Shillings	0	5	0

It is not considered requisite, to introduce the other parts, of the Schedule to the Act, relating to Proceedings in the various Courts of Law, &c. in Scotland and Ireland, as they can scarcely be considered, as coming within the objects, of a Treatise, on the Office of a Notary of England.

STATUTE RELATING TO THE ABOLITION OF
OATHS IN CERTAIN CASES.

STATUTE 5TH AND 6TH WILLIAM IV, CAP. 62.

No. 13.

*An Act to repeal an Act of the present Session of Parlia-
ment, intituled, "An Act for the more effectual Abolition
of Oaths and Affirmations, taken and made in various
departments of the State, and to substitute Declarations
in lieu thereof, and for the more entire suppression of
voluntary and extra-judicial Oaths and Affidavits"; and
to make other provisions for the abolition of unnecessary
Oaths.*

5th and 6th
William IV,
c. 62.

[9th September, 1835.]

"WHEREAS an Act was passed in the present session of
Parliament, intituled, 'An Act for the more effectual Aboli-
tion of Oaths and Affirmations taken and made in various
departments of the State, and to substitute Declarations in
lieu thereof, and for the more entire suppression of volun-
tary and extra-judicial Oaths and Affidavits'; and it was
thereby enacted that the said act should commence and
take effect from and after the first day of June in this
present year, the year of our Lord one thousand eight
hundred and thirty-five, it not being intended that the said
recited act should take effect before the same received the
Royal assent: And whereas the said recited act did not
receive the Royal assent till after the said first day of
June one thousand eight hundred and thirty-five: And

5th William IV,
c. 8.

No. 13.

5th and 6th
Wm. IV, c. 62.

whereas it was enacted by the said recited act, that from and after the first day of June next ensuing it should not be lawful for any Justice of the Peace to administer or receive such voluntary oaths as are therein mentioned, it being intended that the said prohibition should take effect from the time of the commencement of the said recited act: And whereas it is expedient to amend the said act, and to make some further provisions for the better effecting the object thereof, and to consolidate all the provisions relating thereto into one act:" Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act the said recited act shall be, and the same is hereby repealed.

Recited Act
repealed.

Lords of the
Treasury
empowered to
substitute a
Declaration in
lieu of an Oath,
&c. in certain
cases.

II. And be it further enacted, That in any case where, by any act or acts made or to be made relating to the revenues of Customs or Excise, the Post-office, the Office of Stamps and Taxes, the Office of Woods and Forests, Land Revenues, Works, and Buildings, the War Office, the Army Pay Office, the Office of the Treasurer of the Navy, the Accountant General of the Navy, or the Ordnance, his Majesty's Treasury, Chelsea Hospital, Greenwich Hospital, the Board of Trade, or any of the Offices of his Majesty's Principal Secretaries of State, the India Board, the Office for auditing the Public Accounts, the National Debt Office, or any office under the control, direction, or superintendence of the Lords Commissioners of his Majesty's Treasury, or by any official regulation in any department,

any oath, solemn affirmation, or affidavit might, but for the passing of this act, be required to be taken or made by any person on the doing of any act, matter, or thing, or for the purpose of verifying any book, entry, or return, or for any other purpose whatsoever, it shall be lawful for the Lords Commissioners of his Majesty's Treasury or any three of them, if they shall so think fit, by writing under their hands and seals, to substitute a declaration to the same effect as the oath, solemn affirmation, or affidavit which might but for the passing of this act be required to be taken or made; and the person who might under the act or acts imposing the same be required to take or make such oath, solemn affirmation, or affidavit shall, in presence of the Commissioners, Collector, other officer or person empowered by such act or acts to administer such oath, solemn affirmation, or affidavit, make and subscribe such declaration, and every such Commissioner, Collector, other officer or person is hereby empowered and required to administer the same accordingly.

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III. And be it enacted, That when the said Lords Commissioners of his Majesty's Treasury, or any three of them, shall, in any such case as hereinbefore mentioned, have substituted, in writing under their hands and seals, a declaration in lieu of an oath, solemn affirmation, or affidavit, such Lords Commissioners shall, so soon as conveniently may be, cause a copy of the instrument substituting such declaration to be inserted and published in the London Gazette; and from and after the expiration of twenty-one days next following the day of the date of the Gazette wherein the copy of such instrument shall have been pub-

Declaration substituted to be published in the Gazette, and after 21 days from the date thereof the provisions of this Act to apply.

No. 13. lished, the provisions of this act shall extend and apply to each and every case specified in such instrument, as well and in the same manner as if the same were specified and named in this act.

—
5th and 6th
Wm. IV, c. 62.

And no Oath
to be admini-
stered where
such Declara-
tion has been
directed.

IV. And be it enacted, That after the expiration of the said twenty-one days it shall not be lawful for any Commissioner, Collector, officer, or other person to administer or cause to be administered, or receive or cause to be received, any oath, solemn affirmation, or affidavit, in the lieu of which such declaration as aforesaid shall have been directed by the Lords Commissioners of his Majesty's Treasury to be substituted.

False Declara-
tions in matters
relating to cer-
tain Revenues a
Misdemeanor.

V. And be it enacted, That if any person shall make and subscribe any such declaration as hereinbefore mentioned in lieu of any oath, solemn affirmation, or affidavit, by any act or acts relating to the revenues of Customs or Excise, Stamps and Taxes, or Post-office, required to be made on the doing of any act, matter, or thing, or for verifying any book, account, entry, or return, or for any purpose whatsoever, and shall wilfully make therein any false statements as to any material particular, the person making the same shall be deemed guilty of a misdemeanor.

Oath of Alle-
giance still to
be required in
all cases.

VI. Provided always, and be it enacted, That nothing in this act contained shall extend or apply to the Oath of Allegiance in any case in which the same now is or may be required to be taken by any person who may be appointed to any office, but that such Oath of Allegiance shall continue to be required, and shall be administered and taken, as well and in the same manner as if this act had not been passed.

VII. Provided also, and be it enacted, That nothing in this act contained shall extend or apply to any oath, solemn affirmation, or affidavit which now is or hereafter may be made or taken, or be required to be made or taken, in any judicial proceeding in any Court of Justice, or in any proceeding for or by way of summary conviction before any Justice or Justices of the Peace, but all such oaths, affirmations, and affidavits, shall continue to be required, and to be administered, taken, and made, as well and in the same manner as if this act had not been passed.

No. 13.

—
Oaths in Courts
of Justice, &c.
still to be
taken.

VIII. And be it enacted, That it shall be lawful for the Universities of Oxford and Cambridge, and for all other bodies corporate and politic, and for all bodies now by law or statute, or by any valid usage, authorized to administer or receive any oath, solemn affirmation, or affidavit, to make statutes, bye laws, or orders authorizing and directing the substitution of a declaration in lieu of any oath, solemn affirmation, or affidavit now required to be taken or made: Provided always, That such statutes, bye laws, or orders be otherwise duly made and passed according to the charter, laws or regulations of the particular University, other body corporate and politic, or other body so authorized as aforesaid.

Universities of
Oxford and
Cambridge,
and other
bodies, may
substitute a
Declaration in
lieu of an Oath.

IX. "And whereas persons serving the offices of Churchwarden and Sidesman are at present required to take an oath of office before entering upon the execution thereof, and also an oath on quitting such office, and it is expedient that a declaration shall be substituted for such oath of office, and that the oath on quitting the same shall be abolished;" Be it enacted, That in future every person

Churchwar-
den's and
Sidesman's
Oath abolished,
and a Declara-
tion to be made
in lieu thereof.

T T T

No. 13. entering upon the office of Churchwarden or Sidesman, before beginning to discharge the duties thereof, shall, in lieu of such oath of office, make and subscribe, in the presence of the Ordinary or other person before whom he would, but for the passing of this act, be required to take such oath, a declaration that he will faithfully and diligently perform the duties of his office, and such Ordinary or other person is hereby empowered and required to administer the same accordingly: Provided always, that no Churchwarden or Sidesman shall in future be required to take any oath on quitting office, as has heretofore been practised.

Declaration
substituted for
Oaths and
Affidavits by
persons acting
in Turnpike
Trusts.

