A BOOK

OF THE

LAWS OF WASHINGTON

RELATING TO

NOTARIES PUBLIC.

A COLLECTION OF THE STATUTES AND CASES GOVERNING NOTARIES PUBLIC AND COMMISSIONERS OF DEEDS AS PUBLIC OFFICERS, TOGETHER WITH A MANUAL APPLYING WASHINGTON LAWS, WRITTEN AND UNWRITTEN, TO THE EXECUTION OF OATHS, AFFIDAVITS, ACKNOWLEDGMENTS, DEPOSITIONS, PROTESTS, AND INSTRUMENTS IN CONNECTION WITH INSURANCE.

WITH FORMS.

BY

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PREFACE.

This book was written for notaries public. It is an attempt to gather in one book all the law which it is necessary for a notary to apply in order to exercise his powers in a legal manner and in good form. It is a handbook for the notary, not an encyclopedia for the lawyer. It is a book to be read by the notary, to be consulted when he wishes to know whether under certain circumstances he can administer an oath, or take an affidavit or acknowledgment. It is a book to guide him in taking depositions or protesting paper; but it is not a book for a lawyer to consult in preparing a case for trial or in writing a brief. It would be impossible to put on these few pages all the law on the subjects treated herein which an attorney might want on a trial. It is merely an attempt to collect from many books the law which the notary has not access to, but which, sooner or later, he will be obliged to know in exercising his functions as a notary.

Added thereto are two chapters not usually found in works on notaries. The first, "Banks and Notaries," is a chapter on the relations of a bank and its notary to the owners of negotiable paper forwarded for collection. It is an exposition of the law on a subject often passed over with little or no attention by reason of lack of knowledge as to its importance. It should be of special interest to forwarding and collecting banks.

The second, "Notaries and Insurance," is a chapter setting forth the law on the very important role which a notary at times plays in the adjustment of a fire loss. It will be of interest to all insurance agents, and of value to notaries called upon to act for the companies. The law was collected from many books which the insurance agent or notary would be compelled to spend much time in consulting.

As commissioners of deeds are officers of Washington living in other states, and, in almost all cases, without access to books on Washington law, it is hoped this handbook will be of even greater value to them than to notaries here at home.

The section on the steps required for appointment as notary was supervised by the Hon. I. M. Howell, Secretary of State, for which I wish to thank him.

J. O. S.

304 Central Building,
Seattle, Washington.

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LAWS OF WASHINGTON

RELATING TO

NOTARIES PUBLIC.

CHAPTER I.

HISTORY OF THE NOTARY PUBLIC.

§ 1. The Origin of the Notary Public: Tabularius.
§ 2. The Notarius.
§ 3. The Notary in Western Europe.
§ 4. The Notary in England.
§ 5. The Appointment of Notaries.
§ 6. The Notary Public in International Law.
§ 7. Notaries Public in the United States.
§ 8. The Notary Public in the Territory and State of Washington.

§ 1. The Origin of the Notary Public: Tabularius.—In tracing out the beginnings of the notary[1] of to-day one is led back to England, thence to the nations of Western Europe and from there on back to the Romans, from whom we borrowed, or rather inherited, the principles of all our law. We not only find that it was the Romans who originated the idea of appointing persons as officers of the government to draw up legal documents and to certify to them, but also that they coined the original of our word "notary." We learn that the notary public of modern times has about the same powers and duties as the tabularius of old Rome; but that he goes by the name of an altogether different Roman

[1] The plural form of "Notary Public" is properly "Notaries Public"; but the form "Notary Publics" has been often used, and it might be said to be an open question whether its use is not allowable as "Use is the law of language."

The word "Notary" is equivalent to the words "Notary Public": Va. Code (1904), § 5; W. Va. Code (1906), § 293.

officer, the notarius.[2] How old the notary is, it is impossible to determine; but we know that he existed in Rome during the republic,[3] and was then known as tabularius. His employment consisted in the drawing up of legal documents. In that he occupied to some extent the position that an attorney at law now fills.[4] In the canon law the tabularius was a person of great importance; it was a maxim of that law that his evidence was worth that of two unskilled witnesses.[5]

§ 2. The Notarius.—While the modern notary gets his name from the old Roman notarius he is, in fact, of very little relation to him. The notarius was originally a slave or freedman who took notes of judicial proceedings in shorthand or cipher, particularly one who took notes in the Senate. In other words he was a stenographer of modern times. Later on he became the secretary of some public authority and we can imagine it was no great change for him to grow into a public official. The word itself has not changed in appearance, so that it is an easy matter to accept the explanations of the historians. Notarius came from nota, meaning a mark or sign; a notarius was one who made marks or signs.[1]

§ 3. The Notary in Western Europe.—The duties of the tabularius and the name notarius merged at some time in

2 Bouv. Law Dict. (Rawle's Rev.), tit. "Notary Public"; 17 Ency. Britannica, tit. "Notary Public."

3 The republic lasted from 509 B. C. to 31 B. C.

4 "The office of attorney did not come into legal existence until a later date, under the statute of Westminster II (1285)": Mundy v. Strong, 52 N. J. Eq. 833, 31 Atl. 611.

5 See note 2; Hill v. Norris, 2 Ala. 640; Kirksey v. Bates, 7 Port. (Ala.) 529, 31 Am. Dec. 722; Opinion of Justices, 150 Mass. 586, 23 N. E. 850, 6 L. R. A. 842; Brooke's Notary, 6th ed., 1 et seq.; 2 Burn's Ecc. Law, 2; Colquhoun's Rom. Law, § 86; Teutonia Loan etc. Co. v. Turrell, 19 Ind. App. 469, 65 Am. St. Rep. 419, 49 N. E. 852; Carroll v. State, 58 Ala. 396, 400; Ohio Nat. Bank v. Hopkins, 8 App. Cas. (D. C.) 146, 152; Gharst v. St. Louis Transit Co., 115 Mo. App. 403, 408, 91 S. W. 453.

1 5 Century Dict. & Cyc., tit. "Notary"; 17 Ency. Britannica, tit. "Notary."

the history of the nations of Western Europe long before the modern notary was introduced into England as an officer with about the same powers and duties he now has. In the transformation the European countries left the notary with more power than he now has in England. And this is still true in France where the importance of the notary was and still is greater than anywhere else. He is not only a public witness for everyone who wishes his testimony, but he is also the great witness of government. He makes all contracts, mortgages, and other deeds and conveyances where the property in question amounts to more than one hundred and fifty francs.[1] In France a document attested by a notary is said to be "legalized," a term much too strong to express the effect of such attestation in England, where the notary public, in spite of his name, is not recognized as a public officer to such a degree as the notary in other countries.[2]

The following is an excerpt from an article on the "French Lawyer," written for "Law Notes," November, 1910, by Mr. Charles F. Beach, the well-known legal author, who is now in the practice of law in Paris:

"The notary is a functionary of far greater importance than with us, and, especially in Paris and the other great cities of the country, is in a way the élite of the profession. He also usually takes the degree of Licencié en droit as part of his qualification, but no diploma is demanded from him. He is merely required to have preliminary experience in the étude of a notary, and to pass a formal examination prescribed by the Chambre des Notaires. He may then acquire an étude in succession to a deceased or retiring notary. The notaries succeed one another and take over the records of the office they acquire, and their number is also limited by law. It is necessary, therefore, in order to become a notary, to buy the business of a retiring member of that branch of the profession, and to be accepted by the Minister of Justice. Deeds and mortgages of real estate, marriage contracts and settlements, wills, articles of incorporation,

[1] One hundred and fifty francs equals about twenty-nine dollars.

[2] 17 Ency. Britannica, tit. "Notary Public."

and many sorts of the more formal and important contracts must be drawn and attested by him. In these and certain other respects he has a monopoly. There are but one hundred and twenty-two notaries in Paris."

§ 4. The Notary in England.—The office of notary in England is a very ancient one; it was known before the Conquest (1066 A. D.), and is mentioned in statute law as early as the Statute of Provisors, which was passed in 1352 A. D., in the twenty-fifth year of the reign of Edward III.[1] But we know that even before we find a notary mentioned by statute law, as early as 1300 A. D., during the reign of Edward I, notaries were clerks for the chancellor. The chancellor was then the head of what has since developed into our court of chancery, but which was then "a great secretarial bureau, a home office, a foreign office and a ministry of justice."[2] We also know that as early as the thirteenth century two witnesses with the tabularius or notary were enough for a bond.[3] While it is true that the office of notary is a very ancient one in England, we must also remember that in the early days that Roman institution, the

1 Teutonia Loan etc. Co. v. Turrell, 19 Ind. App. 469, 65 Am. St. Rep. 419, 49 N. E. 852; Brooke's Notary, 6th ed., 10; Statute of Provisors, 25 Edward III, Stat. 4.

2 "In the reign of Edward I (1272–1307) in England our present court of chancery was not in our view a court of justice; it did not hear and determine causes. It was a great secretarial bureau, a home office, a foreign office and a ministry of justice. At its head was the chancellor, who, when there was no longer a chief justiciar of the realm, became the highest in rank of the king's servants. He was the king's secretary of state for all departments. Under him there were numerous clerks. The highest in rank among them we might fairly call under secretaries of state; they were ecclesiastics holding deaneries or canonries; they were sworn of the king's council; some of them were doctores utriusque iuris; they were graduates, they were masters; some of them, as notaries of the apostolic See, were men whose authenticity would be admitted all the world over. Edward I had two apostolic notaries in his chancery, John Arthur of Caen and John Busshe: 1 Stubb's Const. Hist., p. 381"; 1 Poll. and Mait. Hist. of Eng. Law, 2d ed., p. 193.

3 1 Poll. and Mait. Hist. of Eng. Law, 2d ed., p. 218.

notarial system, never took deep root. The English kings did not assume the imperial privilege of appointing notaries; for one reason, because the laws did not require that deeds or wills or other instruments in common use should be prepared or attested by professional experts. Now and again when some document was to be drawn up which would demand the credence of foreigners, a papal notary would be employed.[4] With the development of the commerce of England and the "law-merchant," however, the office of notary public increased in importance very rapidly. Notaries were employed to protest commercial paper, to witness certain papers under the maritime law, and were gradually vested with the powers which they exercise generally to-day.[5] The English notary is a skilled person appointed to secure evidence as to the attestation of important documents. The general functions of a notary consist in receiving all acts and contracts which must or are wished to be clothed with an authentic form; in conferring on such documents the required authenticity; in establishing their date; in preserving originals or minutes of them which, when prepared in the style and with the seal of the notary, obtain the name of "original acts"; and in giving authentic copies of such acts.[6] The most important part of an English notary's duty at the present day is the noting and protesting of foreign bills of exchange in case of nonacceptance or nonpayment.[7]

§ 5. The Appointment of Notaries.—In tracing back the different ways in which notaries of all times have been appointed we arrive at last in Rome within the church walls. The first notaries were appointed by the popes of Rome and acted as officials in ecclesiastical courts, in addition to exer-

[4] See note 3. It was a papal notary who framed a most magnificent record of the suit in which the crown of Scotland was at stake.

[5] 14 New International Ency., tit. "Notary Public"; Kirksey v. Bates, 7 Port. (Ala.) 529, 31 Am. Dec. 722; Ohio Nat. Bank v. Hopkins, 8 App. Cas. (D. C.) 146; Pierce v. Indseth, 106 U. S. 546, 1 Sup. Ct. Rep. 418, 27 L. ed. 254.

[6] Brooke "On the Office of a Notary," c. 3.

[7] 17 Ency. Britannica, tit. "Notary Public."

cising certain secular powers.[1] The popes held that power of appointment for centuries, although they would also, during the latter part of the period, delegate the power to certain rulers under certain conditions. We know that as early as 803 A. D. notaries were appointed by the Frankish kings, and also that up to the fifteenth century the Roman See appointed all the notaries for England.[2]

Some time before 1500 the Roman See delegated that power to the Archbishop of Canterbury and after the Reformation (1534 A. D.), a statute was enacted confirming the right in the archbishop as a high prelate in the English church.[3] Later on these appointments were considered as being made by the Archbishop of Canterbury, though through the master of the faculties, who at the present time is the judge of the provincial courts of Canterbury and York. The office is nominally an ecclesiastical one, though its duties are mainly of a secular character.[4]

In Scotland before the reign of James III (1460–1488) the notaries were appointed by the pope and also by the king through one of his church officials. In the year 1469 an act was passed declaring that notaries should be made by the king. But for some time afterward there were in Scotland two kinds of notaries, clerical and legal. In the year 1555, however, an act was passed which took the power away from every notary, "by whatsoever power he be created," except he present himself before the lords and be admitted by them; and in 1563 the power of appointment was placed with the lords of session. Since then the court of session in Scotland has exercised full and exclusive authority on the admission of notaries in all legal matters, spiritual and temporal. In Scotland the parish clergyman still has notarial powers to the extent of executing a will—a relic of the old ecclesiastical position of notaries.[5]

1 14 New International Ency., tit. "Notary Public"; Kirksey v. Bates, 7 Port. (Ala.) 529, 31 Am. Dec. 722; Ohio Nat. Bank v. Hopkins, 8 App. Cas. (D. C.) 146; Vandewater v. Williamson, 13 Phila. (Pa.) 140.

2 Bouv. Law Dict. (Rawle's Rev.), tit. "Notary Public."

3 25 Henry VIII, c. 21, § 4.

4 17 Ency. Britannica, tit. "Notary Public."

5 See note 4. Apostolical notary: An official charged with

§ 6. **The Notary Public in International Law.**—As was said before, the office of notary public is of ancient origin,[1] and has long been known both to the civil and common law.[2] It exists and is recognized throughout the commercial world and has been said to be "known to the law of nations."[3] The court in an Indiana case, Teutonia Loan etc. Co. v. Turrell, said: "All acts done by a notary public, which fall within the rules of the law-merchant, have always been respected under the law of nations";[4] and in Sonfield v. Thompson, an Arkansas case, the court said that "notaries' acts duly authenticated are valid everywhere, and prove themselves by comity of nations."[5] In an English case, Hutcheon v. Mannington, the court said: "A notary public by the law of nations has credit everywhere."[6] In Wood v. St. Paul City Ry. Co., a Minnesota judge said: "A public notary is considered, not merely an officer of the country where he is admitted or appointed, but as a kind of international officer, whose official acts, performed in the state for which he is appointed, are recognized as authoritative

despatching the orders of the papal See; ecclesiastical notary: in the early church, a clerk or secretary, especially a shorthand writer, employed to record the proceedings of councils and tribunals, report sermons, take notes, and prepare papers for bishops and abbots: 5 Century Dict. and Cyc., tit. "Notary."

1 See § 1.

2 29 Cyc. Law & Proc., p. 1069; 21 Am. & Eng. Cyc. of Law, 2d ed., p. 555; Kirksey v. Bates, 7 Port. (Ala.) 529, 31 Am. Dec. 722; Ohio Nat. Bank v. Hopkins, 8 App. Cas. (D. C.) 146; Vandewater v. Williamson, 13 Phila. (Pa.) 140; Stokes v. Acklen (Tenn. Ch. 1898), 46 S. W. 316.

3 29 Cyc. Law & Proc., p. 1069; 21 Am. & Eng. Ency. of Law, 2d ed., p. 555; Bouv. Law Dict. (Rawle's Rev.), tit. "Notary Public."