X. And be it enacted, That in any case where, under any act or acts for making, maintaining or regulating any highway, or any road, or any turnpike road, or for paving, lighting, watching, or improving any city, town, or place, or touching any trust relating thereto, any oath, solemn affirmation, or affidavit might, but for the passing of this act, be required to be taken or made by any person whomsoever, no such oath, solemn affirmation, or affidavit shall in future be required to be or be taken or made, but the person who might under the act or acts imposing the same be required to take or make such oath, solemn affirmation, or affidavit shall, in lieu thereof, in the presence of the Trustee, Commissioner, or other person before whom he might under such act or acts be required to take or make the same, make and subscribe a declaration to the same effect as such oath, solemn affirmation, or affidavit, and such Trustee, Commissioner, or other person is hereby empowered and required to administer and receive the same.

XI. And be it enacted, That whenever any person or persons shall seek to obtain any patent under the Great Seal for any discovery or invention, such person or persons shall, in lieu of any oath, affirmation, or affidavit which heretofore has or might be required to be taken or made upon or before obtaining any such patent, make and subscribe, in the presence of the person before whom he might, but for the passing of this act, be required to take or make such oath, affirmation, or affidavit, a declaration to the same effect as such oath, affirmation, or affidavit; and such declaration, when duly made and subscribed, shall be to all intents and purposes as valid and effectual as the oath, affirmation, or affidavit in lieu whereof it shall have been so made and subscribed.

No. 13.

Declaration
substituted for
Oaths and
Affidavits
heretofore
required on
taking out
a Patent.

XII. And be it enacted, That where by any act or acts at the time in force for regulating the business of pawnbrokers any oath, affirmation, or affidavit might, but for the passing of this act, be required to be taken or made, the person who by or under such act or acts might be required to take or make such oath, affirmation, or affidavit, shall in lieu thereof make and subscribe a declaration to the same effect; and such declaration shall be made and subscribed at the same time, and on the same occasion, and in the presence of the same person or persons, as the oath, affirmation, or affidavit in lieu whereof it shall be made and subscribed would by the act or acts directing or requiring the same be directed or required to be taken or made; and all and every the enactments, provisions, and penalties contained in or imposed by any such act or acts, as to any oath, affirmation, or affidavit thereby directed

Declaration
substituted for
Oaths and
Affidavits
required by
Acts as to
Pawnbrokers.

Penalties as to
such Oaths, &c.
to apply to
Declarations.

No. 13. or required to be taken or made, shall extend and apply to any declaration in lieu thereof, as well and in the same manner as if the same were herein expressly enacted with reference thereto.

5th and 6th
Wm. IV, c. 62.

Justices not to
administer
Oaths, &c.
touching mat-
ters whereof
they have no
jurisdiction by
Statute.

XIII. " And whereas a practice has prevailed of administering and receiving oaths and affidavits voluntarily taken and made in matters not the subject of any judicial inquiry, nor in anywise pending or at issue before the Justice of the Peace or other person by whom such oaths or affidavits have been administered or received: And whereas doubts have arisen whether or not such proceeding is illegal;" For the more effectual suppression of such practice and removing such doubts, Be it enacted, That from and after the commencement of this act it shall not be lawful for any Justice of the Peace or other person to administer, or cause or allow to be administered, or to receive, or cause or allow to be received, any oath, affidavit, or solemn affirmation touching any matter or thing whereof such Justice or other person hath not jurisdiction or cognizance by some statute in force at the time being: Provided always, That nothing herein contained shall be construed to extend to any oath, affidavit, or solemn affirmation before any Justice in any matter or thing touching the preservation of the peace, or the prosecution, trial, or punishment of offences, or touching any proceedings before either of the Houses of Parliament or any Committee thereof respectively, nor to any oath, affidavit, or affirmation which may be required by the laws of any foreign country to give validity to instruments in writing designed to be used in such foreign countries respectively.

Proviso.

XIV. And be it further enacted, That in any case in which it has been the usual practice of the Bank of England to receive affidavits on oath to prove the death of any proprietor of any stocks or funds transferrable there, or to identify the person of any such proprietor, or to remove any other impediment to the transfer of any such stocks or funds, or relating to the loss, mutilation, or defacement of any bank note or bank post bill, no such oath or affidavit shall in future be required to be taken or made, but in lieu thereof the person who might have been required to take or make such oath or affidavit shall make and subscribe a declaration to the same effect as such oath or affidavit.

No. 13.
—
Declaration substituted for Oaths and Affidavits required by Bank of England on the Transfer of Stock.

XV. “ And whereas an act was passed in the fifth year of the reign of his late Majesty King George the Second, intituled, ‘ An Act for the more easy Recovery of Debts in his Majesty’s Plantations and Colonies in America:’ And whereas another act was passed in the fifty-fourth year of the reign of his late Majesty King George the Third, intituled, ‘ An Act for the more easy Recovery of Debts in his Majesty’s Colony of New South Wales:’ And whereas it is expedient that in future a declaration should be substituted in lieu of the affidavit on oath authorized and required by the said recited acts;” Be it therefore enacted, That from and after the commencement of this act, in any action or suit then depending or thereafter to be brought or intended to be brought in any Court of Law or Equity within any of the territories, plantations, colonies or dependencies abroad, being within and part of his Majesty’s dominions, for or relating to any debt or account

Declaration substituted for Oaths and Affidavits required by 5th Geo. 2nd, c. 7, and 54th Geo. 3rd, c. 15.

- No. 13. wherein any person residing in Great Britain and Ireland shall be a party, or for or relating to any lands, tenements, or hereditaments or other property situate, lying, and being in the said places respectively, it shall and may be lawful to and for the plaintiff or defendant, and also to and for any witness to be examined or made use of in such action or suit, to verify or prove any matter or thing relating thereto by solemn declaration or declarations in writing in the form in the schedule hereunto annexed, made before any Justice of the Peace, Notary Public, or other officer now by law authorized to administer an oath, and certified and transmitted under the signature and seal of any such Justice, Notary Public duly admitted and practising, or other officer, which declaration, and every declaration relative to such matter or thing as aforesaid, in any foreign kingdom or state, or to the voyage of any ship or vessel, every such Justice of the Peace, Notary Public, or other officer shall be and he is hereby authorized and empowered to administer or receive; and every declaration so made, certified, and transmitted shall in all such actions and suits be allowed to be of the same force and effect as if the person or persons making the same had appeared and sworn or affirmed the matters contained in such declaration *vivâ voce* in open court, or upon a commission issued for the examination of witnesses or of any party in such action or suit respectively; provided that in every such declaration there shall be expressed the addition of the party making such declaration, and the particular place of his or her abode.

Declaration
in writing,

XVI. And be it further enacted, That it shall and may

be lawful to and for any attesting witness to the execution of any will or codicil, deed or instrument in writing, and to and for any other competent person, to verify and prove the signing, sealing, publication, or delivery of any such will, codicil, deed, or instrument in writing, by such declaration in writing made as aforesaid, and every such Justice, Notary, or other officer shall be and is hereby authorized and empowered to administer or receive such declaration.

No. 13.

—
sufficient to
prove execu-
tion of any
Will, Codicil,
&c.

XVII. And be it further enacted, That in all suits now depending or hereafter to be brought in any Court of Law or Equity by or in behalf of his Majesty, his heirs and successors, in any of his said Majesty's territories, plantations, colonies, possessions, or dependencies, for or relating to any debt or account, that his Majesty, his heirs and successors, shall and may prove his and their debts and accounts, and examine his or their witness or witnesses by declaration, in like manner as any subject or subjects is or are empowered or may do by this present act.

Suits on behalf
of his Majesty
to be proved
by Declaration.

XVIII. "And whereas it may be necessary and proper in many cases not herein specified to require confirmation of written instruments or allegations, or proof of debts, or of the execution of deeds or other matters;" Be it therefore further enacted, That it shall and may be lawful for any Justice of the Peace, Notary Public, or other officer now by law authorized to administer an oath, to take and receive the declaration of any person voluntarily making the same before him in the form in the schedule to this act annexed; and if any declaration so made shall be false or untrue in any material particular, the person wilfully

Voluntary
Declaration
in the form in
the Schedule
may be taken.

No. 13. making such false declaration shall be deemed guilty of a misdemeanor.

5th and 6th
Wm. IV, c. 62.

Fees on Oaths
payable on
Declarations
substituted
in lieu thereof.

XIX. And be it enacted, That whenever any declaration shall be made and subscribed by any person or persons under or in pursuance of the provisions of this act, or any of them, all and every such fees or fee as would have been due and payable on the taking or making any legal oath, solemn affirmation, or affidavit shall be in like manner due and payable upon making and subscribing such declaration.

Declarations
to be in the
form pre-
scribed by
Schedule.

XX. And be it further enacted, That in all cases where a declaration in lieu of an oath shall have been substituted by this act, or by virtue of any power or authority hereby given, or where a declaration is directed or authorized to be made and subscribed under the authority of this act, or of any power hereby given, although the same be not substituted in lieu of an oath heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the schedule hereunto annexed.

Persons
making false
Declaration
deemed guilty
of a Mis-
demeanor.

XXI. And be it further enacted, That in any case where a declaration is substituted for an oath under the authority of this act, or by virtue of any power or authority hereby given, or is directed and authorized to be made and subscribed under the authority of this act, or by virtue of any power hereby given, any person who shall wilfully and corruptly make and subscribe any such declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor.

Commence-
ment of Act.

XXII. And be it enacted, That this act shall commence and take effect from and after the first day of October in

this present year, the year of our Lord one thousand eight hundred and thirty-five.

No. 13.

—
5th and 6th
Wm. IV, c. 62.

XXIII. And be it further enacted, That this act may be amended, altered, or repealed by any act to be passed in this present session of Parliament.

Act may be
amended, &c.

SCHEDULE REFERRED TO BY THE FOREGOING ACT.

I, *A. B.* do solemnly and sincerely declare, That

and I make this solemn Declaration,
conscientiously believing the same to be true, and by virtue
of the provisions of an Act made and passed in the
year of the reign of his present Majesty, intituled, *An Act*
[*here insert the Title of this Act.*]

OBSERVATIONS AND OPINIONS UPON THE PRESENTMENT OF BILLS OF EXCHANGE.

No. 14.

—
Observations
and Opinions.

THE manner in which the presentment is made, of a foreign bill, and the form of the protest of it on dishonour, are entirely regulated by usage and practice, and not by any act of Parliament.

The custom which exists in England of making the presentment of foreign and inland bills either by a notary, or by his clerk, before noting or protesting them, has existed within the author's own knowledge, for more than forty years past; besides which, as will be afterwards shown, the late Mr. Lace, the senior solicitor and notary of Liverpool, a gentleman who possessed most extensive and respectable practice, and an admirable knowledge of the law merchant, has stated⁽¹⁾, that he could speak to its having prevailed for fifty-five years and upwards; and it appears from a communication from the Society of London Notaries to Mr. Chitty, in the year 1829, that it had even then existed for upwards of a century⁽²⁾. Besides which, there are several cases, which have come before the Courts of Law in England, in which the due presentment of bills has been established, by the evidence of notaries' clerks who presented them, or in which the Courts have sanctioned the presentment of bills by them. In *Wilkins v. Jadis*, 2 Barn. and Adol. 188, a notary's clerk proved that he took the

(1) Appendix, *Infra*, p. 538.

(2) See also the communication from Mr. VENN, of London, Appendix, *Infra*, p. 537.

bill to No. 15, Godliman-street, Doctors Commons, the place where it was made payable by the acceptance, and finding the door of the house shut, and no person being there to give an answer, he attempted to present it by knocking or ringing at the door. In *Garnett v. Woodcock*, 1 Starkie, Ni. Pri. C. 475, and 6 Maule and Sel. 44, the bill was accepted, payable at Messrs. Denison and Company's, bankers, London, and a notary's clerk proved that he presented it there. In *Triggs v. Newman*, 1 Carrington and Payne, 631, 10 Moore, (C. P.) 249, the presentment was proved by a notary's clerk, who presented it at the house of a solicitor, where it was accepted payable. In *Philpott v. Bryant*, 3 Carr. and Payne, 244, a notary's clerk proved that he presented the bill for payment at No. 18, Bishopsgate-street, it having been accepted payable there. In all the above-mentioned cases the plaintiff recovered, on the evidence of the presentment by the clerks of the notaries. In *Poole v. Dicas*, 1 Bing. N. C. (C. P.) 649, the Court held, that an entry in the notary's book of the dishonour of a bill made at the time, and in the usual course of business, by the notary's clerk who presented the bill, might be given in evidence, in an action on the bill, upon proof of the death of the clerk. The author has been informed by a notary yet living in Liverpool, that he was once subpoenaed and attended upon the trial of a cause at the Lancaster Assizes, and successfully proved the presentment by him, and the dishonour of a foreign bill, whilst he was a clerk to a notary. And Lord C. J. Tenterden, in the King against The Scriveners' Company, 10 Barn. and Cress. 518, adverts to a notary's

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clerk drawing up protests of the bills, which the clerk had presented⁽¹⁾, as a matter of regular occurrence. Indeed the author would not have been induced to have dwelt upon a matter so well known, had it not been for the circumstance, of Mr. Justice Buller having been reported to have expressed himself, in a case⁽²⁾ in the year 1791, as if he thought it necessary for a notary to go in person to present a foreign bill. Even if that learned Judge did so express himself, such a dictum amounts to very little, and is not entitled to much weight, when it is borne in mind, that on that occasion the point was not then before the Court, and that the case⁽²⁾ was one which arose *not upon a foreign bill, but upon an inland one*; and also that from inquiries which have been carefully made, the result is, either that the report is inaccurate, or the learned Judge was not well informed as to the custom and practice respecting the presentment of bills at that period. It has been ascertained, that (even in the comparatively limited state of commerce in 1791) it was not according to the custom and practice in England, even then necessary, to cause the presentment to be made by a notary in person, but that it was considered sufficient, if done by his clerk⁽³⁾.

(1) See also Act 9th George IV, c. 24, sec. 13, respecting Notaries in Ireland presenting, or causing to be presented, Bills or Notes in that country. See also Joseph Chitty, jun. on Bills, 61, 62.

(2) *Leftley v. Mills*, 4 Term Reports, p. 175.

(3) From a communication (vide *Infra*, p. 538,) received from the late Mr. LACE, the then senior Solicitor and Notary of Liverpool, it is clear that the custom, even at that time, was the reverse of that suggested in the alleged dictum of Mr. Justice Buller. See also the communication to the same effect from Mr. VENN, of London, in the Appendix, *Infra*, p. 537.

At present, in consequence of the immense commerce of England, and the great number of bills drawn upon persons in this country, it is impracticable for notaries to conduct business without the assistance of clerks, and it would be as impossible for all the dishonoured bills to be presented by notaries in person, as by bankers or merchants. The doubt, if it was ever expressed, may have arisen from the learned Judge not being practically acquainted with the mode in which bankers and merchants act with respect to such bills. A most material circumstance must not be overlooked, viz. that every bill has already been presented, by the holder or by some person in his employ, (whenever the drawee can be found, and there is any chance, however small, of obtaining acceptance or payment, as the case may be,) and has been dishonoured, before the sending of it to the notary's office.

It is not to be believed that any holder would cause a foreign bill to be protested, and thereby incur some expense, and then send off the protest to a foreign country, for the purpose of trying to obtain payment there, if he could obtain the money from the drawee or acceptor in this kingdom. The protest is only a formal certificate that it has been dishonoured; the dishonour is the substance, the protest is the form: a second presentment by the notary or by his clerk is of course requisite, and without it the former would not feel justified in granting the protest; but the drawer or indorser abroad cares nothing respecting the person who makes the presentment; that is a matter of perfect indifference to the drawer or indorser; it is the non-payment which is the all-important point to him. It is idle to suppose that

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—
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and Opinions.

the protest is any safeguard to him, against irregularity in the presentment; the substantial and real security, which it affords to him is, that at the date of, and prior to the making of the protest, a previous presentment, and attempt to obtain acceptance, or payment, had been actually made by the holder, since it is evident that it would be contrary to his own interests, to send the bill to a notary's office to be protested, if he could obtain the acceptance of the drawee, or the amount of the bill from the acceptor. And it is not credible that any notary, for so paltry a fee, would insert a false date and certificate of the dishonour, in the protest, and thereby run the risk of being struck off the rolls for his misconduct; indeed, if he were disreputable enough to do that, he would not hesitate to grant a protest of any other nature, however fraudulent.

A protest of a bill may in one case be made, even without the intervention of a notary, for credit is given to the protest of any respectable resident at a place, where there is not a notary: such a resident is not a public officer, and the drawer or indorsers, if abroad, most probably know nothing about him, yet his protest, under those circumstances, is quite as efficient as that of a notary.