4 Teutonia Loan etc. Co. v. Turrell, 19 Ind. App. 469, 65 Am. St. Rep. 419, 49 N. E. 852, 853; 21 Am. & Eng. Ency. of Law, 2d ed., p. 555; Kirksey v. Bates, 7 Port. (Ala.) 529, 31 Am. Dec. 722; Ohio Nat. Bank v. Hopkins, 8 App. Cas. (D. C.) 146; People v. Rathbone (Sup. Ct. Spec. T.), 11 Misc. Rep. 98, 32 N. Y. Supp. 108. See, also, Pierce v. Indseth, 106 U. S. 546, 1 Sup. Ct. Rep. 418, 27 L. ed. 254; Carroll v. State, 58 Ala. 396; 29 Cyc. Law & Proc., p. 1069; The Gallego, 30 Fed. 271.

5 Sonfield v. Thompson, 42 Ark. 46, 50, 48 Am. Rep. 49.

6 Hutcheon v. Mannington, 6 Ves. Jr. 823, 824, 2 Rev. Rep. 115, 31 Eng. Reprint, 1327.

the world over."[7] Some of the states in their statutes on notaries recognize this phase of a notary's powers. The New York statute which defines their powers in respect to foreign and inland bills, drafts and notes confers upon them the further authority "to exercise such other powers and duties as by the law of nations and according to commercial usage, or by the laws of any other state, government or country, may be performed by notaries public."

§ 7. Notaries Public in the United States.—When the Union of the thirteen colonies was formed, nothing was said in the constitution concerning notaries public so that full power over such officers was left with the individual states. [a] It is to the states, then, that we must look for the laws affecting the notary public. We find in most of the states that notaries are appointed by the governor,[1] with or without the consent of the senate or some advisory council; though in Rhode Island they are elected annually by the general assembly. In the District of Columbia they are appointed by the President of the United States.[2] By statute certain other public offices frequently include that of notary, so that one holding the same is ex officio a notary. As a general rule, they are appointed for certain counties, though in a few states, as in Washington, they may exercise their privileges anywhere in the state. In most states the appointment is for a period of four or five years, but in a few the appointment holds good for one year only.[3] It is gen-

[a] "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people": Constitution of the United States, art. 10.

[7] Wood v. St. Paul City Ry. Co., 42 Minn. 411, 44 N. W. 308, 7 L. R. A. 149.

[1] 29 Cyc. Law & Proc., p. 1072; 21 Am. & Eng. Ency. of Law, 2d ed., p. 556; Carroll v. State, 58 Ala. 396; Brown v. State, 43 Tex. 478; New Orleans v. Bienvenu, 23 La. Ann. 710; Opinion of Justices, 73 N. H. 621, 62 Atl. 969, 5 L. R. A., N. S., 415.

[2] Bouv. Law Dict., tit. "Notary Public"; U. S. Stat. approved June 7, 1878, 20 Stat. L. 100, 2 F. S. A. 205, 5 F. S. A. 379.

[3] 29 Cyc. Law & Proc., p. 1073; 21 Am. & Eng. Cyc. of Law, 2d ed., p. 557.

erally held, though the legislation varies in different states, that a notary must be a citizen and a male;[4] in some few states, however, of which Washington is one, women may be appointed to the office.[5] At common law a minor has been held eligible to the office.[6] It is also provided in some states that persons who hold certain positions cannot be appointed; for example, a stockholder, director, cashier, teller, clerk or other officer in any bank or banking institution, or in the employment thereof.[7] By statute in most of the states a notary is required, before assuming the duties of the office, to give a bond, varying in amount in different states, with good and sufficient sureties, conditioned for the faithful performance of his duties. Usually this bond must be approved by some designated officer and filed of record.[8] Nearly all the states demand that the notary provide himself with a seal, although in many states it is not necessary in

[4] 29 Cyc. Law & Proc., p. 1071; 21 Am. & Eng. Cyc. of Law, 2d ed., p. 556; Wilson v. Kimmel, 109 Mo. 260, 19 S. W. 24; Opinion of Justices, 150 Mass. 586, 23 N. E. 850, 6 L. R. A. 842; Opinion of Justices, 165 Mass. 599, 43 N. E. 927, 32 L. R. A. 350; Stokes v. Acklen (Tenn. Ch. 1898), 46 S. W. 316; Chattanooga Third Nat. Bank v. Smith (Tenn. Ch. 1898), 47 S. W. 1102; State v. Davidson, 92 Tenn. 531, 22 S. W. 203, 20 L. R. A. 311; State v. McKinley, 57 Ohio St. 627, 50 N. E. 1134.

[5] Harbour-Pitt Shoe Co. v. Dixon (Ky. 1901), 60 S. W. 186; State v. Hostetter, 137 Mo. 636, 59 Am. St. Rep. 515, 39 S. W. 270, 38 L. R. A. 208; Van Dorn v. Mengedoht, 41 Neb. 525, 59 N. W. 800; Wash. Laws 1907, p. 264, § 1; Rem. & Bal. Code, § 8295.

[6] United States v. Bixby, 9 Fed. 78, 10 Biss. 520. In that case it was held that an infant may be a notary at common law, since the office is ministerial; that therefore an infant might be a notary in Indiana in the absence of any statutory prohibition; also, that a notary was not a county officer within the meaning of the constitution of Indiana requiring such officers to be of age.

[7] Pa. Act, April 14, 1840; 3 Purdon Dig., 13th ed., p. 3323; Commonwealth v. Pyle, 18 Pa. 519; Rupert's Case, 16 Pa. Co. Ct. 333; Dunlap's Case, 16 Pa. Co. Ct. 588; Fisher v. Kutztown Sav. Bank, 3 Walk. (Pa.) 477; compare Horner's Ann. Stats. Ind. (1896), §§ 2021, 5966.

[8] 21 Am. & Eng. Ency. of Law, 2d ed., p. 558; 29 Cyc. Law & Proc., p. 1103; Tevis v. Randall, 6 Cal. 632, 65 Am. Dec. 547; Van de Casteele v. Cornwall, 5 Cal. 419; People v. Butler, 74 Mich. 643, 42 N. W. 273; Heidt v. Minor, 113 Cal. 385, 45 Pac. 700.

all cases that his seal be attached for a valid authentication.[9] Generally, however, the acts of a foreign notary must be authenticated by his seal.[10]

The powers of a notary may be generalized as follows: He may administer oaths and take affidavits; he may take depositions; he may take acknowledgments of creditors to powers of attorney and proofs of debt against the estate, in bankruptcy proceedings; he may take acknowledgments; he may note and extend marine protests; he may present foreign bills of exchange and protest them.[11] In some jurisdictions the notarial function is very much more extensive. Thus in Alabama the governor has been authorized by statute to appoint a limited number of notaries who are ex-officio justices of the peace in the wards for which they are appointed.[12] And in states or countries the foundation of whose jurisprudence is the Roman law, the duties of a notary public are often of great variety and importance, as in Louisiana and in Lower Canada.[13] In conclusion, we may say that a notary owes his client the general duty of integrity, diligence and skill, payment for the exercise of which is fixed by statutes in the different states.[14]

9 29 Cyc. Law & Proc., p. 1096; 21 Am. & Eng. Ency. of Law, 2d ed., p. 559; Miller v. State, 122 Ind. 355, 24 N. E. 156; Neese v. Farmers' Ins. Co., 55 Iowa, 604, 8 N. W. 450; Gates v. Brown, 1 Wash. 470, 25 Pac. 470; Stetson etc. Mill Co. v. McDonald, 5 Wash. 496, 32 Pac. 108.

10 Alabama Nat. Bank v. Chattanooga Door etc. Co., 106 Ala. 663, 18 South. 74; Bayonne Knife Co. v. Umbenhauer, 107 Ala. 496, 54 Am. St. Rep. 114, 18 South. 175; Booth v. Cook, 20 Ill. 129.

11 29 Cyc. Law & Proc., pp. 1076–1089; 21 Am. & Eng. Ency. of Law, 2d ed., pp. 562–567; Bouv. Law Dict. (Rawle's Rev.), tit. "Notary Public."

12 Douglass v. State, 117 Ala. 185, 23 South. 142; Harper v. State, 109 Ala. 66, 19 South. 901; Carroll v. State, 58 Ala. 396; Russell v. Huntsville R. etc. Co., 137 Ala. 627, 34 South. 855; Bell v. State, 124 Ala. 94, 27 South. 414.

13 Stork v. American Surety Co., 109 La. 713, 33 South. 742; Schmitt v. Drouet, 42 La. Ann. 1064, 21 Am. St. Rep. 408, 8 South. 396; Tete's Succession, 7 La. Ann. 95, 96; Leveille v. Kauntz, 4 Quebec Pr. 358; Taillifer v. Taillifer, 21 Ont. 337.

14 29 Cyc. Law & Proc., p. 1101; Fogarty v. Finlay, 10 Cal. 239, 70 Am. Dec. 714; Stork v. American Surety Co., 109 La. 713, 716, 33 South. 742.

§ 8. The Notary Public in the Territory and State of Washington.—We now come to the notary public in the territory and state of Washington. We find the territorial fathers passed the first law in 1854, [a] when notaries were to be "biennially appointed by the governor for the several counties as he shall deem expedient." The said notaries were authorized "to act, transact, do and finish all matters and things relating to protests, and protesting bills of exchange and promissory notes, and all matters within their office required by law." They could take depositions as prescribed by law and acknowledgments of deeds and other instruments and administer oaths. On the death or removal of the notary his records and official papers were to be deposited in the office of the clerk of the district court for the county in which the notary resided. If that direction were not followed within three months he or his executors or administrators would be liable to a fine of five hundred dollars. Before performing any duties as notary he was obliged to provide himself with an official seal and deposit an

[a] When the territory of Washington was created it thereupon fell heir to the common law as it then stood modified by the laws of the United States as they applied to the territory of Oregon, together with all Oregon territorial statutes passed subsequent to the first day of September, 1848. The organic act is as follows:

"Art. 2. Legislative Power.—Sec. 6. *And be it further enacted,* That the legislative power of the territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States." [Organic act establishing the territorial government of Washington approved March 2, 1853 (10 U. S. Stats. at Large, p. 172).]

As the constitution of the United States contains no provisions governing notaries the power of appointment remained in the states and Congress could grant any legislative powers to the territories it saw fit. By virtue of this fact and the said organic act the legislature of the territory passed a law in 1854 establishing the office of "Notary Public."

In 1889 Washington was admitted as a state. In the state constitution is the following:

"§ 1. Legislative Powers Where Vested.—The legislative powers shall be vested in a senate and house of representatives, which shall be called the legislature of the state of Washington." (Art. 2, § 1.)

By virtue of these powers all laws governing notaries passed since November 11, 1889, are valid.

See chapter II for the various laws.

impression of the same, together with his oath and his bond in the office of the secretary of the territory. In 1857 an act was passed extending the jurisdiction of a notary to any county of the judicial district to which he belonged. In 1860 a very interesting act was passed, for it is the only one of its kind in reference to notaries to be found in the laws; it is an act to legalize the acts of J. J. H. Van Bokkelen as notary between May 14, 1859, and April 30, 1860.

In 1861 an act was passed regulating the fees and costs of a notary. He was allowed a dollar for a protest; fifty cents for an attestation, noting a bill, an acknowledgment, certifying an affidavit, or being present at a tender; seventy-five cents for registering a protest; and twenty-five cents for an oath. In 1862 an amendment was passed to that law in so far as it affected the counties of Spokane, Shoshone, Nez Perce and Idaho. In those counties a notary was allowed two dollars for a protest; one dollar for an attestation, noting a bill, taking an acknowledgment, certifying an affidavit or being present at a demand, tender or deposit; one dollar and a half for registering a protest and for each oath or affirmation. In 1862 a new act was passed, "In relation to notaries public." It set forth that the governor should appoint as many notaries public for the territory of Washington "as he shall deem expedient," who should hold their offices for a period of three years. Said notaries were authorized "to act, transact, do and finish all matters and things relating to protests," and all "other matters within their office required by law"; to take depositions and acknowledgments and to administer oaths. Each notary, before he entered upon the duties of his office, was to provide a seal, and if he did not the governor might remove him for the neglect. The power was also given to the governor to remove any notary for incompetency. Although the law was so explicit as to the necessity of a seal, yet it went on to say that it was not necessary for the notary to attach his seal if the document in question was to be used in the territory of Washington. Then all that was necessary was for the official to add the words "Notary Public," to his signature. On the 19th of January, 1863, a new law was

passed practically to the same effect as the former law, but including the bill of fees and adding a section that on the death, resignation or removal of a notary his records were to be sent to the office of the auditor of the county in which the notary resided, and fixing a penalty of five hundred dollars if the same were not done within three months. It was not until 1869 that another act in relation to notaries was passed, and that was the same as the act of 1863 in which the favorite words "to act, transact, do and finish all matters and things" were found, but there was added an enabling clause to the following effect: "And all official acts heretofore performed in this territory by notaries public, duly commissioned and qualified under color of their office, are hereby declared authentic and valid, though such acts may have been performed subsequently to the time or term named in the commission appointing said notaries." In the session of 1873 they combined the previous laws in a new act and made a few changes. In this act, approved November 14, 1873, the period was left at three years, the notary was required to have a seal containing the words "Notary Public" and "Washington Territory," together with his surname at length and at least the initials of his Christian name, and he was required to take the oath of office, subscribe the same and to file it in the office of the secretary of the territory. He was then allowed, after paying five dollars, "to transact and perform all matters and things relating to protests, and such other duties as pertain to that office by the custom and law of merchants." He could take acknowledgments, depositions and affidavits, administer oaths and "exercise all other powers and perform all other duties, heretofore conferred upon him by law." In this act it was set forth that every "attorney at law who is a notary public may administer any oath to his client, and no pleading or affidavit shall on that account be held by any court to be improperly verified." The use of the seal was not changed, but it was provided that each notary should keep "a true record of all notices of protest given or sent by him, with the time or manner in which the same were given or sent, and the name of all the parties to whom

the same were given or sent, with a copy of the instrument in relation to which the notice is served and of the notice itself." The forfeit for not depositing the records within three months was raised to one thousand dollars, "to be recovered in a civil action by any person injured by such neglect." And also the fees for noting a bill, taking an acknowledgment and certifying an affidavit with the seal were raised to one dollar. On the 11th of November, 1875, was approved "An act prescribing the qualifications of notaries public," which allowed a notary to use the words "Notarial Seal" or "Notary Public," "Washington Territory," on his seal, together with his name as before. This act was passed in part for the purpose of adding to the law the following section: "Sec. 2. After delivery of a commission to a notary public so appointed and qualified, the secretary shall make a certificate of such appointment, with the date of said commission, and file the same in the office of the clerk of the district court, of the district, where such notary resides, who shall file and preserve the same, and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public, during the time such commission is in force." Then follows an enabling act making valid all official acts performed by notaries whose seals previous to this time had on them the words "Notarial Seal" instead of "Notary Public." At the same session the good legislators decided that the notaries had too much power in being allowed to perform their official acts anywhere in the state, so they passed a law which was approved on the 12th of November, as follows: "Notaries public are hereby declared to be county officers, and they shall be hereafter appointed by the governor of the territory for the several counties in the territory." The next act on notaries was approved on the 31st of October, 1877, when the previous acts were brought together and the time of the running of the commission changed to four years. Otherwise it was the same, with one exception; that was as to how the accounts should be kept at Olympia. On the 13th of November, 1879, an act was passed amending this clause as to the accounts and on the

10th of November, 1881, an act was passed repealing this amendment. In the Code of 1881 the law as to notaries forms chapter 104; it was merely the law of 1877 set out as sections 2614–2625 of the new code. On the 26th of November, 1883, section 2625 on the manner of handling the expenses of the commissions, etc., in the office of the secretary, was amended; and on the 28th of November, 1883, section 2615 was amended making a notary an officer of the territory again. On the 2d of February, 1888, an act was passed validating all acts performed under the 1883 amendment. The Code of 1881 was the law until 1890, when the present law was passed. A number of new ideas were introduced in the new law, among them being the provision that no notary would be appointed except on the petition of at least twenty freeholders of the county in which such person resides, that the state treasurer must be paid ten dollars, and that to the other words required on the seal must be added the date of the expiration of his commission. The scale of fees was changed by the laws of 1890, 1893, 1903 and 1907, so that the dollar fees for noting a bill, taking an acknowledgment and certifying an affidavit with the seal were changed back to fifty cents. Otherwise the law now is practically the same as it was under the Code of 1881, with the one addition that women were allowed to act as notaries under the law of 1907.