The commerce of this country is so vast and extensive, and the amount of foreign bills held by British merchants, and dishonoured from time to time, is so immense, especially during periods of commercial pressure, that no one but a banker or notary of extensive practice can form the slightest idea of it; and if ever there should happen to be a decision against the regularity of the before-mentioned existing custom as to the presentment of bills, such a

decision must necessarily be useless, and would probably do much mischief, for it would be impossible generally to act upon it, and its effects would be most injurious to numbers of British merchants, bankers, and others, who would be deprived of their property, to an incalculable and ruinous amount, by the loss of their remedy against the merchants of foreign countries, whose names appear upon them as drawers or indorsers.

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and Opinions.

It is submitted, that the words within the brackets in the Precedent No. 3, see pages 286 and 287, (Note 1), may be used, in case any notary should imagine, that the Form No. 3 of a Protest on Non-acceptance, conveys the idea that he went in person to present the bill. There is, however, no just foundation for any such over-scrupulous feeling, for that which a notary causes to be done, in the usual and customary mode of business, is virtually done by him; and the reason for using a form, stating to the effect, that he presented the bill, is, that it is the general understanding, that the presentment by the clerk is that of the notary. Just in the same manner, a deponent in one room, with the door a little open, behind a judge or magistrate, sitting in another room, (and whose clerk, in fact, administers the oath for him,) is considered as virtually sworn to an affidavit before the judge or magistrate, who certifies, in the jurat to the affidavit, that it was sworn before him, and very often without even seeing the deponent.

In order to prevent any doubt, respecting the existence of the before-mentioned usage and practice, in England, on the presentment of foreign bills, the author, before the first edition was published, corresponded with practical men of

No. 14. experience and respectability, in various cities and towns
— in England ; and the following is the general tenor and
Observations and Opinions. substance of the questions put to them, and of their replies
upon that point.

Question 1st. 1st. How many years have you been a solicitor and
notary, [or, a notary, or banker, or merchant, as the case
may be,] and conversant with the usages relating to the
dishonour and protesting of bills of exchange [in Eng-
land⁽¹⁾] ?

Question 2nd. 2nd. According to usage, and to the practice of notaries,
is it, in your opinion, necessary that prior to making the
protest for non-acceptance or non-payment of a foreign
bill of exchange, the previous presentment to the drawee
should be made by the notary in person ; or according to
such usage and practice, is it sufficient for the notary's
clerk to present the bill ; and have such usage and practice
prevailed in that respect for the period of time during
which you have been a solicitor and notary [or a notary,
or banker, or merchant] ?

(1) In order to ascertain the general prevalence of the usage and
practice in England (and to prevent its being supposed that they
merely prevailed locally), the words " in England " were inserted
in various instances in the above questions sent to some of the
Notaries, &c.

*Answers of John Venn, Esq. of the City of London,
Notary.*

1st.
John Venn,
Esq.

17th August, 1838.

I have been a notary, conversant with the usages relating to the dishonour and protesting of bills, upwards of forty years.

Answer to
Question 1st.

The presentment is made by the notary or his clerk, which is sufficient to found protest. This practice has invariably existed during my experience, and for upwards of a century previous, as appears by the books of my predecessors.

Answer to
Question 2nd.

*Answers of R. Forrester, Esq. of the City of London,
Notary.*

2nd.
R. Forrester,
Esq.

6th September, 1838.

I beg to inform you, that I have been a notary for fifteen years.

Answer to
Question 1st
and

I have been conversant with the usages relating to the dishonour and protesting of bills for at least twenty-two years.

Question 2nd.

In my opinion, it is not necessary that, prior to making the protest for non-acceptance or non-payment of a foreign bill of exchange, the previous presentment to the drawee should be made by the notary in person.

According to usage and custom, it is quite sufficient for the notary or his clerk to present the bills, and such usage and custom have prevailed for as long a period as I can remember.

W W W

3rd. *Answers of William Scorer, Esq. of the City of London,*
 Wm. Scorer, *Notary, of the Firm of Messrs. Withers and Scorer,*
 Esq. *Notaries to the Bank of England.*

16th November, 1838.

Answer to
 Question 1st
 and
 Question 2nd.

I have to state, that I have myself been in the notarial profession about twenty years, during which time it has never been considered necessary for the notary to present any bills of exchange in person; indeed it would be quite impracticable.

4th. *Answers of Joshua Lace, Esq. of Liverpool, Solicitor and*
 Joshua Lace, *Notary.*

1838.

Answer to
 Question 1st.

I have been an attorney and notary upwards of fifty-five years, but my knowledge of the usages relating to the dishonour and protesting of bills of exchange has been, in a great degree, confined to the information I acquired from those who were my senior partners when I commenced the practice of a notary, and to my own observations during such practice.

Answer to
 Question 2nd.

With respect to the practice of notaries, it has not been uniform, though the prevailing one has been for the notary's clerk to present the bill; and such practice has been, in some degree, sanctioned by our Courts of Law receiving the evidence of the notary's clerk as sufficient proof of presentment. I think it is necessary, that a presentation by the notary or his clerk should take place before the notary protests a bill in the usual mode; but I have known a protest made under special circumstances; for instance,

where a bill has been presented when due by the holder, and refused payment, but, owing to neglect or other cause, not put into the hands of the notary till some days had elapsed, when the holder and drawee appeared before the notary, and the drawee admitted the fact of presentment and the want of funds: in this case the notary certified the facts, wherefore he protested, &c. And I have known other cases of a similar nature. Such a protest in a foreign Court (where alone it could be evidence) might probably be received as proof of the facts stated therein, and the effect would depend on such other circumstances as might be given in evidence, on the trial of any question between contending parties.

Observations
and Opinions.
—

Answers of Thomas Avison, Esq. of Liverpool, Solicitor and Notary. 5th
T. Avison, Esq.

About forty years.

1838.

Answer to
Question 1st.

I have occasionally presented bills personally, as a notary, but my general practice is to send a clerk of my own, and such I consider, and have always been informed, is the usual practice.

Answer to
Question 2nd.

Answers of Thomas George Massey, Esq. of Liverpool, Solicitor and Notary. 6th.
T. G. Massey, Esq.

1838.

I have practised as a solicitor in Liverpool thirty-one years, and as a notary twenty-five years.

Answer to
Question 1st.

Answer to
Question 2nd.

It has not been the usage, nor do I consider it necessary, that prior to making a protest of a foreign bill either for non-acceptance or non-payment, the presentment to the drawee should be made by the notary in person; it has been and is the usual practice for the clerk of the notary to present the bill, and report to the notary the answer which he has received; upon which, the notary makes the notation on the bill. It would be impossible in London, or any other large town, for a notary in general practice, to present all bills which might daily come into his hands.

7th.

Wm. Spurstow
Miller, Esq.

*Answers of William Spurstow Miller, Esq. of Liverpool,
Solicitor and Notary.*

21st August, 1838.

Answer to
Question 1st.

Twenty-six years.

Answer to
Question 2nd.

The usage and practice that have prevailed during the period that I have been in business, have been invariably for the clerk of the notary to present the bill, and I never heard of any other usage or practice.

8th.

George James
Duncan, Esq.

*Answers of George James Duncan, Esq. of Liverpool,
Solicitor and Notary.*

1838.

Answer to
Question 1st.

Yes.

Seventeen years as a principal, and seven as an apprentice.

Answer to
Question 2nd.

Not necessary to be presented by the notary himself. The universal usage, during my experience, has been for the clerk to present bills.

*Answers of John Whitley, Esq. of Liverpool, Solicitor and
Notary.*

9th.

John Whitley,
Esq.

15th November, 1838.

Nineteen years as a notary, besides seven years previously as an apprentice; making in the whole twenty-six years.

Answer to
Question 1st.

It has been the invariable practice (as far as I have had experience or information) for the presentment to be made by a clerk.

Answer to
Question 2nd.

*Answers of William Wilson, Esq. of Liverpool, Manager
of the Liverpool Banking Company.*

10th.

Wm. Wilson,
Esq.

5th October, 1838.

1st. I have been engaged in mercantile business upwards of thirty years, and as a banker upwards of two years, during all which I have been conversant in the usages relating to bills of exchange in England.

Answer to
Question 1st.

2nd. As far as my experience goes, it has always been considered sufficient that the notary's clerk should present a foreign bill of exchange to the drawee; and upon refusal to accept, or upon dishonour, the protest is made out in the usual form.

Answer to
Question 2nd.

Answers of Thomas Orford, Esq. of Liverpool, Merchant.

11th.

Thos. Orford,
Esq.

10th October, 1838.

1st. I have been a merchant twenty-four years, and consider that I have had some experience as to protesting bills, &c.

Answer to
Question 1st.

Answer to
Question 2nd.

2nd. In presenting bills for acceptance or payment, previous to protesting them, the practice is not uniform; I have known them presented by a notary himself, as well as his clerk, and I have always understood that the evidence of either was sufficient, to prove the presentation of the bill.

12th.

C. Frost, Esq. *Answers of Charles Frost, Esq. of Hull, Solicitor and Notary.*

7th September, 1838.

Answer to
Question 1st.

My answer to the 1st is, that I have been in practice as a solicitor and notary, for thirty years.

Answer to
Question 2nd.

To the 2nd, I may say, that in my office, presentment has generally been made by a clerk, and only occasionally by myself; and I entertain no doubt of the sufficiency of the presentment by a clerk, notwithstanding the doubt apparently raised upon the point by Buller J. in *Leftley v. Mills*. It would, of course, be impossible for the London notaries to make all their presentments in person.

13th.

Richard Brickdale Ward, Esq. *Answers of Richard Brickdale Ward, Esq. of Bristol, Solicitor and Notary.*

20th August, 1838.

Answer to
Question 1st.

1st. I was admitted an attorney of the Court of King's Bench on the 26th June, 1798. My notarial faculty is dated the 29th of the same month, and I have practised since that time to the present.

Answer to
Question 2nd.

During my apprenticeship, I always presented the bills as a clerk for Messrs. Dicks; and, during the period of my

practice, I have always employed a clerk to present bills, both for acceptance and payment, and have protested them on his report of the answer given: Observations
and Opinions:
—

Answers of Brooke Smith, Esq. of Bristol, Solicitor and Notary. 14th.
Brooke Smith,
Esq.

17th August, 1838.

1st. Twelve years; my father near thirty years before I commenced practice; he is now dead. Answer to
Question 1st.

2nd. The bills are usually presented by a notary's clerk. Answer to
Question 2nd.

Answers of Joseph Denison, Esq. of Manchester, Solicitor and Notary. 15th.
J. Denison,
Esq.

23rd August, 1838.

About twenty-eight years.

Answer to
Question 1st.

During all my experience, the practice has been for the notary's clerk to present the bill, which I consider sufficient. Answer to
Question 2nd.

Answers of John Sansum, Esq. of Harwich, Solicitor and Notary. 16th.
John Sansum,
Esq.

16th August, 1838.

1st. I have been an attorney forty years, and a notary thirty-two; but my notarial practice has been chiefly in protests and shipping documents, and very little indeed, if any, in bills of exchange, respecting which, therefore, I can profess but very small, scarcely any, experience. Answer to
Question 1st.

2nd. The usage and practice, so far as I have known, have been for either the notary or his clerk to present the Answer to
Question 2nd.

Observations
and Opinions.
—

bill for acceptance, prior to protesting it; and to leave a short notice of the bill, and where lying for acceptance, at the drawee's house or place of business, in his absence.

17th.

L. Willan, Esq. *Answers of Leonard Willan, Esq. of Lancaster, Solicitor and Notary.*

14th August, 1838.

Answer to
Question 1st.

Since 1816; twenty-two years.

Answer to
Question 2nd.

In my experience, it has not been the practice for the notary to go in person with a bill for presentment, unless it suited his convenience so to do. A clerk is usually sent.

18th.

Geo. Lamburn Greetham, Esq. *Answers of George Lamburn Greetham, Esq. of Portsmouth, Solicitor and Notary.*

November, 1838.

Answer to
Question 1st.

I have been a notary public upwards of twenty years.

Answer to
Question 2nd.

It has been usual to have the previous presentment made by a clerk, and not by the notary in person; and such has been the more general practice at this place.

19th.

Thos. Heather, Esq. *Answers of Thomas Heather, Esq. of Portsmouth, Notary.*

October, 1838.

Answer to
Question 1st.

Upwards of forty-four years.

Answer to
Question 2nd.

I never deemed it necessary to present foreign bills of exchange, either for acceptance or payment, to the drawee, personally; according to my practice for the long period above mentioned, I have considered it sufficient, for my regularly-articled clerk to present the bill to the drawee, which practice I have always understood prevailed in London.

The following is the substance of Questions and Answers on the subject of leaving a Foreign Bill, or a copy of it, to allow the Drawee time for deliberation, as to accepting it.

Observations
and Opinions.
—

1st. How many years have you been a merchant, or banker, and conversant with mercantile or banking business, and with the usages relating to the dishonour, and protests of bills of exchange in England? Question 1st.

2nd. In your opinion, is the mercantile usage of the holder's leaving a foreign bill for acceptance, or a copy of it on one day, and calling for it on the next, imperative, whenever the drawee can be met with, or is there an exception in the case of the drawee's bankruptcy or known insolvency, so as to justify the holder in causing it to be protested at once, without waiting until the ensuing day? And if the drawee be a person little known, or not considered respectable, would you consider it sufficient to leave a copy with him, instead of the original bill? Question 2nd.

3rd. In your experience, have you ever known any loss or disadvantage accrue to the holder of a foreign bill, by reason of his refusing to leave the bill until the next day, in consequence of the drawee's bankruptcy or insolvency, which induced the holder to cause it to be protested at once? Question 3rd.

Answers of William Wilson, Esq. of Liverpool, the Manager of the Liverpool Banking Company. 1st.
Wm. Wilson,
Esq.

5th October, 1838.

I have been engaged in mercantile business upwards of thirty years, and as a banker upwards of two years, during Answer to
Question 1st.

X X X

Observations
and Opinions.

all which I have been conversant in the usages, relating to bills of exchange in England.

Answer to
Question 2nd.

In my opinion it is not imperative, according to mercantile usage, upon the holder of a foreign bill of exchange, to leave the same in possession of the drawee when presented for acceptance, though such is the courtesy. I believe it to be the rule, that the bill should be exhibited to the drawee, or at his usual place of business, with a demand for acceptance, and that the drawee is entitled to take until the following day to consider his answer; and that this is the rule whether or not the drawee be a bankrupt or known insolvent, as bills are frequently specially provided for, even although the drawee be in the circumstances noted.

Answer to
Question 3rd.

I have not known any loss or disadvantage accrue to the holder of a foreign bill of exchange under such circumstances, because I don't know any instance of such practice. But if it should turn out that the bill had been specially provided for, the proceeding would, in my opinion, be attended with danger.

2nd.

Thos. Orford, *Answers of Thomas Orford, Esq. of Liverpool, Merchant.*
Esq.

10th October, 1838.

Answer to
Question 1st.

I have been a merchant twenty-four years, and consider that I have had some experience as to protesting bills, &c.

Answer to
Question 2nd.

It is certainly the usage in this place, to leave a bill for acceptance one day, and call for it on the succeeding one; this practice is now become so common, that it has ceased to be considered an act of courtesy, in which feeling I

believe it originated. At the same time I do not consider such a course imperative, because there are some cases in which it may be prudent to deviate from it. If, for instance, there should be any doubt as to the character of the drawee, or that he should be unknown; in such cases I should leave a copy only, and present the bill itself on the following day.

Observations
and Opinions.
—

I have never known any loss arise from a refusal to comply with the above usage or courtesy. I have myself refused to leave a bill with the drawee; and the bill being ultimately refused payment, I have proved upon the estate of the drawee.

Answer to
Question 3rd.

Answers of James Lister, Esq. of Liverpool, the Manager of the Liverpool Union Bank.

3rd.

James Lister,
Esq.

18th October, 1838.

Twenty years with banking business.

Answer to
Question 1st.

When the parties have been bankrupt or insolvent, I have invariably sent the bill to the notary, who is, however, instructed to inquire, on presentation, whether or not specific funds have been lodged to protect the bill.

Answer to
Question 2nd.

In ticklish times I should not consider that I faithfully discharged my duty to a foreign correspondent, if I allowed a bill to lie over till the next day for acceptance, and thereby missed a packet, and did not apprise him of its fate. In such a case I should consider myself legally entitled to an answer on the day of presentation, and should not hesitate to protest, if refused.

In case of the drawee being such a party as described,

Observations and Opinions. — I should consider it a proper precaution to leave a copy of the bill for consideration, after exhibiting the original and demanding acceptance.

Answer to Question 3rd. Never.

COPY OF THE OPINION OF SIR JOHN CAMPBELL, KNT. ATTORNEY GENERAL, UPON VARIOUS POINTS RESPECTING THE ACT FOR THE ABOLITION OF UNNECESSARY OATHS, 5TH AND 6TH WM. 4TH, C. 62, SUBMITTED FOR HIS OPINION BY THE SOCIETY OF PUBLIC NOTARIES OF LONDON.