CHAPTER II.

NOTARIAL LAWS OF THE TERRITORY AND STATE OF WASHINGTON.

An Act to Provide for the Appointment of Notaries Public.

Section 1. *Be it enacted by the legislative assembly of the territory of Washington,* There shall be as many notaries public biennially appointed by the governor for the several counties as he shall deem expedient; and they shall be severally commissioned and engaged thereon, according to law.

Sec. 2. Notaries public are hereby authorized within their respective counties to act, transact, do and finish all matters and things relating to protests, and protesting bills of exchange and promissory notes, and all matters within their office required by law; to take depositions as prescribed by law, and acknowledgments of deeds and other instruments, and to administer oaths.

Sec. 3. On the death, resignation, or removal from office of any notary public, his records, together with all his official papers, shall be deposited in the office of the clerk of the district court, for the county in which the said notary public resided.

Sec. 4. If any notary public on his resignation or removal from office, shall for the space of three months, neglect to deposit his records and official papers in the clerk's office, he shall forfeit a sum not exceeding five hundred dollars.

Sec. 5. Every notary public, before he enters upon the duties of his office shall provide an official seal, and deposit an impression of the same, together with said oath and bond, in the office of the secretary of the territory.

Passed March 16, 1854.

An Act to Regulate Fees and Costs.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the fees and compensation of the several officers and persons herein named, shall be as follows, to wit:

Notary Public.

6th. For every protest of a bill of exchange or promissory note, one dollar and fifty cents.

Attesting any instrument of writing, and seal, one dollar.

Noting a bill of exchange or promissory note for nonacceptance or nonpayment, one dollar and fifty cents.

Drawing and taking proof of acknowledgment of any legal instrument, each one hundred words, thirty-five cents.

Registering protest of bill of exchange or promissory note, one dollar and twenty-five cents.

Certifying an affidavit, and all other certificates under seal, one dollar.

Each oath or affirmation, fifty cents.

Being present at demand, tender, or deposit, and noting the same, including traveling fees at ten cents per mile, going to and returning from, fifty cents.

Passed April 27, 1854.

An Act Relating to Notaries Public.

"Powers extended to all the counties of judicial district in which they belong."

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That notaries public may exercise all the powers that are conferred upon them by law, or may hereafter be conferred upon them, in any county of the judicial district to which they belong.

Passed January 26, 1857.

An Act to Legalize the Acts of J. J. H. Van Bokkelen as Notary Public, Between May 14, 1859, and April 30, 1860.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the acts of J. J. H. Van Bokkelen as notary public of the third judicial district of this territory, made between May 14, 1859, and April 30, 1860, shall be and remain of the same force and validity as they would have been had he then held a commission as notary public according to law.

Passed December 18, 1860.

An Act to Regulate Fees and Costs.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the fees and compensation of the several officers and persons herein named, shall be as follows, to wit:

Notary Public.

6th. For every protest of a bill of exchange or promissory note, one dollar.

Attesting any instrument of writing and seal, fifty cents.

Noting a bill of exchange or promissory note for nonacceptance or nonpayment, fifty cents.

Taking acknowledgment of any legal instrument, fifty cents.

Registering protest of bill of exchange or promissory note, seventy-five cents.

Certifying an affidavit, and all other certificates under seal, fifty cents.

Each oath or affirmation without seal, twenty-five cents.

Being present at demand, tender, or deposit, and noting the same, besides mileage, fifty cents.

For any instrument of writing drawn by a notary public, for each one hundred words, twenty-five cents.

Passed January 27, 1861.

An Act to Amend an Act Entitled an Act Regulating Fees and Costs in the Counties of Spokane, Shoshone, Nez Perce and Idaho.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the fees and compensation of the several officers and persons herein named, shall be as follows in the counties of Spokane, Shoshone, Nez Perce and Idaho:

Notary Public.

6. For every protest of a bill of exchange or promissory note, two dollars.

Attesting any instrument of writing and seal, one dollar.

Noting a bill of exchange or promissory note for nonacceptance or nonpayment, one dollar.

Taking acknowledgment of any legal instrument, one dollar.

Registering protest of bill of exchange or promissory note, one dollar and fifty cents.

Certifying an affidavit, and all other certificates under seal, one dollar.

Each oath or affirmation without seal, one dollar and fifty cents.

Being present at demand, tender or deposit, and noting the same, besides mileage, one dollar.

For any instrument of writing drawn by a notary public, for each one hundred words, fifty cents.

Passed January 23, 1862.

An Act in Relation to Notaries Public.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the governor shall hereafter appoint as many notaries public for said territory as he shall deem expedient, who shall hold their office for the period of three years, and until their successors shall be duly appointed and qualified, and they shall be severally commissioned and engaged thereon according to law.

Sec. 2. Notaries public are hereby authorized within the territory of Washington to act, transact, do and finish all matters and things relating to protests, and protesting bills of exchange and promissory notes, and all other matters within their office required by law; to take depositions as prescribed by law, and acknowledgments of deeds and other instruments, and to administer oaths.

Sec. 3. Every notary public, before he enters upon the duties of his office, shall provide an official seal, which shall be approved by the governor, and shall deposit an impression of the same, together with his official oath, in the office of the secretary of the territory.

Sec. 4. The governor may remove any person heretofore, or who may hereafter be appointed a notary public, who has or shall neglect to provide himself with a proper official seal, or who, from any cause, may be incompetent.

Sec. 5. It shall be sufficient for any person acting as notary public, to certify an oath to be used in this territory in any of the courts, or in any manner whatever, to say simply in addition to his name "Notary Public," and all the courts of this territory shall consider an oath or affidavit properly certified by an acting notary without the impression of his seal or other or further addition.

Sec. 6. This act to take effect and be in force from and after its passage.

Passed January 27, 1862.

An Act in Relation to Notaries Public.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the governor shall hereafter appoint as many notaries public for said territory as he shall deem expedient, who shall hold their office for the period of three years, and until their successors shall be duly appointed and qualified, and they shall be severally commissioned and engaged thereon according to law.

Sec. 2. Notaries public are hereby authorized within the territory of Washington to act, transact, do and finish all matters and things relating to protests, and protesting bills of exchange and promissory notes, and all other matters within their office required by law; to take depositions as prescribed by law, and acknowledgments of deeds and other instruments, and to administer oaths, for which they may charge and receive the fees herein enumerated:

For every protest of a bill of exchange or promissory note, one dollar.

Attesting any instrument of writing and seal, fifty cents.

Noting a bill of exchange or promissory note for nonacceptance or nonpayment, fifty cents.

Taking acknowledgment of any legal instrument, fifty cents.

Registering protest of bill of exchange or promissory note, seventy-five cents.

Certifying an affidavit, and all other certificates under seal, fifty cents.

Each oath or affirmation without seal, twenty-five cents.

Being present at demand, tender, or deposit, and noting the same, besides mileage, fifty cents.

For any instrument of writing drawn by a notary public, for each one hundred words, twenty-five cents.

Sec. 3. Every notary public, before he enters upon the duties of his office, shall provide an official seal, which shall be approved by the governor, and shall deposit an impression of the same, together with his official oath, in the office of the secretary of the territory.

Sec. 4. The governor may remove any person heretofore, or who may hereafter be appointed a notary public, who has or shall neglect to provide himself with a proper official seal, or who, from any cause, may be incompetent, and on the death, resignation, or removal from office of any notary public, his records, together with all his official papers, shall be deposited in the office of the county auditor for the county in which the said notary public resided. If any notary public on his resignation or removal from office shall for the space of three months neglect to deposit his records and official papers with the auditor, he shall forfeit a sum not exceeding five hundred dollars.

Sec. 5. It shall be sufficient for any person acting as notary public, to certify an oath to be used in this territory in any of the courts, or in any manner whatever, to say simply in addition to his name "Notary Public," and all the courts of this territory shall consider an oath or affidavit properly certified by an acting notary without impression of his seal or other or further addition.

Sec. 6. This act to take effect and be in force from and after its passage.

Passed January 19, 1863.

An Act in Relation to Notaries Public.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Governor shall hereafter appoint as many notaries public for said territory as he shall deem expedient, who shall hold their office for the period of three years, and they shall be severally commissioned and qualified, according to law.

Sec. 2. Notaries public are hereby authorized within the territory of Washington to act, transact, do and finish all matters and things relating to protests, and protesting bills of exchange and promissory notes, and all other matters within their office required by law; to take depositions as prescribed by law, and acknowledgments of deeds and other instruments, and to administer oaths, for which they may charge the fees herein enumerated:

For every protest of a bill of exchange or promissory note, one dollar.

Attesting any instrument of writing and seal, fifty cents.

Noting a bill of exchange or promissory note for nonacceptance or nonpayment, fifty cents.

Taking acknowledgment of any legal instrument, fifty cents.

Registering protest of a bill of exchange or promissory note, seventy-five cents.

Certifying an affidavit, and all other certificates under seal, fifty cents.

Each oath or affirmation without seal, twenty-five cents.

Being present at demand, tender, or deposit, and noting the same, besides mileage, fifty cents.

For any instrument of writing drawn by a notary public, for each one hundred words, twenty-five cents.

Sec. 3. Every notary public, before he enters upon the duties of his office, shall provide an official seal, which shall be approved by the governor, and shall deposit an impression of the same, together with his official oath, in the office of the secretary of the territory.

Sec. 4. The governor may remove any person heretofore, or who may hereafter be appointed a notary public, who has or shall neglect to provide himself with a proper official seal, or who, from any cause, may be incompetent, and on the death, resignation, or removal from the office of any notary public, his records, together with all his official papers, shall be deposited in the office of the county auditor for the county in which the said notary public resided. If any notary public on his resignation or removal from office shall for the space of three months neglect to deposit his records and official papers with the auditor, he shall forfeit a sum not exceeding five hundred dollars.

Sec. 5. It shall be sufficient for any person acting as notary public, to certify an oath to be used in this territory in any of the courts, or in any manner whatever, to say simply in addition to his name "Notary Public," and all the courts of this territory shall consider an oath or affidavit properly certified by an acting notary without the impression of his seal or other or further addition. And all official acts heretofore performed in this territory by notaries public, duly commissioned and qualified under color of their office, are hereby declared authentic and valid, though such acts may have been performed subsequently to the time or term named in the commission appointing said notaries.

Sec. 6. This act to take effect and be in force from and after its passage.

Approved November 19, 1869.

An Act Creating the Office of Notary Public and Prescribing the Duties, Powers and Emoluments Thereof.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the governor shall hereafter appoint and commission as many notaries public as he shall deem expedient, and he may, at any time, revoke any appointment.

Sec. 2. Every notary public shall hold his office for three years from the date of his commission unless his appointment is sooner revoked.

Sec. 3. Before any commission is delivered to the person appointed, he shall procure a seal, on which shall be engraved the words "Notarial Seal" and "Washington Territory," with his surname at length and at least the initials of his Christian name: Provided, That any seal of any notary public which has been duly approved by the governor prior to the passage of this act, shall be lawful during the continuance in office of such notary public. He shall also take and subscribe the oath of office required of all territorial officers and file the same, together with a distinct impression of his official seal, in the office of the secretary of the territory.

Sec. 4. When the secretary of the territory is satisfied that the requirements of the foregoing section have been fully complied with, he shall deliver the commission to the person appointed, and who shall thereupon be authorized to enter upon the duties of his office.

Sec. 5. No money shall hereafter be paid out of the territorial treasury for any expense connected with the appointment of notaries public, but every applicant shall pay to the secretary five dollars prior to the delivery of his commission, out of which amounts the secretary shall pay all the expenses of printing blank commissions, blank oaths of office, postage and other incidental expenses connected therewith, and the secretary shall also cause to be printed out of the fees so received a sufficient number of copies of this act and he shall deliver to each notary public hereafter appointed a copy of the same.

Sec. 6. Every notary public is authorized within the territory of Washington:

1. To transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and law of merchants.

2. To take acknowledgments of all deeds and other instruments of writing, and certify the same in the manner required by law.

3. To take depositions and affidavits, and administer all oaths required by law to be administered, and every attorney at law who is a notary public, may administer any oath to his client, and no pleading or affidavit shall on that account be held by any court to be improperly verified.

4. To exercise all other powers and perform all other duties heretofore conferred upon him by law.

Sec. 7. It shall be sufficient for any person acting as notary public to certify an oath to be used in this territory, in any of the courts, or in any manner whatsoever, to say simply in addition to his name, "Notary Public," and all the courts of this territory shall consider an oath or affidavit otherwise properly certified by an acting notary public, without the impression of his seal, or other further addition.

Sec. 8. Every notary is required to keep a true record of all notices of protest given or sent by him, with the time and manner in which the same were given or sent, and the name of all the parties to whom the same were given or sent, with the copy of the instrument in relation to which the notice is served and of the notice itself.

Sec. 9. On the death, resignation or removal from office, and at the expiration of the term of office, of any notary public, his records with all his official papers, shall within three months therefrom be deposited in the office of the auditor of the county in which such notary shall have kept his office, and if any notary, on his resignation or removal from office, shall for the space of three months neglect to so deposit his records, he shall forfeit a sum not exceeding one thousand dollars, to be recovered in a civil action by any person injured by such neglect,

and it shall also be the duty of the executor or administrator of the estate of any notary public, deceased, to deposit the records and official papers of such notary with the said auditor, and within three months after his appointment under like penalty.

Sec. 10. Every notary public is entitled to demand and receive the fees herein enumerated:

For every protest of a bill of exchange or promissory note, one dollar.

Attesting any instrument of writing, under seal, one dollar.

Noting a bill of exchange or promissory note for nonacceptance or nonpayment, one dollar.

Taking acknowledgment of any legal instrument, one dollar.

Registering protest of bill of exchange or promissory note, seventy-five cents.

Certifying an affidavit, and all other certificates under seal, one dollar.

Each oath or affirmation without seal, twenty-five cents.