You are requested to advise the Society of Public Notaries of London,—

1st. Whether, under the above Act of 5th and 6th William 4th, section 15, a notary public, duly admitted and practising, be authorised to receive the solemn declarations mentioned in the said section ?

Sir J. Campbell, Knt.
Attorney General.

I think there is no doubt whatever, that a notary is authorised to receive the solemn declarations referred to. The authority is expressly given, and there is nothing in the act to restrict or qualify it.

1st.

2ndly. Whether, by the same section, the provisions of the act extend to debts, &c. due to residents in Great Britain and Ireland, by persons resident in foreign states, in like manner as to debts, &c. in his Majesty's colonies ?

I do not think that the 15th section extends to debts due
by persons resident in foreign states⁽¹⁾. 2nd.

3rdly. Whether the blank in the schedule of the act for
the year of the reign should be supplied by the
words "fifth and sixth years of the reign," &c. or
by the word "sixth" year, the royal assent having
been given in the sixth year of his Majesty's
reign? 3rd.

The blank in the schedule ought to be filled up with the
word "sixth" only. No single act of parliament can be
passed in two years of the king's reign.

J. CAMPBELL.

Temple, September 30th, 1835.

(1) It is not surprising that a difference of opinion should be entertained respecting the meaning of an Act of Parliament, which, as has been before pointed out,* is worded in a manner slovenly, and ill adapted to the purpose intended. Indeed, it is astonishing to observe the numerous mistakes, and the want of attention or skill on the part of some of the framers, of most important Acts of Parliament, as evinced in the state in which they are now too often drawn up, and introduced as bills into the House of Commons, and also the indifference and carelessness, with which they are suffered in an imperfect or objectionable form, to glide or pass through that branch of the Legislature, in this country. The general opinion is at variance with the one on the 15th section copied above: and it certainly is more consistent with the mercantile interests and public policy of this country to give a liberal construction to the 15th section than a limited one, and in practice, that section is acted on, and considered as extending to debts due by persons resident in Foreign States.

* Supra, Chap. 8, p. 257, Chap. 10, p. 306. (Note 1.)

Observations
and Opinions.
—

COPY OF THE OPINION OF DR. LUSHINGTON,
RESPECTING THE SERVICE OF A CLERK TO
A NOTARY, WHERE THE CLERK WAS ALSO
SERVING UNDER ARTICLES OF CLERKSHIP IN
A DIFFERENT OFFICE, TO AN ATTORNEY.

CASE.

F. R. is an attorney-at-law, practising at _____ with
an office and the customary establishment of clerks there.

A. B. is a young man, articed as a clerk to him, in the
usual form, for a term of five years, with a view to admis-
sion, at the end of the term, as an attorney.

A. B. wishes also to be admitted as a public notary, and
with that intent is also articed as a clerk to *G. D. B.* a
notary, practising at _____ for a term of seven years;
but as the latter articles were only executed to enable him
to obtain a notarial faculty, and as *A. B.* is not expected
to give active service under them, he of course, is not
employed in the office of *G. D. B.* and on the contrary,
writes and works, in the usual way of attornies' clerks, at
the desk and in the office of *F. R.* *G. D. B.* contends,
however, that such service is good and valid, because he
occasionally employs *A. B.* to prepare or copy notarial
documents.

1st. You are requested to advise, whether such
service to *G. D. B.* is good and available towards
the admission of *A. B.* as a notary, your attention
being drawn to the Statute 41st Geo. III, c. 79,
secs. 2 and 7.

2nd. And in case you are of opinion that such ser-
vice is merely colourable and unavailable, then to

advise whether, if *G. D. B.* should, at the end of the term, sign the usual certificate (required by the Court of Faculties), that *A. B.* has continued and been actually employed by him in the proper business, practice, or employment of a public notary, or otherwise collude with *A. B.* to enable him to obtain his admission and faculty, it would be considered such an offence in *G. D. B.* as to expose him to reprehension and punishment by the Court of Faculties?

Observations
and Opinions.
—

I am of opinion, that the act requires a *bonâ-fide* service to a notary public for seven years, and that the service of *A. B.* to *G. D. B.* is insufficient to entitle *A. B.* to be admitted a notary⁽¹⁾.

1st.

I also think that *G. D. B.* if he signs the usual certificate on such a service, will expose himself to reprehension and punishment, should his conduct be made known in proper form, to the Master of the Faculties.

2nd.

STEPHEN LUSHINGTON.

Doctors Commons, April 11, 1823.

(1) The correctness and soundness of the above opinion have been since proved by the decision in the case of the *King v. the Scriveners' Company*, 10 Barn. and Cress. 511.

BILL, SUGGESTED TO BE BROUGHT BEFORE
PARLIAMENT RESPECTING THE TIME OF
DAY FOR THE PRESENTMENT OF BILLS OF
EXCHANGE AND PROMISSORY NOTES FOR
PAYMENT⁽¹⁾.

*An Act for declaring the Law, in relation to the Time of
Day, when Bills of Exchange, and Promissory Notes
may be presented for Payment.*

Bill suggested
relating to the
Time of Day
for the present-
ment of Bills
and Notes for
payment.

WHEREAS it is expedient, for the benefit of commerce and the prevention of doubts and litigation, to make provision in relation to the time of day when bills of exchange and promissory notes may be presented for payment; Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament

(1) It appears to be only proper that the Acceptor of a Bill, or the maker of a Promissory Note, should be prepared with funds to provide for the Bill or Note at any reasonable hour when the Holder may send for payment, in the common course of business, on the day on which it becomes payable; and it appears very unreasonable that the Holder should ever be expected to send repeatedly, perhaps at much inconvenience to himself, for payment of it. Lord Kenyon, in *Leftley v. Mills*, 4 Term Rep. 179, expressed himself as if he thought that the Acceptor of a bill had until the last moment of the day of grace to pay the bill. It does not appear that in practice, such a suggested right is claimed in this country; indeed it would be prejudicial to the credit of the Acceptor to attempt it, besides being injurious to commerce if it could be established, because it would often deprive the Holder of the opportunity of sending off advices or the protest by the next packet. The Author never knew an instance of such a right being pretended by any Acceptor, and it appears very probable that the Courts, if the case came before them, would decide against it; however, if any doubts exist on the point, it is submitted that a short Act of Parliament, if passed to the effect of the above form, would be expedient and useful to obviate them.

assembled, and by the authority of the same ; That from and after the passing of this act it shall be lawful for the holder or holders, bearer or bearers of all bills of exchange or promissory notes, or for his, her, or their agent or agents, to present or cause such bills of exchange or promissory notes to be presented for payment at any reasonable time during the day on which the same shall be payable ; and that it shall be lawful for any public notary, duly admitted and practising, at the request of, or on behalf of such holder or holders, bearer or bearers, agent or agents, to present or cause to be presented, at any reasonable time during such day, such bills of exchange or promissory notes for payment ; and that it shall be lawful for such public notary, after refusal or default made in payment of such bills of exchange or promissory notes, to note or protest the same on non-payment ; and that in default of such public notary, duly admitted and practising, and able and willing to act in the premises as aforesaid, it shall be lawful for any other substantial person of the city, town, or place to act in the premises as aforesaid, and to protest such bills of exchange or promissory notes, and that every such last-mentioned protest, so made as aforesaid, shall have the same effect and operation at law as if such protest had been made or solemnized by any public notary.

Bill suggested relating to the Time of Day for the presentment of Bills and Notes for payment.

Provided always and be it further enacted, that nothing in this act contained shall extend either to Scotland or Ireland.

ADDENDA.

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- 7 Add, "In the canon of 1st James 1st, (1603), respecting wills, proved in peculiar and inferior courts, after reciting that deans, archdeacons, prebendaries, &c. &c. exercising ecclesiastical jurisdiction, claim the liberty of proving wills within their several jurisdictions, having no known or certain registers, or public places, to keep their records in, by reason of which many wills, "upon the death or change of such persons and their private notaries," miscarry, and cannot be proved; it is therefore ordered, that all such possessors of peculiar jurisdiction, shall once in every year, exhibit into the public registry of the Bishop of the diocese, or of the Dean and Chapter under whose jurisdiction the peculiars are, every original testament by them proved, in their several peculiar jurisdictions, or a true copy of every such testament, "examined, subscribed, and sealed, by the peculiar judge and his notary."—Gibson's *Codex Juris Ecclesiastici Anglicani*, vol. 1, title 24, p. 470.
- 7 Also add, "By the Act 9th and 10th of William 3rd, c. 25, sec. 9, passed in 1698, a stamp duty was first imposed upon the admission of a notary."
- 84 note (1). After the words "Manning, Gr. and Sc." add "New Series."

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- 90 After the words "as a nullity, and," introduce the words "note or."
- 90 note (1). Before the word "Selwyn's," insert the words "See also."
- 91 After the words "the drawee," and before the words "has no right," insert "if residing out of London;" and after the words "making it payable," strike out the words "at another," and substitute the words "in London, or in such other."
- 97 note (1). "In *Campbell v. Webster*, 2 Man. and Grang. N. S. (C. P.) 258, which was an action on a foreign bill of exchange, on the trial of which a document was attempted to be put in in evidence by the plaintiff, which purported to be a protest, but which, in fact, had been drawn up *after the commencement of the action*, which the judge rejected, the plaintiff then put in certain letters from the defendant, as a waiver of the want of a protest, and which amounted to an acknowledgment of his liability, upon which the plaintiff recovered, and the verdict was afterwards supported by the Court after argument."
- 135 For "*quere*," insert "*quære*."
- 137 note (1). "A bill was indorsed by the defendant, the drawer, to one Satour, and by Satour to De Vos, Ryland, and Co. of Bruges, who wrote upon it, "in case of need, apply to Mr. Goodall." It was presented when due, on the 2nd of February, 1844, and dishonoured, and on the same day was protested for non-payment; on the

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3rd, Goodall, the plaintiff, *paid it for the honour of De Vos, Ryland, and Co.* to whom it was sent by the next post. De Vos, Ryland, and Co. indorsed it, and sent it back by return of post to the plaintiff, who received it on the 8th of February, and on the same day, by his attorney, gave the defendant notice of the dishonour: held, that the notice of dishonour was in time; and that *payment for the honour of De Vos, Ryland, and Co.* put the plaintiff in the situation of an indorsee under them, with all the rights and liabilities incident to that character, and that where a notice was given to the drawer, which was within time as far as De Vos, Ryland, and Co. were concerned, the plaintiff had a right to adopt and take advantage of it, as a notice given by himself.”—Goodhall *v.* Polhill, 1 Mann. Grang. and Sc. N. S. (C.P.) 233.

145 For “*quere*,” insert “*quære*.”

148 note (1). “In a count by an indorsee against the drawer of a bill, drawn payable in London, the venue being laid in London, a general allegation of presentment, was held to be a sufficient allegation of a presentment in London, since the Rule of Hilary Term, 4 Wm. 4, r. 8.”—Boydell *v.* Harkness, 3 Mann. Grang. and Sc. C. B. Rep. 168.

151 note (3). After “Wilmot *v.* Williams, 8 Scott, N. S. (C.P.) 713,” add “and 7 Mann. and Grang. (C.P.) 1017.”

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- 166 Before the words “ promissory note,” in the last line, strike out the word “ and,” and insert the word “ but.”
- 166 note (2). “ A note made payable to the maker’s order, is not a promissory note within the Statute 3rd and 4th Anne, c. 9, which requires that a promissory note to be assignable, shall be made payable by the party making it to some *other* person, or his order, or unto bearer.”—Per Alderson, Baron, in *Flight v. Maclean*, 16 Mee. and Wels. Ex. Rep. 53.
- 201 In the margin, after the words “ Stamp duty,” add “ 5s.”
- 244 In the margin, after the words “ Stamp duty,” add “ £1 10s.”
- 248 note (2). After the word “ France,” insert the words, “ and of one part of the United States of America.”
- 283 After the words “ apprentice ought to do,” introduce as follows ; “ and that the said *C. B.* his executors or administrators shall and will during the said term provide the said *A. B.* with sufficient diet, washing, lodging, clothes, and all other necessaries suitable to him.”
- 284 In a note at the foot of this page insert as follows : “ The above proviso for the dismissal of the clerk, may be either introduced or not, as the parties may arrange.”
- 368 After the words “ and of and from,” strike out the word “ any,” and insert the words “ all and every.”

GENERAL INDEX.

ABSCONDING.—(See *Presentment for Acceptance. Protest for better Security. Presentment for Payment.*)

of the drawee or acceptor, or if there be no such person, course to be pursued by the holder...69 to 71, 94, 95, 140.

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ABSENCE.—(See *Presentment for Acceptance. Presentment for Payment.*)

course to be pursued by the holder in case of the absence of the drawee or acceptor...69 to 71, 140, 155.

ACCEPTANCE,

not necessary, to present for acceptance bills payable on a certain future day, or at a certain period after date...61.

but if presented and refused, notice must be given to the other parties, or they will be discharged from liability...61.

except to a subsequent indorsee for value, not acquainted with the circumstance...61.

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ADDITIONAL PRECEDENTS.

No. 13A.

PROTEST OF A BILL ON NON-PAYMENT, MADE
BY A RESIDENT PERSON IN A PLACE WHERE
THERE IS NO NOTARY.⁽¹⁾

Protest of a
Bill on non-
payment, made
by a resident
person in a
place where
there is no
Notary.

ON the day of , one thousand
eight hundred and , I, *Alexander B*———,
a substantial person, residing at N———, in the
county of , and the United Kingdom of
Great Britain and Ireland, at the request of the
holder of a certain bill of exchange, whereof a true
copy is on the other side written, did exhibit the
said original bill of exchange unto Mr. ,
of N——— aforesaid, the person upon whom the
same is drawn, and demanded payment thereof,
who answered that [*here state his answer and
refusal*]; and I, the said *Alexander B*———,
do hereby certify that there is not any public
notary practising in or near N——— aforesaid.
Wherefore I, the said *Alexander B*———, at
the request aforesaid, and in the absence of,
and in default of, a public notary at this place,
have protested, and by these presents do protest,
against the drawer of the said bill, and all other

(1) The above ought to have been introduced on page 296, after No. 13 of the Precedents. The above Form, as well as the two following Forms, No. 35A and No. 52A, were omitted by inadvertence, in the places where they ought to have appeared.

parties thereto, and all others concerned, for all exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of payment thereof, *in the presence of C. D. and E. F. both credible persons, residing at N* aforesaid.⁽¹⁾

No. 13A.
Protest of a
Bill on non-
payment, made
by a resident
person in a
place where
there is no
Notary.

Which I attest,

Alexander B—,

A Housekeeper and a *Merchant*, [or *Manufacturer*, or *Attorney-at-law*, or *Banker*, or *Hotel-keeper*, &c. &c.] residing at N— aforesaid.

PROTEST AND DECLARATION, MADE BEFORE A NOTARY, BY THE SHIPPER OF GOODS, AGAINST A FOREIGN CONSUL RESIDING AT THE PORT OF SHIPMENT, IN ENGLAND, IN CONSEQUENCE OF HIS ABSENCE AND NON-ATTENDANCE AT THE CONSULAR OFFICE.

No. 35A.
Protest.

By the public instrument of protest hereinafter contained⁽²⁾;

BE it known and made manifest unto all people, that on the day of ,
in the year of our Lord one thousand eight

(1) The concluding words in *Italics* may be added if wished; but they are not considered necessary in such protests of foreign bills.

(2) Or, BY THIS PUBLIC INSTRUMENT OF PROTEST.

The above Form ought to have been introduced on page 339, after No. 35 of the Precedents.