Being present at demand, tender or deposit, and noting the same, besides mileage at ten cents per mile, fifty cents.

For any instrument of writing drawn by a notary public, for each hundred words, twenty-five cents.

Sec. 11. All acts and parts of acts in any manner conflicting with any of the provisions of this act be and the same are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its passage.

Approved November 14, 1873.

An Act Prescribing the Qualifications of Notaries Public.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That, before a commission shall issue to any notary public, who shall have been appointed, or may be appointed by the governor of the territory, said appointee shall:

1. Procure a seal on which shall be engraved the words "Notary Public," "Notarial Seal," or words of equivalent import, and "Washington Territory," with his surname in full, and at least the initials of his Christian name.

2. Take the oath of office prescribed in the act creating the office of notary public.

3. Append to said oath of office a clear impression of his official seal, which seal shall be approved by the governor.

4. File said oath of office and impression and approval of seal in the office of the secretary of the territory.

Sec. 2. After delivery of a commission to a notary public so appointed and qualified, the secretary shall make a certificate of such appointment, with the date of said commission, and file the same in the office of the clerk of the district court, of the district, or subdistrict, where such notary resides, who shall file and preserve the same, and it shall be deemed sufficient evidence to enable such clerk to certify

that the person so commissioned is a notary public, during the time such commission is in force.

Sec. 3. All official acts heretofore done and performed by notaries public in this territory and attested by their official seal, shall be taken as valid, and of full force and effect, if such seals have been approved by the governor of the territory, at the time of commissioning said notaries public, whether such official seals have engraved thereon the words "Notarial Seal," or "Notary Public," or other equivalent words distinguishing such office. Anything in section three of the act entitled "An act creating the office of notary public and prescribing the duties and powers and emoluments thereof," approved November 14, 1873, to the contrary thereof notwithstanding.

Sec. 4. This act to take effect and be in force from and after its passage.

Approved November 11, 1875.

An Act Relating to Notaries Public.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That notaries public are hereby declared to be county officers, and they shall be hereafter appointed by the governor of the territory for the several counties in this territory.

Sec. 2. Nothing in this act contained shall be so construed as to prevent any duly qualified notary public from exercising any or all of the powers and duties of his office in any county in this territory.

Sec. 3. All acts in conflict herewith are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its approval.

Approved November 12, 1875.

An Act in Relation to Notaries Public.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the governor shall hereafter appoint and commission as many notaries public as he shall deem expedient, and he may, at any time, revoke any appointment.

Sec. 2. Every notary public shall be appointed for the county in which he resides, and shall hold his office for four years, unless his appointment is sooner revoked.

Sec. 3. Before a commission shall issue to a person appointed he shall:

1. Pay into the territorial treasury the sum of five dollars, taking the territorial treasurer's receipt therefor.

2. Procure a seal, on which shall be engraved the words "Notary Public," "Notarial Seal," or words of equivalent import, and "Washington Territory," with his surname in full, and at least the initials of his Christian name.

3. To take and subscribe the oath of office required of all territorial or county officers.

4. Append to the said oath a clear impression of his official seal, which seal shall be approved by the governor.

5. File the said oath of office, impression and approval of seal, and territorial treasurer's receipt, in the office of the secretary of the territory.

Sec. 4. When the secretary of the territory is satisfied that the requirements of the foregoing section have been fully complied with, he shall so inform the governor, who shall issue or cause to be issued a commission to the person appointed, who shall thereupon be authorized to enter upon the duties of his office.

Sec. 5. Every duly qualified notary public is authorized in any county in this territory:

1. To transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and law of merchants.

2. To take acknowledgments of all deeds and other instruments of writing, and certify the same in the manner required by law.

3. To take depositions and affidavits, and administer all oaths required by law to be administered. and every attorney at law who is a notary public, may administer any oath to his client, and no pleading or affidavit shall on that account be held by any court to be improperly verified.

Sec. 6. It shall be sufficient for any notary public, to certify an oath to be used in this territory, in any of the courts, or in any manner whatsoever, to say simply in addition to his name, "notary public," and all the courts of this territory shall consider an oath or affidavit otherwise properly certified by an acting notary public, without the impression of his seal, or other further addition.

Sec. 7. Every notary is required to keep a true record of all notices of protest given or sent by him, with the time and manner in which the same were given or sent, and the name of all the parties to whom the same were given or sent, with the copy of the instrument in relation to which the notice is served and of the notice itself.

Sec. 8. On the death, resignation or removal from office, and at the expiration of the term of office, of any notary public, his records and (with) all his official papers, shall within three months therefrom be deposited in the office of the auditor of the county for (in) which such notary shall have been appointed (kept his office), and if any notary, on his resignation or removal from office, shall for the space of three months neglect to so deposit his records, he shall forfeit a sum not exceeding one thousand dollars, to be recovered in a civil action by any person injured by such neglect, and it shall also be the duty of the executor or administrator of the estate of any notary public, deceased, to deposit

the records and official papers of such notary with the said auditor, and within three months after his appointment under like penalty.

Sec. 9. Every notary public is entitled to demand and receive the fees herein enumerated:

For every protest of a bill of exchange or promissory note, one dollar.

Attesting any instrument of writing, under seal, one dollar.

Noting a bill of exchange or promissory note for nonacceptance or nonpayment, one dollar.

Taking acknowledgment of any legal instrument, one dollar.

Registering protest of bill of exchange or promissory note, seventy-five cents.

Certifying an affidavit, and all other certificates under seal, one dollar.

Each oath or affirmation without seal, twenty-five cents.

Being present at demand, tender or deposit, and noting the same, besides mileage at ten cents per mile, fifty cents.

For any instrument of writing drawn by a notary public, for each hundred words, twenty-five cents.

Sec. 10. After the delivery of a commission to a notary, appointed and qualified as heretofore provided, the secretary of the territory shall make a certificate of such appointment, with the date of said commission, and file the same in the office of the clerk of the district court of the district or subdistrict where such notary resides, who shall file and preserve the same, and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force.

Sec. 11. All official acts heretofore done and performed by notaries public in this territory, and attested by their official seals, shall be taken as valid and of full force and effect, if such seals were approved by the governor of the territory at the time of commissioning said notaries public.

Sec. 12. The territorial treasurer shall keep all moneys received by him under the provisions of this act as a special fund and pay the same out only upon warrants drawn by the territorial auditor against the said fund, and whatsoever of the said fund shall remain in his hands, unappropriated as hereinafter provided, at the end of each fiscal year, shall be transferred to the general fund.

Sec. 13. The territorial auditor shall, upon presentation to him by the secretary of the territory, of bills or vouchers for postage, the purchase or printing of blanks, commissions, circulars, letters, instructions, acts, etc., to be used or distributed by the said secretary of the territory in matters pertaining to the appointment or commissioning of notaries public, audit the same, and draw his warrant upon the territorial treasury, against the said special fund for the amount allowed by him, in favor of the secretary of the territory, and the territorial treasurer shall pay the same out of the said special fund only.

Sec. 14. All acts and parts of acts heretofore passed in relation to notaries public, be and the same are hereby repealed.

Sec. 15. This act to take effect and be in force from and after its passage.

Approved October 31, 1877.

An Act to Amend an Act Entitled "An Act in Relation to Notaries Public," Approved October 31, 1877.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section thirteen of an act approved October 31, 1877, in relation to notaries public, be and the same is hereby amended so as to read as follows: "The territorial auditor shall, upon presentation to him by the secretary of the territory of bills or vouchers for postage, the purchase or printing of blanks, commissions, circular letters, instructions, acts, (and other incidental expenses) of the secretary's office, audit the same and draw his warrant upon the territorial treasury against the said special fund for the amount allowed by him in favor of the secretary of the territory, and the territorial treasurer shall pay the same out of the said special fund only.

Sec. 2. This act shall take effect and be in force from and after its approval.

Approved November 13, 1879.

An Act to Repeal an Act Entitled "An Act to Amend an Act in Relation to Notaries Public," Approved November 13, 1879.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That an act entitled "An act to amend an act entitled an act in relation to notaries public," approved November 13, 1879, be and the same is hereby repealed.

Sec. 2. This act shall take effect and be in force from and after its passage and approval.

Approved November 10, 1881.

On the 6th of December, 1881, the Code of 1881 became a law. In that the law as to notaries, chapter CCIV, sections 2614–2625, was a copy of the law passed in 1877 together with the amendments of 1879.

An Act to Amend Chapter CCIV of the Code of Washington.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That chapter CCIV of the Code of Washington, be amended by striking out subdivision one, of section 2616, and inserting, in lieu thereof, the following:

1. "Pay to the secretary of the territory the sum of five dollars: Provided, That from the proceeds of the sum hereby set apart as compensation to the secretary of the territory, the said secretary shall furnish all necessary stationery, blank appointments, and commissions in reference to the appointment of notaries public."

Sec. 2. That chapter CCIV of the Code of Washington be further amended by striking out section 2625.

Sec. 3. This act shall take effect from and after its approval.

Approved November 26, 1883.

An Act to Amend Section Two Thousand Six Hundred and Fifteen, Chapter Two Hundred and Four of the Code of Washington.

Be it enacted by the Legislative Assembly of the Territory of Washington:

Section 1. That section two thousand six hundred and fifteen of chapter two hundred and four of the Code of Washington, relating to notaries public, be and the same is hereby amended so as to read:

"Section 2615. Every notary public shall be appointed for the territory in which he resides, and shall hold his office for four years, unless his appointment is sooner revoked; and all official acts heretofore done or performed by notaries public in any county in this territory, other than that in which they at that time resided, or for which their commission issued, shall be valid and of full force and effect."

Sec. 2. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its passage and approval.

Approved November 28, 1883.

An Act Validating the Acts of Notaries Public Appointed Under and by Virtue of an Act Entitled, "An Act to Amend Section 2615, Chapter CCIV, of the Code of Washington," Approved November 28, 1883, and Appointments Made Thereunder.

Be it enacted by the Legislative Assembly of the Territory of Washington:

Section 1. That all appointments of notaries public in Washington Territory made by the governor, under and by virtue of an act entitled, "An act to amend section 2615, chapter CCIV, of the Code of Washington," approved November 28, 1883, be and the same are hereby declared to be valid and legal.

Sec. 2. No official act heretofore done or performed, or hereafter to be done or performed by any notary public of this territory appointed under the provisions of the act aforesaid, shall be invalidated or considered null or void by reason of any irregularity or informality in their appointments, or by reason of the invalidity of said statute.

Sec. 3. This act to take effect and be in force from and after its passage and approval.

Approved February 2, 1888.

NOTARIES PUBLIC.

An Act to Provide for the Appointment, Qualification, and Duties of Notaries Public, Certifying Their Official Acts, and Declaring an Emergency to Exist.

Be it enacted by the Legislature of the State of Washington:

Section 1. That the governor may appoint and commission as notaries public as many persons having the qualifications of electors as he shall deem necessary: Provided, That no person shall be appointed a notary public except upon the petition of at least twenty freeholders of the county in which such person resides.

Sec. 2. Every notary public shall be appointed for the state, and shall hold his office for four years, unless sooner removed by the governor.

Sec. 3. Before a commission shall issue to the person appointed he shall—(1) execute a bond, payable to the state of Washington, in the sum of one thousand dollars, with sureties to be approved by the county clerk of the county in which the applicant resides, conditioned for the faithful discharge of the duties of his office; (2) pay into the state treasury the sum of ten dollars for special state library fund, taking the treasurer's receipt therefor; (3) procure a seal, on which shall be engraved the words "Notary Public" and "State of Washington," and date of expiration of his commission, with surname in full, and at least the initials of his Christian name; (4) to take and subscribe the oath of office required of state officers; (5) file the said oath of office, bond and treasurer's receipt in the office of the secretary of state, and before performing any official acts, shall file in the office of the secretary of state a clear impression of his official seal, which seal shall be approved by the governor.

Sec. 4. Every duly qualified notary public is authorized in any county in this state—(1) to transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and laws merchant; (2) to take acknowledgments of all deeds and other instruments of writing, and certify the same in the manner required by law; (3) to take depositions and affidavits, and administer all oaths required by law to be administered, and every attorney at law who is a notary public may administer any oath to his client, and no pleading or affidavit shall, on that account, be held by any court to be improperly verified.

Sec. 5. It shall not be necessary for a notary public in certifying an oath to be used in any of the courts in this state, to append an impression of his official seal, but in all other cases when the notary public shall sign any instrument officially, he shall, in addition to his name and the words "Notary Public," add his place of residence and affix his official seal.

Sec. 6. Every notary public is required to keep a true record of all notices of protest given or sent by him, with the time and manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with the copy of the instrument in relation to which the notice is served, and of the notice itself; said record, or a copy thereof, duly certified under the hand and seal of the notary public, or county clerk having the custody of the original record, shall be competent evidence to prove the facts therein stated, but the same may be contradicted by other competent evidence.

Sec. 7. On the death, resignation or removal from office, and at the expiration of the term of office of any notary public, provided his commission is not renewed, his records and all his official papers shall, within three months therefrom, be deposited in the office of the county clerk of the county from which such notary shall have been appointed, and if any notary public, on his resignation or removal from office, shall, for the space of three months, neglect to so deposit his records, he shall forfeit a sum not exceeding one thousand dollars, to be recovered in a civil action by any person injured by such neglect, and it shall also be the duty of the executor or administrator of the estate of any notary public, deceased, to deposit the records and official papers of such notary with said clerk, and within three months after his appointment under like penalty.

Sec. 8. Every notary public is entitled to demand and receive the fees herein enumerated: For every protest of a bill of exchange or promissory note, one dollar; and for each notice, twenty cents; attesting any instrument of writing, under seal, fifty cents; noting a bill of exchange or promissory note for nonacceptance or nonpayment, one dollar; for each acknowledgment of any legal instrument, fifty cents for the first name and twenty-five cents for each additional name; registering protest of a bill of exchange or promissory note, seventy-five cents; certifying an affidavit, and all other certificates under seal, fifty cents; each oath or affirmation, without seal, twenty-five cents; being present at demand, tender or deposit, and noting the same, besides mileage at ten cents per mile, fifty cents; for any instrument of writing, or depositions or affidavits written, exclusive of the certificate thereto, drawn by a notary public, for each hundred words, twenty-five cents.

Sec. 9. After the delivery of a commission to a notary public, appointed and qualified as heretofore provided, the secretary of state shall make a certificate of such appointment, with the date of said commission, and file the same in the office of the county clerk of the county where such notary resides, who shall file and preserve the same, and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force.

Sec. 10. The county clerk of the county in which such notary resides, or the secretary of state, may grant certificates of official char-

acter of notaries public. The certificate of the clerk shall be under his hand and official seal, and that of the secretary of state, under the seal of the state. The fee for such certificates shall be one dollar, and shall be paid by the county clerks into the treasury of their respective counties, and by the secretary of state into the state treasury.

Sec. 11. All appointments of notaries public made in pursuance of the laws of the territory of Washington, that do not sooner expire, shall expire on the first day of April, A. D. 1890: Provided, That there shall be deducted from the fee of ten dollars herein provided for, such proportion of said fee as the unexpired time in the territorial appointment bears to the whole term for which the original commission was issued.

Sec. 12. The seals now in use by notaries public in this state, being the seals authorized under the laws of Washington territory, shall continue to be the seals of such officers until the expiration of their offices, as provided for in section 11 of this act, and all notarial acts of such officers, which have been or may be authenticated by such seals, shall be held good and valid as if done and performed under this act. And all official acts done since the admission of the state of Washington into the Union, by notaries public of the late territory of Washington, the terms of whose appointments had not, at the time of doing such acts, expired by the limitation of time expressed in the statutes of said territory, are hereby declared to be valid under the same circumstances, and to the same extent, as if done before the admission of the said state into the Union.

Sec. 13. All laws and acts in conflict with this act are hereby repealed.

Sec. 14. Great embarrassment, inconvenience and uncertainty in commercial and legal business, and in transfers of property will arise from delay of the time when this act shall take effect; and therefore, it shall take effect from the date of its approval by the governor.

Approved December 21, 1889.

NOTARIES PUBLIC; RELIEF OF.

An Act for the Relief of Certain Notaries Public.

Whereas, The legislature of the state of Washington passed an act, approved December 21, 1889, providing for the appointment, qualification and duties of notaries public; and

Whereas, Certain notaries public holding territorial commissions have failed to receive deductions due them in accordance with the provisions of section 11 of said act; therefore,

Be it enacted by the Legislature of the State of Washington:

Section 1. That the treasurer of state be and hereby is instructed to issue certificates for the amount due to each notary public entitled to such rebate; that the auditor of state be and hereby is instructed to

draw warrants on the state treasurer for such sums, and that the state treasurer is hereby instructed to pay such sums out of the state library fund.

Sec. 2. For the purpose of carrying into effect the provisions of this act, there is hereby appropriated out of the state library fund the sum of two hundred dollars, or so much thereof as may be necessary.

Approved March 27, 1890.

CHAPTER CXXX.

Fees of State and County Officers, Witnesses and Jurors.

An Act in Relation to the Fees of State and County Officers, Witnesses and Jurors, and Amending Section 2086 of the Code of Washington of 1881.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 2086 of the Code of Washington of 1881, is hereby amended to read as follows: "Section 2086. The several officers hereinafter enumerated shall be entitled to collect the fees hereinafter provided for their official services, to wit:

Notaries Public.

1. Protest of a bill of exchange of [or] promissory note, one dollar.
2. Attesting any instrument of writing, with seal, fifty cents.
3. Taking acknowledgment, two persons, with seal, fifty cents.
4. Taking acknowledgment, each person, over two, fifteen cents.
5. Certifying affidavit, without seal, twenty-five cents.
6. Certifying affidavit, with seal, fifty cents.
7. Registering protest of bill of exchange or promissory note for nonacceptance or nonpayment, fifty cents.
8. Being present at demand, tender or deposit, and noting the same, besides mileage at the rate of ten cents per mile, fifty cents.
9. Noting a bill of exchange or promissory note for nonacceptance or nonpayment, fifty cents.
10. For copying any instrument of record, besides certificate and seal, per folio, fifteen cents.

Approved March 15, 1893.

CHAPTER 151.

Relative to Fees of State and County Officers, Witnesses and Jurors.

An Act in Relation to the Fees of State and County Officers, Witnesses and Jurors, and Repealing an Act Entitled "An Act in Relation to the Fees of State and County Officers, Witnesses and Jurors and Amending Section 2086 of the Code of Washington of 1881," the Same Being Approved March 15, 1893.

Be it enacted by the Legislature of the State of Washington:

Section 1. The several officers herein named shall collect the fees herein prescribed for their official services:

Notaries Public.

1. Protest of a bill of exchange of (or) promissory note, one dollar.

2. Attesting any instrument of writing with or without seal, fifty cents.

3. Taking acknowledgment, two persons, with seal, fifty cents.

4. Taking acknowledgment, each person over two, twenty-five cents.

5. Certifying affidavit, with or without seal, fifty cents.

6. Registering protest of bill of exchange or promissory note for non-acceptance or nonpayment, fifty cents.

7. Being present at demand, tender or deposit, and noting the same, besides mileage at the rate of ten cents per mile, fifty cents.

8. Noting a bill of exchange or promissory note, for nonacceptance or nonpayment, fifty cents.

9. For copying any instrument or record, besides certificate and seal, per folio, fifteen cents.

Approved March 16, 1903.

CHAPTER 137.

Notaries Public.

An Act to Amend [Pierce's Code, § 6798] an Act Entitled, "An Act to Provide for the Appointment, Qualification and Duties of Notaries Public, Certifying Their Official Acts and Declaring an Emergency to Exist," Approved December 21st, 1889.

Be it enacted by the Legislature of the State of Washington:

Section 1. That section 1 of said act [Pierce's Code, § 6798] be amended to read as follows: Section 1. The act to provide for the appointment, qualification and duties of notaries public, certifying their official acts and declaring an emergency to exist, approved December 21st, 1890, is hereby amended by adding to section one (1) of said act a proviso so that when so amended said section shall read as follows: Section 1. That the governor may appoint and commission as notaries public as many persons having the qualifications of electors as he shall deem necessary: Provided, That no person shall be appointed a notary public except upon the petition of at least twenty freeholders of the county in which such person resides: Provided, further, That women over the age of twenty-one years resident within this state and of good moral character may be appointed.

Approved by the governor March 12, 1907.

CHAPTER 56.

Relative to Fees of State and County Officers, Witnesses and Jurors.

Be it enacted by the Legislature of the State of Washington:

Section 1. The several officers herein named shall collect the fees herein prescribed for their official services:

Fees of Secretary of State.

2. For any certificate under seal of state, two dollars.

Notaries Public.

1. Protest of a bill of exchange or promissory note, one dollar.

2. Attesting any instrument of writing with or without seal, fifty cents.

3. Taking acknowledgment, two persons, with seal, fifty cents.

4. Taking acknowledgment, each person over two, twenty-five cents.

5. Certifying affidavit, with or without seal, fifty cents.

6. Registering protest of bill of exchange or promissory note for nonacceptance or nonpayment, fifty cents.

7. Being present at demand, tender or deposit, and noting the same, besides mileage at the rate of ten cents per mile, fifty cents.

8. Noting a bill of exchange or promissory note, for nonacceptance or nonpayment, fifty cents.

9. For copying any instrument or record, besides certificate and seal per folio, fifteen cents.

Approved by the governor March 2, 1907.

CHAPTER III.

THE NOTARY PUBLIC: APPOINTMENT, ETC.

§ 9. Purpose of the Office of Notary.
§ 10. Definition.
§ 11. Nature of the Office: A Public Officer.
§ 12. Judicial or Ministerial Office.
§ 13. Eligibility and Qualifications: Electors: Women.
§ 14. ——: Incompatible Offices.
§ 15. Appointment: In General.
§ 16. ——: Steps to be Taken by the Applicant.
§ 17. Term of Office.
§ 18. Oath of Office.
§ 19. The Notary's Bond.
§ 20. The Fee to the State.
§ 21. Seal: Notary must Procure.
§ 22. ——: Sufficiency: How Determined.
§ 23. Notary's Commission.
§ 24. Jurisdiction.

§ 9. **Purpose of the Office of Notary.**—Possibly the best way to appreciate the need and purpose of the office of notary public would be to imagine a state with no officers empowered to administer an oath outside of court. Then, if one should want to prove that he presented a note for payment on a certain day, at the proper time and place, he would be compelled to hale two or three persons to court to prove that fact. If those persons were a thousand miles away when the case came on for trial, he would be compelled to get them to court notwithstanding the expense; if they had died in the meantime, he would not be able to prove his case. If at the present day a plaintiff or defendant in a case on trial were compelled to bring into court witnesses to prove the thousand and one things that are now accepted in the form of affidavits, the business world would be paralyzed to a great extent. Every time a business man takes a note for an ordinary amount he would know that if it were not paid at the proper time he might as well destroy the note, for it would cost him as much to prove the debt as he would recover. And again, suppose every time a deed were

placed on record it would be necessary for the grantor to appear at the auditor's office with some friend who knows the auditor personally, to prove to him that he is the man who is granting the land and not an imposter. One can readily see that real property owners living out of the state, or, we might say, out of the county, would make one trip to the auditor's office, transfer their land, and be careful not to buy any more in a foreign state or county. Thousands of affidavits and acknowledgments are taken in Washington every year to be used in all parts of the world. So it can be seen that a public officer who is empowered to administer oaths and can thereafter attach his name to facts sworn to before him, thus making what we term "affidavits," is a very necessary official both in the business world and in the legal world. And the more complex our civilization becomes the more necessary is such an officer.

§ 10. **Definition.**—A notary public[1] is a public officer whose function it is to attest and certify, by his hand and official seal, certain classes of instruments in order to give them credit and authenticity in foreign jurisdictions; to take acknowledgments of deeds and other conveyances, and to certify the same; to perform certain official acts, in commercial matters, such as the protesting of notes and bills, and the noting of foreign drafts; to receive the affidavits of mariners and to draw up protests in cases of loss or damage; and to perform other official acts, the power to do which is conferred by law.[2]

1 The word "notary" is equivalent to the words "notary public": 29 Cyc. Law & Proc., p. 1068; Va. Code (1904), § 5; W. Va. Code (1906), § 293.

2 Bouv. Law Dict. (Rawle's Rev.), tit. "Notary Public"; 21 Am. & Eng. Ency. of Law, 2d ed., p. 555; 29 Cyc. Law & Proc., p. 1069; Black's Law Dict., tit. "Notary Public"; Kirksey v. Bates, 7 Port. (Ala.) 529, 31 Am. Dec. 722. "A public officer whose function it is to attest and certify, by his hand and official seal, certain classes of documents in order to give them credit and authenticity in foreign jurisdictions": Gharst v. St. Louis Transit Co., 115 Mo. App. 403, 408, 91 S. W. 453.

"An officer whose duty it is to attest the genuineness of any deeds or writings in order to ren-

From this definition it is seen that a notary is a public official whose signature on certain documents carries more weight than that of the ordinary man. He is appointed by the state for the purpose of assisting anyone who wants his assistance in proving that certain facts were sworn to. He is a public functionary authorized to put his name to certain documents to show that they are genuine. When he "attests" he witnesses or sees, as an officer, that a person named in the document swears before God that certain facts set forth in the document are true; when he "certifies" to that instrument he writes on the same instrument that the person named therein did appear before him on a certain day and at a certain place and did there swear before God that the facts stated therein are true. When he "takes an acknowledgment," the man named in a deed or other conveyance comes to him with the deed and tells him that he is the man named as grantor in the deed, that he signed the deed and means to convey the property to the person named therein; when he "certifies the same," he writes on the deed these facts, that he knows the man named in the deed and that the said man did sign it and means to convey it. When he "protests," he writes down how and when he performed certain acts which he is called upon to perform as such public official; for example, that he, at the request of X, called upon A, at his home at 9 o'clock Tuesday, September 6, 1910, and asked A to pay a certain note; that A refused to pay the note but gave no reason for said refusal, and that he thereupon notified certain specified parties of the fact. After writing on these various instruments the facts which took place before his eyes, the notary places his seal, which is an impression in the paper which cannot be changed, to further prove that the

der them available as evidence of the facts therein contained": Nolan v. Labatut, 117 La. 431, 445, 41 South. 713; Schmitt v. Dronet, 42 La. Ann. 1064, 1066, 8 South. 396, 21 Am. St. Rep. 408. See, also, Bowen v. Stilwell, 9 N. Y. Civ. Proc. 277, 283.

"A public functionary, authorized to receive all acts and contracts to which parties wish to give the character of authenticity, attached to the acts of public authority, to secure their date, their preservation and the delivery of copies": Nolan v. Labatut, 117 La. 431, 445, 41 South. 713; 5 Dict. Droit Civ., p. 27.

acts were done before him, a public officer, authorized by the state to have a seal. These facts as set forth by the notary are then accepted as true without further proof.

In Washington every duly qualified notary public is authorized to transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and laws merchant; to take acknowledgments of all deeds and other instruments of writing, and certify the same in the manner required by law; to take depositions and affidavits, and administer all oaths required by law to be administered.[a]

[a] The Washington statute (Laws 1890, p. 474, § 4; 1 H. C., § 232; Bal. Code, § 248; 2 Rem. & Bal. Code, § 8298) is as follows:

"Every duly qualified notary is authorized in any county in this state—

"1. To transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and laws merchant;

"2. To take acknowledgments of all deeds and other instruments of writing, and certify the same in the manner required by law;

"3. To take depositions and affidavits, and administer all oaths required by law to be administered; and every attorney at law who is a notary public may administer any oath to his client, and no pleading or affidavit shall, on that account, be held by any court to be improperly verified."

§ 11. Nature of the Office: A Public Officer.—The office of notary public is a public office,[1] although in some states the notaries' powers may be confined to acts performed in a certain city or county. The court in Golladay v. Union Bank,[2] a Tennessee case, said: "The notary is a public offi-

1 29 Cyc. Law & Proc., p. 1069; 21 Am. & Eng. Ency. of Law, 2d ed., p. 555; Governor v. Gordon, 15 Ala. 72; Ashcraft v. Chapman, 38 Conn. 230; Ohio Nat. Bank v. Hopkins, 8 App. Cas. (D. C.) 146; Opinion of Justices, 150 Mass. 586, 23 N. E. 830, 6 L. R. A. 842; People v. Wadhams, 176 N. Y. 9, 68 N. E. 65; Britton v. Niccolls, 104 U. S. 757, 26 L. ed. 917; Bettman v. Warwick, 108 Fed. 46, 47 C. C. A. 185; Gervais v. McCarthy, 35 Can. Sup. Ct. 14; Choquette v. McDonald, 19 Quebec Super. Ct. 408.

2 2 Head (Tenn.), 57, 59.

cer, and when he certifies that he has done an official act, it must be presumed that he has done it correctly, unless some statute or rule of law prescribes a particular mode, until the contrary appears." In Ashcraft v. Chapman,[3] a Connecticut judge said: "Notaries were originally mere commercial scriveners. Becoming important to the commercial world, their appointment was provided for and their duties regulated by public law, and they became sworn public officers—notaries public—and their certificates were received as evidence of their official acts." The title itself expresses this fact, for they are notaries—public. It is a public office within the meaning of the New York constitution, which prohibits public officers from accepting passes on railroads and other franking privileges;[4] and though the question as to a notary has never been before the courts of this state, he, without doubt, is a public officer within the meaning of the Washington constitution forbidding the issue of passes and tickets sold at a discount to public officers.[a] [b] There is no question as to a notary public being a public officer in Washington, for the words of the statute are "every notary shall be appointed for the state."[c]

[a] The Washington constitution (art. 11, § 39) is as follows:
"It shall not be lawful for any person holding public office in this state to accept or use a pass or to purchase transportation from any railroad or other corporation, other than as the same may be purchased by the general public, and the legislature shall pass laws to enforce this provision."

[b] The Washington constitution (art. 13, § 20) is as follows:
"No railroad or other transportation company shall grant free passes, or sell tickets or passes at a discount, other than as sold to the public generally, to any member of the legislature, or to any person holding any public office within this state. The legislature shall pass laws to carry this provision into effect."

[c] The Washington statute (Laws 1890, p. 473, § 2; 1 H. C., § 330; Bal. Code, § 246; 2 Rem. & Bal. Code, 8296) is as follows:
"Every notary public shall be appointed for the state, and shall hold his office for four years, unless sooner removed by the governor."