No. 35A. hundred and , personally came and
—
Protest. appeared before me, *R. B.* Notary Public, duly
authorized, admitted, and sworn, residing and
practising in L———, in the county of L———,
in the United Kingdom of Great Britain and
Ireland, and also a Master Extraordinary of the
High Court of Chancery in England, *H. G.* of
L——— aforesaid, merchant, who did duly and
solemnly declare and state as follows, that is to
say : That he, this appearer, *H. G.* is the attorney
duly authorized of Messieurs *G. W.* and *Company*,
who are the L——— agents of Messieurs *V. W. S.*
and *Company*, of in the county of ,
in England, merchants ; and that the goods and
merchandize mentioned in the paper writing,
or invoice hereunto annexed, have been shipped
at the port of L——— aforesaid, by the said firm
of *G. W.* and *Company*, as the agents of the
said Messieurs *V. W. S.* and *Company*, on board
the vessel called the *Annie Duncan*, Captain *W.*
for V———, in the Republic of Mexico, and that
the said goods and merchandize are now on board
of her, and are intended to be consigned from
L——— to V———, and that he, *H. G.* has
repeatedly been at the office of the L——— Con-
sul for the Republic of Mexico, in order to obtain
from him a certificate, in his capacity as Mexican
Consul, in the usual form, to accompany the said
goods and merchandize so shipped as aforesaid,
and that, after making many ineffectual attempts,
he, the said *H. G.* has not been able to meet with

him ; and that he, the said *H. G.* has always on those occasions found the door of the office of the said Consul locked, and that his name has been removed from the door ; and also, that he, the said *H. G.* has been informed by a merchant of L—— aforesaid, who is engaged in the Mexican trade, that the said Mexican Consul has refused, on similar occasions, to give his consular certificate for goods shipped under similar circumstances to those before mentioned, and has assigned as a reason, that the Mexican States were at war with the United States of America, and that the ports to which the goods were consigned, were not in the possession of the Mexican Government.

No. 35A.

Protest.

I, the said *H. G.* do solemnly and sincerely declare that the foregoing statement is correct, and contains a true account of the facts and circumstances ; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of, &c. &c. [*add here the declaration, under the Act 5th and 6th William 4th, c. 62, as in Form No. 25, page 318, or in Form No. 61, page 393.*]

Wherefore the said appearer, *H. G.* on behalf of the said Messieurs *V. W. S. and Company*, and on behalf of all and every persons or person who are, or may be, interested in the said goods and merchandize, doth protest, and I, the said notary, at his request, do protest, against the said L—— Consul of or for the Republic of

No. 35A. Mexico, and against the Consulate Office at
 ——— of or for the said Republic, and against
 Protest. all and every person or persons responsible, or
 whom these presents do or may concern, for all
 absence, neglect of duty, inattention, and delay
 before mentioned, and all fall of market, loss,
 damage, inconvenience, and expenses which have
 been or may be sustained in consequence of
 the absence, neglect of duty, matters and circum-
 stances aforesaid.

H. G.

Thus declared and protested in due form
 of law, at L—— aforesaid, the day
 and year first before written; before
 me,

(Seal.)

R. B.

Notary Public, L——.

POWER OF ATTORNEY, TO SELL AND TRANSFER
 SHIPS AND SHARES OF SHIPS⁽¹⁾.

No. 52A. To all to whom these presents shall come, I,
 ———
 ver of *A. B.* of L——, in the county of L——,
 orney, to in England, merchant, send greeting; Whereas,
 landTrans- I, the said *A. B.* am the sole owner of the British
 Ships and I, the said *A. B.* am the sole owner of the British
 ures of brig or vessel the Handford, of Liverpool, which
 ps. is now about to proceed to in

(1) The above ought to have appeared after No. 52, on page 382.
 It was inadvertently omitted.

and I am desirous of appointing *S. D.* of merchant, my attorney and agent in aforesaid, to sell and transfer the said brig or vessel, and other ships or vessels, and shares thereof. Now, know ye that I, the said *A. B.* do hereby make, constitute, and appoint, and in my place depute the said *S. D.* my true and lawful attorney and agent, for me and in my name, when and at such time or times as he may judge expedient, absolutely to sell and dispose of the said brig or vessel the Handford, and any other ships or vessels, and parts or shares of ships or vessels which I now hold or have, or may hereafter hold or have, and all my right, title, shares, and interest therein respectively, either together or in separate parts or shares, and either by public auction or private contract, for such price or prices as he, my said attorney, may think reasonable; and also to make, sign, seal, or execute good and valid bills of sale, transfers, or assurances thereof, and of any share or shares, part or parts thereof, with the usual and proper covenants; and to allow (if he shall think it expedient) credit or time for payment, either with security or without; and to do and perform all usual and legal acts, matters, and things necessary to make and perfect a good title or titles to the purchaser or purchasers thereof respectively; and to sign or execute good and valid receipts, releases, and discharges for the purchase money for the same respectively.

No. 52A.

Power of
Attorney, to
Sell and Tran-
fer Ships and
Shares of
Ships.

No. 52A. Hereby confirming whatsoever shall be lawfully
 done in the premises by virtue hereof.—In Wit-
 ness whereof, I have hereunto set and affixed my
 hand and seal, at aforesaid, this
 day of in the year of our Lord one
 thousand eight hundred and

Signed, sealed, and delivered }
 (being first duly stamped) } *A. B.* (Seal.)
 in the presence of }

ATTESTATION OR CERTIFICATE SUBJOINED TO
 A SHIP PROTEST, WHEN THE APPEARER IS A
 FOREIGNER NOT CONVERSANT WITH THE
 ENGLISH LANGUAGE, AND THE CONTENTS
 OF THE INSTRUMENT ARE EXPLAINED BY AN
 INTERPRETER⁽¹⁾.

No. 26A.
 —
 Ship Protest. THUS declared and protested in due form of law
 at L—— aforesaid, the day and year first
 before written, (and I certify that the said *G. H.*
 being a foreigner not conversant with the English
 language, this protest was interpreted and ex-
 plained to him by *J. K.* a person competent
 thereto, who was first duly sworn by and before
 me well and faithfully to interpret and explain
 the contents thereof) ; before me,

(1) The above Form was inadvertently omitted ; it ought to have
 been introduced as a note on page 319, after the form No. 26 of the
 Precedents.

ADDENDA.

PAGE.

-
- 7 Add after the 2nd line: "Previously to the 25th year of the reign of King Henry the 8th, (1533-4), Notaries in England were appointed by the Pope, but by the Statute concerning Peter Pence and Dispensations⁽¹⁾, of the 25th of Henry 8th, c. 21, the Papal authority in respect of Faculties of various kinds, and in respect of various other matters of importance, was abolished; and the Archbishop of Canterbury, and his successors, were authorized, under certain regulations, by themselves or by their commissary or deputy, by an instrument in the name and under the seal of the Archbishop, to grant and dispose of Licences, Dispensations, Faculties, and other Instruments.
-

(1) In the Statute Book, the Act of 25th Henry VIII, c. 21, is entitled "An Act concerning the exoneration of the King's subjects from Exactions and Impositions heretofore paid to the See of Rome, and for having Licenses and Dispensations within this Realm without suing further for the same;" but in the copy printed in Gibson's Codex, it is entitled "An Act concerning Peter Pence and Dispensations;" and it is also so entitled in the Act 6th and 7th Victoria, c. 90, sec. 5.—Vide Supra, p. 32 and 480.

In Gibson's Codex, vol. 1, p. 91, note h h, to the 11th sec. *Notaries* are mentioned amongst the cases which are still dispensable; and the matters to be observed respecting them, are stated to be contained in the book, under their respective heads. In the 2nd vol. p. 1563, of the same work, there is given the ancient Latin Form of a Notarial Faculty and the Notary's Oath of Office, as customary in 1691.

The Court of Faculties was established in pursuance of that Act; and the most ancient Muniment Book in the Office of Faculties, contains many entries of the appointment of Notaries in the reigns of King Henry the 8th and King Edward the 6th⁽¹⁾. There are not any entries during the reign of Queen Mary⁽¹⁾, a circumstance which arose from the temporary re-introduction of the papal power into England, the before-mentioned Act having been repealed by the Act of the 1st and 2nd of Philip and Mary, c. 8, and revived by that of the 1st of Elizabeth, c. 1.

In Queen Elizabeth's reign there are about 250 entries in the Muniment Book, of the creation of Notaries⁽¹⁾.

(1) From a communication received by the Author from PHILIP CHAS. MOORE, Esq. Deputy Registrar of the Court of Faculties, who also very kindly sent to him the following copies of Entries of the Reigns of Henry the 8th and Elizabeth :—

Gregory. “Creatus fuit Johes Gregory Cant Dioc Iratus ut possit exercere officium Notariatus sive Tabellionatus (p̄st̄ito jura^o consueto) in forma cor sub dat tertio die mensis Octobris An^o Dni 1544^{to}”

Fryar. “Quinto die Februarii Anno Dni 1582 dispensat fuit cum Thoma Fryar Diocess Lincoln Irato ut ipse possit exercere officium Notarii publici & Tabellionat”

THE END.

BINDING SECT. SEP 21 1964

256174

Author	Brooke, Richard	Law Eng B872t
Title	A treatise on the office and practice of a notary of England. Ed.2	
DATE.	NAME OF BORROWER.	

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