[3] 38 Conn. 230.
[4] N. Y. Const., art. 13, § 5; People v. Rathbone, 145 N. Y. 434, 40 N. E. 395, 28 L. R. A. 384.

§ 12. Judicial or Ministerial Office.—An important question which presents itself in the discussion of the law of notaries is whether a notary is a judicial or ministerial officer. The point has arisen mainly in the consideration of the questions of the territorial jurisdiction of the officer, his disqualifications by reason of interest in the matter, his power to amend a defective certificate of acknowledgment, and the effect of the certificate as evidence. The weight of authority seems to be in favor of the view that the acts of a notary are ministerial and not judicial.[1] And while the cases cannot be taken as laying down the rule in regard to all the functions of a notary, still we may safely say that cases decided in Washington place this state with the majority. The cases are, Nixon v. Post, 13 Wash. 184, 43 Pac. 23 (December, 1895); The Spokane & Idaho Lumber Co. v. Loy, 21 Wash. 501, 58 Pac. 672, 60 Pac. 1119 (October, 1899); Keene Guaranty Savings Bank v. Lawrence, 32 Wash. 576, 73 Pac. 680 (September, 1903); and McLean v. Roller, 33 Wash. 166, 73 Pac. 1123 (October, 1903). In the Post case the husband took the acknowledgment of the grantor to a deed in which his wife was the grantee; it was held to be a good acknowledgment. In the Loy case, Mr. Justice Anders said: "The substance of the affidavit of the sureties in such bonds is prescribed by law, and the act of the notary in administering the oath is purely ministerial, and is not affected by his interest therein." In the Lawrence case, the court said: "The mere fact that the notary in this case was an officer and stockholder in the corporation, to whom the mortgage was executed, would not preclude his taking the acknowledgment of the mortgagor. The taking of an acknowledgment by a notary public is a ministerial act, and may be performed by anyone qualified to act as notary." In the Roller case it appears that the principal in an appeal bond, as notary public, took the affidavit of the sureties attached to the bond, and for that reason, and on that ground, the respondent moved to dismiss the appeal. Mr. Justice

1 See § 32; 21 Am. & Eng. Ency. of Law, 2d ed., p. 556, and vol. 1, p. 485; 29 Cyc. Law & Proc., p. 1070.

Anders quoted the Loy case, and denied the motion to dismiss the appeal.

A ministerial act may be defined to be one which a person performs upon a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety of doing the act.[2] In State v. Womack, 4 Wash. 27 (March, 1892), Mr. Justice Dunbar defines a ministerial office as follows: "A ministerial office, as defined by Bouvier, is one which gives the officer no power and no charge of the matter to be determined, but requires him to obey the mandates of the superior."

§ 13. Eligibility and Qualifications: Electors: Women.— The question as to who can be notaries public is generally answered by the constitution or statutes of a state. In Washington we find both by the constitution [a] and statutes that they must have the qualifications of electors; but that women over the age of twenty-one years resident within this state and of good moral character may be appointed.[1] [b] The statute seems to assume that an "elector" is a man of good moral character. From the Law of 1901, page 284, section 1, defining electors, we find that to be qualified for appointment as notary a person must be a male person twenty-one years of age, able to read and speak the English language, and must be a citizen of the United States who has

[2] Am. & Eng. Ency. of Law, 2d ed., p. 793; Bouv. Law Dict. (Rawle's Rev.), tit. "Ministerial"; American Casualty Ins. etc. Co. v. Fyler, 60 Conn. 448, 25 Am. St. Rep. 337, 22 Atl. 494; Flournoy v. Jeffersonville, 17 Ind. 169, 79 Am. Dec. 468; School Dist. No. 2 v. Lambert, 28 Or. 209, 42 Pac. 221; Patterson v. Portland Smelting Works, 35 Or. 96, 56 Pac. 407.

In People v. Bartels, 138 Ill. 322, 17 N. E. 1091, Chief Justice Magruder said: "The doctrine that the taking of an acknowledgment is a judicial act had its origin in the consideration of acknowledgments by married women, where the officer is required to make the privy examination herein referred to; and, as applied to such cases, the doctrine is sound." In this state at the present time a wife is not examined privately by the notary; therefore the doctrine would not apply.

[1] As women are now electors in Washington, they are eligible

lived in the state one year and in the county ninety days.[c] Under the Washington statute, therefore, neither an alien nor a minor could be appointed.[2]

[a] The Washington constitution (art. 3, § 25) is as follows:

"No person except a citizen of the United States and a qualified elector of this state shall be eligible to hold any state office, and . . . ."

[b] The Washington statute (Laws 1907, p. 264, § 1; Bal. Code, § 245; 2 Rem. & Bal. Code, § 8295) is as follows:

"The governor may appoint and commission, as notaries public, as many persons having the qualifications of electors as he shall deem necessary: Provided, that no person shall be appointed a notary public except upon the petition of at least twenty freeholders of the county in which such person resides: Provided further, that women over the age of twenty-one years resident within this state and of good moral character may be appointed."

[c] The Washington statute as to qualified electors (Laws 1901, p. 284, § 1; Bal. Code, § 1320*; 2 Rem. & Bal. Code, § 4752) is as follows:

"All male persons over the age of twenty-one years, possessing the following qualifications shall be entitled to vote at all elections: All persons who at the time of the taking effect of this act are qualified electors of this state; all other male persons who are over the age of twenty-one years, citizens of the United States who have lived in the state one year and in the county ninety days and in the city, town, ward or precinct thirty days immediately preceding the election at which they offer to vote, and who shall be able to read and speak the English language: Provided, that Indians not taxed shall never be allowed the elective franchise."

§ 14. Eligibility and Qualifications: Incompatible Offices.

By reason of constitutional provisions and state statutes, a number of cases have been decided in various states to the effect that a notary public cannot at the same time hold some

to the office under the general designation of electors.

But, question: Was the law of 1907 (note [b]) as to the appointment of women constitutional in view of art. 3, § 25 of the constitution (note [a]) and the law of 1901 (note [c])? In the event that it was unconstitutional women appointed under that law were and are notaries de facto: See §§ 42, 43. A woman is ineligible to the office of notary public under Ohio Const., art. 15, § 4, requiring an officer to be an elector, and art. 5, § 1, requiring an elector to be a male citizen: State ex rel. Monnett v. Adams, 58 Ohio St. 612, 51 N. E. 135.

2 Wilson v. Kimmel, 109 Mo. 260, 19 S. W. 24.

other office. In Washington there is neither a provision in the constitution nor a statute on the subject. The natural conclusion is that a notary might at the same time be a justice of the peace or county clerk or a town official.[3]

§ 15. Appointment: In General.—In the states one must always go to the constitution and the statutes of the state in question to learn how notaries are appointed.[a] As a general thing, they are appointed by the governor, sometimes with the consent of the senate or an advisory council.[1] In Washington the governor may appoint and commission as many persons as he shall deem necessary, but before he is allowed to make such appointment the person must file a petition signed by at least twenty freeholders of the county in which he resides recommending his appointment.[a] It might be well to add in this connection that if an appointment is not made in the mode prescribed by the constitution or statute it is inoperative.[2]

[a] For the law as to appointment in Washington, see note [b], § 13.

§ 16. Appointment: Steps to be Taken by the Applicant. The present law as to the appointment of a notary is somewhat confusing; and it may be of assistance to some to have the steps set out in their order. It will be noticed that in certain steps the letters or instruments should be addressed

3 In State v. Clark, 21 Nev. 333, 37 Am. St. Rep. 517, 31 Pac. 545, 18 L. R. A. 313, it was held that the office of notary public is a "civil office," within the meaning of the constitutional provision that no person holding a lucrative office under the government of the United States or any other power shall be eligible to any civil office of profit under this state.

In Biencourt v. Parker, 27 Tex. 558, it was held that the offices of notary public and county clerk were incompatible, and that when a notary was elected county clerk and qualified as such, his office as notary was thereby determined: See, also, Building etc. Assn. v. Sohn, 54 W. Va. 101, 46 S. E. 222; Com. v. Shindle, 19 Pa. Co. Ct. 258; Merzbach v. New York, 163 N. Y. 16, 57 N. E. 96.

1 21 Am. & Eng. Ency. of Law, 2d ed., p. 556.

2 Brown v. State, 43 Tex. 478; 29 Cyc. Law & Proc., p. 67; 21 Am. & Eng. Ency. of Law, 2d ed., p. 557.

to the governor, and in others they should be addressed to the secretary of state. The "secretary to the governor" has charge of the correspondence in this matter, and all the governor's letters should be addressed to him instead of to the governor.

The steps are as follows:

The applicant should write a letter to the "secretary to the governor" asking for an application blank for appointment as a notary public. The letter should state whether it is for a renewal or for a new appointment; it should state also whether the applicant is a female.

The applicant will receive the blank petition as set out in note [a], page 46, if for a new appointment or one somewhat different if for a renewal. A few words are changed if the applicant is a female.

Applicant should then fill out the petition with county, name and date, and then have it signed in ink by twenty (20) freeholders of the said county. A freeholder is one entitled to real estate irrespective of the amount of interest therein.[1] Any elector who owns real estate may sign.

The petition should then be mailed to the "secretary to the governor," together with a postal or express money order for ten dollars ($10) payable to the "state treasurer." A check will not be accepted.

If the application is acceptable to the governor, he will make the appointment and file the notice of appointment with the state department.

The secretary of state will then mail the applicant a bond corresponding in number with notice of appointment, and a letter telling him of his appointment and setting forth what steps to take with the bond and seal. (For copy of the bond, see page 49. The letter of instructions is set out in note [b], page 46. No other bond will be accepted; the applicant must use the bond sent him. The official bond, furnished by the secretary of state, contains oath of office and all necessary data for approval by county clerk, etc.. and may be executed either as a personal or surety bond.

1 People v. Scott, 8 Hun (N. Y.), 567; People v. Hynds, 30 N. Y. 472.

The applicant should then procure a seal containing the following:

(1) Name of the applicant. The name must be in the same form that it appears on the application blank; that will be the same as it appears in the letter of instructions, note [b].

(2) The words "Notary Public."

(3) The words "State of Washington."

(4) The date of the expiration of the applicant's commission as a notary: "Commission Expires September 30, 1914." This date will appear in the letter of instructions, note [b], and also in the body of bond. (See page 52, for form of seal.)

Applicant should not order a seal until he gets the letter of instructions setting forth the date of the expiration of his commission, which will be four years from date of appointment.

The bond should then be executed and approved by the county clerk of the applicant's county. Care should be taken that the notary, county clerk or officer before whom the acknowledgment is taken affixes his seal. An impression of the applicant's seal must be affixed in the place indicated so that it may be approved by the governor. Applicants should be careful to always give street number, or office building, as many bonds are returned for want of that information. The applicant's name should be written in the bond and oath of office, and should be in the seal in the same form it is written in the application blank, which will be the same form in which it appears in the letter of instructions. That means that if the applicant intends to sign his name John B. Doe, it should be in that form always, and not J. B. Doe in the bond and J. Doe in the seal.

The bond should then be sent to the "secretary to the governor." The governor will approve the seal and forward the applicant his commission. The bond is then filed with the secretary of state, who notifies the county clerk of the applicant's county of his appointment. This is done so that the notary can thereafter obtain certificates of authenticity at the clerk's office. The secretary of state also

can certify to the official status of any regularly appointed notary. The fee for such certificate is two dollars.

[a] FORM I.

To the Governor of Washington:

We, the undersigned freeholders of King county, state of Washington, hereby certify that we are well acquainted with John Doe, that he is a reputable citizen of said county; that he is an elector of the state of Washington, and we hereby recommend him to the governor as a proper person to receive appointment as notary public.

Dated at Seattle, this 10th day of September, 1910.

1..... 11.....
2..... 12.....
3..... 13.....
4..... 14.....
5..... 15.....
6..... 16.....
7..... 17.....
8..... 18.....
9..... 19.....
10..... 20.....

NOTE—This petition should be signed, in ink, by twenty freeholders of the county in which the applicant resides.

[b] ————, ————,
SECRETARY OF STATE. ASST. SEC'Y OF STATE.

STATE OF WASHINGTON.
DEPARTMENT OF STATE.

Olympia, Sept. 30, 1910.

John Doe Esq.,

Sir: You have been appointed, by the governor, a notary public in and for the state of Washington, for a term of four years from date of appointment.

Please execute the inclosed bond, have it approved by the clerk of your county, and forward same to the governor. The governor will approve the impression of your seal, if same is correct, and forward the commission. See that the notary, county clerk or officer before whom the acknowledgment is taken does not fail to impress his seal. You must procure a seal on which must be engraved the words "Notary Public" and "State of Washington," and the date of the expiration of your commission, which will be September 30, 1914, with your name as same appears in your petition for appointment, which is as herein-

before written. Affix an impression of your seal in the place indicated, so that it may be approved by the governor.

Very respectfully,

_____,

Secretary of State.

Return Your Bond to the Governor—Do not Send to This Office.

§ 17. **Term of Office.**—The state statutes always set forth the time for which the notary shall be appointed.[1] In Washington the statute says that he shall hold his office for four years, unless sooner removed by the governor.[a] If, after his four year term has elapsed and he has not been reappointed, he would continue to act as notary, he would then be a notary de facto—that is, a notary actually exercising the powers, although not legally capable of exercising such powers. While he might be subjecting himself to a fine or penalty for such acts, his notarial acts as to the public and third persons are valid and cannot be attacked collaterally.[2] [b]

[a] The Washington statute (Laws 1890, p. 473, § 2; 1 H. C., § 330; Bal. Code, § 246; 2 Rem. & Bal. Code, § 8296) is as follows:

"Every notary public shall be appointed for the state, and shall hold his office for four years, unless sooner removed by the governor."

[b] In Bullene v. Garrison, 1 Wash. Ter., p. 589 (July, 1878), Mr. Justice Greene said: "The evidence shows that Plummer was exercising the functions of a notary, and publicly assuming to be such. His oath of office, official bond and notarial seal were all on file in the executive office of the territory. He was at least an officer de facto, and his right to the office could not be tried in this suit."

§ 18. **Oath of Office.**—In nearly every state the notary is required to take and subscribe an oath of office.[3] In Washington the statute says, that before a commission shall issue to the person appointed he shall take and subscribe the oath of office required of state officers.[a] The oath reads as follows: "I do solemnly swear [or affirm] that I will support the constitution of the United States and the constitution and laws of the state of Washington, and that I will

1 29 Cyc. Law & Proc., p. 1073.
2 See note 1; see §§ 42, 43.
3 21 Am. & Eng. Ency. of Law, 2d ed., p. 558.

faithfully discharge the duties of the office of notary public to the best of my ability."[b]

[a] The Washington statute (Laws 1890, p. 473, § 3; 1 H. C., § 331; Bal. Code, § 247; 2 Rem. & Bal. Code, § 8297) is as follows:

"Before a commission shall issue to the person appointed, he shall—

"4. Take and subscribe the oath of office required of state officers."

[b] The Washington statute setting forth the oath for state officers (Laws 1909, p. 70, § 1; 2 Rem. & Bal. Code, § 8987) is as follows:

"The governor, lieutenant-governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands and insurance commissioner of the state of Washington, shall, before entering upon the duties of their respective offices, take and subscribe an oath or affirmation in substance as follows: I do solemnly swear [or affirm] that I will support the constitution of the United States and the constitution and laws of the state of Washington, and that I will faithfully discharge the duties of the office of [name of office] to the best of my ability. . . . ."

§ 19. The Notary's Bond.—By statute in nearly all of the states, the notary is required, before assuming the duties of office, to give a bond for the faithful performance of the duties of his office.[1] In Washington he must execute a bond, payable to the state of Washington,[2] in the sum of one thousand dollars, with sureties to be approved by the county clerk of the county in which the applicant resides, conditioned for the faithful discharge of the duties of his office.[3] [a] The bond once approved and filed can be canceled only when the office is vacated.[4]

1 21 Am. & Eng. Ency. of Law, 2d ed., p. 557.

2 Where the statute provided that the notary's bond should be made payable to "the state of California," a bond made payable to "the people of the state of California" was held good: Tevis v. Randall, 6 Cal. 632, 65 Am. Dec. 547. A bond without a seal is held not to be a notary's bond within the meaning of the statute: Van de Casteele v. Cornwall, 5 Cal. 419.

3 Under a statute which prescribed no condition for the notarial bond, but declared that a notary should be liable on his bond for any misconduct or neglect of duty, it was held that the only condition that should be inserted in such bond was the faithful performance of duty: Tevis v. Randall, 6 Cal. 632, 65 Am. Dec. 547.

4 Rochereau v. Jones, 29 La. Ann. 82.

[a] The Washington statute (Laws 1890, p. 473, § 3; 1 H. C., § 331; Bal. Code, § 247; 2 Rem. & Bal. Code, § 8297) is as follows:

"Before a commission shall issue to the person appointed, he shall—1. Execute a bond payable to the state of Washington in the sum of one thousand dollars with sureties to be approved by the county clerk of the county in which the applicant resides conditioned for the faithful discharge of the duties of his office."

The form of bond used in this connection is the following:

FORM II

OFFICIAL BOND.

FROM OFFICE OF

SECRETARY OF STATE.

Know All Men by These Presents:

That we, John Doe, of Seattle, King county, state of Washington, as principal, and John Stiles and Frank Smith, of the same county and state, as sureties, are held and firmly bound unto the state of Washington in the full penal sum of one thousand dollars, lawful money of the United States, for the payment of which well and truly to be made, we, and each of us bind ourselves, our, and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 1st day of December, A. D. 1910.

The condition of the above obligation is such that—

Whereas, the above-bounden principal has been appointed by the governor of the state of Washington a notary public, in and for the state of Washington, for the term ending September 30, 1914, under and by virtue of an act of the legislature of the state of Washington, approved December 21, 1889.

Now, Therefore, if the said principal shall faithfully discharge the duties of his said office according to law and shall faithfully discharge the duties of his said office according to any laws which may be enacted subsequent to the execution hereof, then this obligation shall be void; otherwise to be and remain in full force and effect.

JOHN DOE. [Seal]
JOHN STILES. [Seal]
FRANK SMITH. [Seal]

In Presence of
HENRY JONES.
WILLIAM JAMES.
(Two witnesses required)

State of Washington,
County of King,—ss.

John Stiles, being first duly sworn on oath, deposes and says: That he is one of the sureties on the foregoing obligation; that he is a resident of said county and state, and is, and was at the time of the execution of the foregoing obligation, a freeholder within the said state of Washington; that he is worth the sum of two thousand dollars over and above all his debts and liabilities, in separate property, situated within the said state of Washington, which is not exempt from sale on execution.

JOHN STILES.

Subscribed and sworn to before me this 1st day of December, A. D. 1910.

[Seal of Daniel Noe] DANIEL NOE,
Notary Public in and for the State of Washington,
Residing at Seattle.

State of Washington,
County of King,—ss.

Frank Smith, being first duly sworn on oath, deposes and says: That he is one of the sureties on the foregoing obligation; that he is a resident of said county and state, and is, and was at the time of the execution of the foregoing obligation, a freeholder within the said state of Washington; that he is worth the sum of two thousand dollars over and above all his debts and liabilities, in separate property, situated within the said State of Washington, which is not exempt from sale on execution.

FRANK SMITH.

Subscribed and sworn to before me this 1st day of December, A. D. 1910.

[Seal of Daniel Noe] DANIEL NOE,
Notary Public in and for the State of Washington,
Residing at Seattle.

State of Washington,
County of King,—ss.

Be it remembered, that on this 1st day of December, A. D. 1910, before me, the undersigned, a notary public in and for the state of Washington, personally appeared John Doe, John Stiles and Frank Smith, all personally known to me to be the persons described in, and who executed the foregoing obligation, and they each acknowledged to me that they signed the same freely and voluntarily for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

[Seal of Daniel Noe] DANIEL NOE,
Notary Public in and for the State of Washington,
Residing at Seattle.

Bond approved ————, A. D. 19——

————,
County Clerk.

(County Clerk's seal here)

———— County,
Washington.

(To the county clerk: See that all blanks in this bond are filled before approving.)

State of Washington,
County of King,—ss.

I, John Doe, do solemnly swear that I will support the constitution of the United States and the constitution and laws of the state of Washington, and that I will faithfully and impartially discharge the duties of notary public. So help me God.

JOHN DOE.

Subscribed and sworn to before me this 1st day of December, A. D. 1910.

[Seal of Daniel Noe] DANIEL NOE,
Notary Public in and for the State of Washington,
Residing at Seattle.

Seal approved.

(Place impression of seal here for approval by the Governor.)

————,
————,
Governor.

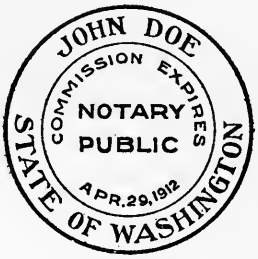
If the applicant desires, he may have a surety company go on his bond in place of two freeholders.

§ 20. The Fee to the State.—In most of the states the applicant for the office of notary is required by law to pay to some officer of the state a fee for his commission. In Washington he must pay into the state treasury the sum of ten dollars, whereupon he gets the treasurer's receipt therefor, which is a very necessary paper to file with his bond, oath of office and an impression of his seal.[a]

[a] The Washington statute (Laws 1890, p. 473, § 3; 1 H. C., § 331; Bal. Code, § 247; 2 Rem. & Bal. Code, § 8297) is as follows:

"Before a commission shall issue to the person appointed, he shall— 2. Pay into the state treasury the sum of ten dollars for special state library fund, taking the treasurer's receipt therefor."

§ 21. **Seal: Notary must Procure.**—The requirement that a notary must have a seal is a very old one. Although we find that a seal was not necessary under the civil law,[1] under the common law it was.[2] Most of the states now have statutes setting forth the requisites of the notarial seal. In Washington the seal must be engraved with the words "Notary Public," and "State of Washington," the notary's surname in full and at least the initials of his Christian name, together with the date of the expiration of his commission. Here is a good form for a seal, both as to its size and also as to the arrangement of the lettering:



The seal must be one that the governor will approve of, and a clear impression must be filed in the office of the secretary of state before the notary performs any official acts.[a]

By section 1778 of the Revised Statutes of the United States [b] the notary must attach an impression of his seal to all oaths, acknowledgments and affidavits.

[a] The Washington statute (Laws 1890, p. 473, § 3; 1 H. C., § 331; Bal. Code, § 247; 2 Rem. & Bal. Code, § 8297) is as follows:

"Before a commission shall issue to the person appointed, he shall,— 3. Procure a seal, on which shall be engraved the words 'Notary Public' and 'State of Washington,' and date of expiration of his commission,

1 Orr v. Lacy, 4 McLean (U. S.), 243, Fed. Cas. No. 10,589; Flemming v. Richardson, 13 La. Ann. 414; Rochester Bank v. Gray, 2 Hill (N. Y.), 227.

2 Orr v. Lacy, 4 McLean (U. S.), 243; Fed. Cas. No. 10,589; Opinion of Justices, 150 Mass. 586, 23 N. E. 850, 6 L. R. A. 842.

with surname in full, and at least the initials of his Christian name; 5. And before performing any official acts, shall file in the office of the secretary of state a clear impression of his official seal, which seal shall be approved by the governor."

[b] See page 73.

§ 22. Seal: Sufficiency: How Determined.—There are so many different kinds of seals—for example, an impression made in the paper; a piece of paper pasted on; a scroll made with a pen or pencil  ; a piece of ribbon pasted on; a printed square 

; the printed or written letters L. S.;[1] an impression made on wax or other adhesive substance; the word "SEAL"—that the question naturally arises, How are the requisites of the notarial seal to be determined? Then, too, what one state demands to be engraved on the notary's seal may be very different from that required by another state. For example, Washington demands that the date of the expiration of the commission show in the impression, while that is not required in many states. The question is answered by saying that the requisites of the notarial seal are to be determined by the laws of the state from which the notary derives his authority.[2] In Washington the statute on the subject of what must be engraved on the seal is mandatory, and must be followed in every detail.[3] Where a notarial seal is required, one which is not notarial is ineffective. An interesting case of mistake showing the importance of the seal itself and that the mere intention to use the notary's seal was insufficient is that of McKellar v. Peck, 39 Tex. 381, where, under a statute de-

1 "L. S." stand for the Latin words, locus sigilli, meaning the place of the seal: 2 Bouv. Law Dict. (Rawle's Rev.), p. 274.

2 21 Am. & Eng. Ency. of Law, 2d ed., p. 559; In re Phillips, 19 Fed. Cas. No. 11,098, 14 N. B. R. 219; Orr v. Lacy, 4 McLean (U. S.), 243, Fed. Cas. No. 10,589; Crowley v. Barry, 4 Gill (Md.), 194.

3 21 Am. & Eng. Ency. of Law, 2d ed., p. 559; Laws 1890, p. 473, § 3; 1 H. C., § 331; Bal. Code, § 247; 2 Rem. & Bal. Code, § 8297.

claring that no official act should be valid without the notary's seal of office, it was held that an acknowledgment to which the notary inadvertently affixed the seal of the county court was invalid.

§ 23. **Notary's Commission.**—After having executed his bond in the sum of one thousand dollars, paid the state treasurer ten dollars, procured a seal acceptable to the governor, taken and subscribed the oath of office, and filed the said bond, treasurer's receipt, impression of his seal and oath of office with the secretary of state, the said secretary sends the applicant his commission.[a] He is then a duly qualified notary public and authorized to perform all acts which he may perform according to the laws of Washington, the laws of the different states of the United States, or the laws of any foreign country. His commission reads as follows:

"THE STATE OF WASHINGTON.

————, Governor.

"To All to Whom These Presents Shall Come, Greeting:

"Know ye, That John Doe, having been appointed a notary public for the state of Washington, and having duly qualified according to law: Now, therefore, I do authorize and empower him to execute and fulfill the duties of that office according to law, with all the powers, privileges and emoluments thereunto of right appertaining unto him, for the term of four years ending the twenty-ninth day of April, A. D. 1912, unless his appointment be sooner revoked by the governor of the state of Washington. In testimony whereof I have hereunto set my hand and caused the seal of said state to be affixed at Olympia, this 7th day of May, A. D., one thousand nine hundred and eight."

It is signed by the governor and secretary of state and the great seal of the state is attached.

In 1899 a question seems to have arisen as to whose legal duty it is to do or have done the clerical work involved in the preparation of a commission. The governor, John R. Rogers, attempted by mandamus proceedings to compel the

secretary of state, Will D. Jenkins, to fill out and present to the governor, for his signature, a commission to a person named in the application, who was entitled to be commissioned a notary public under title 4, chapter 4, of Ballinger's Code. The supreme court refused to issue a writ of mandamus. The court said: "As the only authority to issue commissions is vested in the governor, and as there is no provision, either in the constitution or statutes, requiring the particular work here in question to be done by the secretary, and as the writ of mandate only issues to compel the performance of some duty specially enjoined by law, it follows that the application in the present instance must be denied."[3]

[a] "Commissions, How Issued.—All commissions shall issue in the name of the state, shall be signed by the governor, sealed with the seal of the state, and attested by the secretary of state": Wash. Const., art. 3, § 15.

For other Washington statutes, see notes [a] and [b] under four preceding sections.

§ 24. Jurisdiction.—The question as to where a notary can take an affidavit or acknowledgment or administer an oath is a very important one. In many states, while appointed by the governor he can act only within the confines of his own county; in others he is appointed for the state.[1] From 1854 to 1857, Washington notaries were county officers; from 1857 to 1862 they were officers of the judicial district to which they belonged; from 1862 to 1875 they were state officers; from 1875 to 1883 they were county officers;[2] since 1883 they may exercise their functions anywhere in the state of Washington, but not beyond the limits

3 The State of Washington on the Relation of John R. Rogers, Governor, v. Will D. Jenkins, Secretary of State, 21 Wash. 364, 58 Pac. 217.

1 21 Am. & Eng. Ency. of Law, 2d ed., p. 558; 29 Cyc. Law & Proc., p. 1090.

2 Laws 1854, p. 444; Laws 1857, p. 30; Laws 1862, p. 52; Laws 1875, p. 118; Laws 1883, p. 87; Laws 1890, p. 473.

of the state.[3] The statute in Washington says "every notary public shall be appointed for the state."[a]

[a] The Washington statute (Laws 1890, p. 473, § 2; 1 H. C., § 330; Bal. Code, § 246; 2 Rem. & Bal. Code, § 8296) is as follows:

"Every notary shall be appointed for the state and shall hold his office for four years, unless sooner removed by the governor."

[3] Harris v. Burton, 4 Harr. (Del.) 66.

CHAPTER IV.

THE NOTARY PUBLIC: FUNCTIONS AND POWERS.

§ 25. Functions and Powers: Plan.
§ 26. Under International Law.
§ 27. Under the Law-merchant.
§ 28. Under Federal Statutes.
§ 29. Under the Laws of Other States.
§ 30. Under the Laws of Washington.

§ 25. Functions and Powers: Plan.—The powers which a notary of this state may exercise will be considered under five heads: First, his powers under international law; secondly, his powers under the law-merchant; thirdly, his powers as set forth in the statutes of the United States; fourthly, his powers under the laws of other states; and, fifthly, his powers as they are specified by the laws of Washington.

§ 26. Functions and Powers: Under International Law.—The powers of a notary public of the state of Washington under international law may be said to be the drawing up of any affidavit, the taking of any acknowledgment, the drawing up of any marine protest, the taking of depositions or the administering an oath or affirmation to a subject of a foreign country or to a subject of this country, which said instrument is intended to be put in evidence in the courts of or used in any manner in some foreign nation. If the document so to be used is one other than a protest of a bill of exchange, the signature of the notary should be authenticated, first, by the clerk of the county in which he resides or by the secretary of state,[1] [a] [b] and, later, by the consul, minister or representative of the foreign country to which it is to be sent. In Merchants' Express Co. v. Morton, 15 Grant Ch. 274, it was held "that by statute an affidavit sworn in the United States before a notary public and having the signature and official seal of the notary as the offi-

[1] Bouv. Law Dict. (Rawle's Rev.), tit. "Notary Public"; 29 Cyc. Law & Proc., p. 1078.

cial administering the oath was receivable without proof aliunde in the courts of Upper Canada."[2] It will be noted that in this case the affidavit without any authentication of the notary's powers was received by reason of a statute. It is always better form and safer practice to attach the county clerk's certificate and also the certificate of a consul. For example, in Re Earle Trust, 4 Kay & J. 300, 70 Eng. Reprint, 126, it was held that the official seal of a notary public of a country not under the dominion of the British sovereign was one of which the court could not take judicial notice; that an affidavit could not be admitted in evidence by virtue of such seal unverified.[3] A complete affidavit ready to be mailed to a party in England is here given:

[a] The Washington statute giving a county clerk the power to issue such certificate of authentication (Laws 1890, p. 475, § 9; 1 H. C., § 337; Bal. Code, § 253; 2 Rem. & Bal. Code, § 8303) is as follows:

"After the delivery of a commission to a notary public, appointed and qualified as heretofore provided, the secretary of state shall make a certificate of such appointment, with the date of said commission, and file the same in the office of the county clerk of the county where such notary resides, who shall file and preserve the same, and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force."

[b] The Washington statute as to the issue of certificates of the official character of a notary (Laws 1890, p. 476, § 10; 1 H. C., § 338; Bal. Code, § 254; 2 Rem. & Bal. Code, § 8304) is as follows:

"The county clerk of the county in which such notary resides, or the secretary of state, may grant certificates of official character of notaries public. The certificate of the clerk shall be under his hand and official seal, and that of the secretary of state under the seal of the state. The fee for such certificates shall be one dollar, and shall be paid by county clerks into the treasury of their respective counties, and by the secretary of state into the state treasury."

[2] 29 Cyc. Law & Proc., p. 1078.

[3] In the following English cases it was held that an affidavit taken before a notary, whose official character was duly authenticated by certificate of the British consul of New York under the official seal of the latter, might be filed with the clerk of the record of writs: In re Davis, L. R. 8 Eq. 98; Haggitt v. Iniff, 5 De Gex, M. & G. 910, 43 Eng. Reprint, 1124.

In Chicot v. Lequesne, Dick. 150, 21 Eng. Reprint, 226, an

FORM III.

United States of America.

State of Washington,
County of King,—ss.

This is to certify that on the tenth day of June, in the year 1905, A. D., I, John Stiles, now of Seattle, King County, Washington, was a resident of London, England, and that at that time William Smith kept a grocery store on the corner of ———— street and ———— street; that I was well acquainted with the said William Smith, being a regular customer of his; that I saw and talked with the said William Smith daily and was always led to believe that the said William Smith was the owner of the said store; that the matter of the amount of money it took to run a grocery store was the subject of our conversation at various times previous to the said tenth day of June, 1905, and at all such times and on all such occasions the said William Smith led me to believe that he was the sole owner of the store.

JOHN STILES. 

Sworn to (or affirmed) and subscribed before me this 10th day of September, 1910, at Seattle, King County, Washington, United States of America, and I hereby certify that I am a notary public of the state of Washington, having been

English case, in a decree for an accounting it was ordered that an affidavit by a person in Amsterdam, there made, should be made before a notary with the assistance of a magistrate, if necessary under the laws of Holland: Kinnaird v. Saltoun, 1 Madd. 227, 56 Eng. Reprint, 84; see Cole v. Sherard, 11 Exch. 482; Hutcheson v. Mannington, 6 Ves. Jr. 823, 31 Eng. Reprint, 1327. In Laurendean v. De Montlord, 7 Quebec Pr. 37, it was held that an affidavit taken before a notary public in a foreign country, and not in England, could not be used in a court in the province of Quebec, as the provision in relation to affidavits taken before notaries referred only to notaries in England.

Either the county clerk's certificate or a certificate from the secretary of state may be attached; it is not necessary to have both.

duly appointed, commissioned and sworn; that I am authorized to take affidavits; that the said affidavit was made before me within my jurisdiction; that I have affixed my official seal hereto; and that my commission does not expire until January 10, 1913.[4]

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington, Residing at Seattle.

State of Washington,
County of King,—ss. No. ——[5]

I, ———, county clerk of King county and ex-officio clerk of the superior court of the state of Washington, for the county of King, the same being a court of record, do hereby certify that John Doe, the person subscribing the annexed affidavit and before whom the same was taken, was at the date thereof, and is now, a notary public in and for the said state, duly appointed and commissioned; that by virtue of his said office, he is authorized to take acknowledgments of deeds and other instruments of writing under seal and to administer oaths.

I do further certify that I am acquainted with the handwriting of the said John Doe and verily believe the name subscribed to the said annexed instrument is his proper and genuine signature.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Seattle, this 10th day of September, A. D. 1910.

[County Clerk's Seal] ————————,
Clerk.
By ————————,
Deputy.

4 The explanation of this extended jurat will be found under § 65.

5 The county clerk's certificate is obtained by taking the instrument to the county clerk's office when he or his deputy will paste on a certificate. The county clerk's fee for the certificate is one dollar. The fee charged by the secretary of state for the same certificate is two dollars under the Law of 1907, page 94.

BRITISH VICE-CONSULATE.[6]

Seattle, Washington, U. S. A.

To All Whom These Presents shall Come:

I, ———, British Pro-consul at Seattle, in the state of Washington, United States of America, do hereby certify that I have reason to believe that the signature subscribed and seal affixed to the certificate hereunto annexed, are the true signature and seal of John Doe who was, on the day and date of said certificate, a notary public, duly commissioned and practicing in the city of Seattle and county of King, to whose acts full faith and credit can be given.

In testimony whereof, I have hereunto set my hand and seal of office, in Seattle, the 12th day of December, A. D. one thousand nine hundred and ten.

———————,
British Pro-consul.

The following is a power of attorney drawn here to be used in England:

FORM IV.

United States of America.

State of Washington,
County of King,—ss.

Know all men by these presents that I, John Stiles of Seattle, Washington, do hereby appoint Richard Roe of London, England, my attorney, for me and in my name, to sign, seal, acknowledge, and deliver as my act and deed a certain deed, prepared for execution, and bearing date on or about the 31st day of August, 1909, intended to convey to William Stiles of London, England, a certain lot of land, situate, lying and being: (the description of the London

[6] After getting the county clerk's certificate or a certificate of the secretary of state, the instrument should be taken to the office of the consul or other representative of the country to which it is to be sent. The consul will attach his certificate, for which he will charge a fee.

property should go in here) for the consideration of forty thousand dollars, and for me to receive said purchase money.

(Signed) JOHN STILES. 

Witnesses:
FRANK JONES, 27 W. 81st Street, Seattle, Wash.
JAMES SMITH, 42 1st Ave., Seattle, Wash.

On this 14th day of September, A. D. 1910, at 10 A. M., Pacific time, before me, John Doe, a notary public in and for the state of Washington, personally appeared John Stiles, known to me to be the person described in and who executed the foregoing instrument, and who thereupon acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned. And I hereby certify that I am a notary public of the state of Washington, having been duly appointed, commissioned and sworn; that a notary public of Washington is authorized to take acknowledgments; that the said acknowledgment was taken by me within my jurisdiction; that I have affixed my official seal hereto and that my commission does not expire until January 1, 1913.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington, Residing in Seattle.

No. ——[6]

United States of America.
State of Washington.
Office of the
Secretary of State.

I, ———, Secretary of State of the state of Washington, and custodian of the seal of said state, do hereby cer-

[6] After getting the county clerk's certificate or a certificate of the secretary of state, the instrument should be taken to the office of the consul or other representative of the country to which it is to be sent. The consul will attach his certificate, for which he will charge a fee.

tify that John Doe was on the 1st day of January, 1909, appointed a notary public in and for the state of Washington, for the term of four years, and that he was commissioned on the 31st day of January, 1909, for four years from date of appointment.

I further certify that the said John Doe is authorized by the laws of the state of Washington to administer oaths and take acknowledgments of deeds and other instruments of writing.

Witness my hand and the seal of the state at Olympia, this, the 15th day of September, 1910.

[Seal of the State] ————————,
Secretary of State.

By ————————,
Chief Clerk.

BRITISH VICE-CONSULATE.

Seattle, Washington, U. S. A.

To All Whom These Presents shall Come:

I, ———, British Pro-consul at Seattle, in the state of Washington, United States of America, do hereby certify that I have reason to believe that the signature subscribed and seal affixed to the certificate hereunto annexed, are the true signature and seal of ———, who was, on the day and date of said certificate, secretary of state of the state of Washington, to whose acts full faith and credit can be given.

In testimony whereof, I have hereunto set my hand and seal of office, in Seattle, the 18th day of September, A. D. one thousand nine hundred and ten.

————————,
British Pro-consul.

FORM V.

MARINE NOTE OF PROTEST BY MASTER.

The United States of America.

State of Washington,
County of King,—ss.

Be it known, that on this 10th day of December, 1910, before me, John Doe, a notary public for the state of Washington residing in the county of King, personally appeared Richard Roe, master of the "City of Panama," or vessel called the "City of Panama," of the burthen of one hundred tons, or thereabouts, who declares that he sailed last in the vessel under his command, laden with a cargo of merchandise, on the 30th day of November, 1910, from the port of San Francisco, and bound for the port of Nome, in the territory of Alaska. Thus the said master notes this, his protest, before me, reserving to himself the right to extend the same at any time and place convenient.

RICHARD ROE.

Subscribed and sworn to before me, this 10th day of December, 1910.

[Notary's Seal] JOHN DOE,
Notary Public of the State of Washington, Residing at Seattle.

FORM VI.

MARINE PROTEST.

United States of America.

State of Washington,
County of King,—ss.

To All People to Whom These Presents shall Come or may Concern:

I, John Doe, a notary public, in and for the county of King, in the state aforesaid, by letters patent, under the great seal of the said state, duly commissioned and sworn, dwelling in the city of Seattle, send greeting:

Know ye, that on the 10th day of December, in the year of our Lord one thousand nine hundred and ten, before

me, the said notary public, appeared Richard Roe, master of the vessel called "City of Panama," of the city of Los Angeles, burthen one hundred tons, and noted in due form of law with me, the said notary, his protest, for the use and purposes hereinafter mentioned; and now at this day, to wit, the day of the date hereof, before me, the said notary, at the city of Seattle aforesaid, again comes the said Richard Roe, master, and requires me to extend his protest, and together with the said master, also comes John Stiles, mate, and Henry Jones, Frank Smith, seamen, belonging to the aforesaid vessel, all of whom, being by me duly sworn, voluntarily, freely and solemnly do declare and depose as follows, that is to say: That on the 30th day of November, 1910, at 10 o'clock P. M., the said vessel left San Francisco, in the state of California, bound thence to the port of Nome, in the territory of Alaska, United States of America, laden with merchandise; that the said vessel was then stout, staunch and strong; had her cargo well and sufficiently stowed and secured; was well masted, manned, tackled, victualed, appareled and appointed, and was in every respect fit for sea, and the voyage she was about to undertake:

And the said master further says, that as all the damage and injury which already has or may hereafter appear to have happened or occurred to the said vessel or her said cargo has been occasioned solely by the circumstances hereinbefore stated, and cannot, nor ought to be attributed to any insufficiency of the said vessel, or default of him, this deponent, his officers or crew. He now requires of me, the said notary, to make this protest and this public act thereof, that the same may serve and be of full force and value, as of right shall appertain. And thereupon the said master doth protest, and I, the said notary, at his special instance and request, do by these presents publicly and solemnly protest against winds, weather and seas, and against all and every accident, matter and thing, had and met with as aforesaid, whereby or by means whereof the said vessel, or her cargo, already has or hereafter shall appear to have suffered or sustained damage or injury, for all losses, costs, charges, expenses, damages and injury which the said master, or the

owner or owners of the said vessel, or the owners, freighters, or shippers of her said cargo, or any other person or persons interested or concerned in either, already have or may hereafter pay, sustain, incur, or be put into, by or on account of the premises, or for which the insurer or insurers of the said vessel, or her cargo, is or are respectively liable to pay or make contribution or average, according to custom, or their respective contracts or obligations; and that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall on him, the said master, his officers or crew.

This done and protested, in Seattle, this 12th day of December, 1910.

RICHARD ROE,
Master.
JOHN STILES,
Mate.
HENRY JONES,
FRANK SMITH,
Seamen.

In witness whereof, as well the said appearers, as I, the said notary, have hereunto subscribed these presents, and I, the said notary, hereunto attached my notarial seal, the day and year last aforesaid.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington, Residing at Seattle.

State of Washington,
County of King,—ss.

I, John Doe, a notary public in and for said county, in the state aforesaid, do hereby certify that the foregoing contains a true and correct copy of the original protest entered on record before me, by Richard Roe, master of the "City of Panama," said protest having been noted on the 10th day of December, 1910, and extended before me on the 12th day of December, 1910.

In witness whereof, I have hereunto set my hand and notarial seal, this 12th day of December, 1910.

[Notary's Seal] JOHN DOE,

Notary Public in and for the State of Washington, Residing at Seattle.

In preparing depositions for use in a foreign country the notary would follow the instructions in his commission issued to him by some court in this country. For forms see the subject "Depositions" and "Letters Rogatory."

The subject of protests of negotiable instruments is the same over all the world. A notary would protest an English bill of exchange or a German promissory note in the same manner he would a note from Texas, New York or any other state. For forms see the subject "Protesting Negotiable Instruments."

§ 27. Functions and Powers: Under the Law-merchant. The "law-merchant" is the general body of commercial usages in matters relative to commerce.[1] Blackstone calls it the custom of merchants, and ranks it under the head of the particular customs of England, which go to make up the great body of the common law.[2] Since, however, its character is not local, nor its obligation confined to a particular district, it cannot with propriety be considered as a custom in the technical sense;[3] it is rather a system of law which does not rest exclusively on the positive institutions and local customs of any particular country, but consists of certain principles of equity and usages of trade which general convenience and a common sense of justice have established, to regulate the dealings of merchants and mariners in all the commercial countries of the civilized world.[4] These usages constitute a part of the general law of any land; their application is not confined to merchants, but extends to all persons concerned in any mercantile transaction.[5]

1 Bouv. Law Dict. (Rawle's Rev.), tit. "Law-merchant."

2 1 Black Com. 75.

3 1 Steph. Com. 54.

4 3 Kent's Com. 2.

5 Bouv. Law. Dict. (Rawle's Rev.), tit. "Law-merchant"; Pardessus, Droit Commercial; Beawes, Lex. Mercatoria Rediviva; Caines, Lex Mercatoria Americana; Pian-

Independently of statute a notary public may present foreign bills of exchange and protest them;[6] but a protest of commercial paper other than a foreign bill of exchange is not a notarial act at common law.[7]

The question of the power of a notary under the "law-merchant" is not an important one in the state of Washington by reason of the Law of 1889, page 474, section 4, which says that "every duly qualified notary public is authorized, in any county in this state, to transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and laws merchant." [a]

[a] The Washington statute conferring on a notary the powers which he would otherwise have in part under the law-merchant (Laws 1889, p. 474, § 4; 1 H. C., § 332; Bal. Code, § 248; 2 Rem. & Bal. Code, § 8298) is as follows:

"Every duly qualified notary public is authorized in any county in this state,—

"1. To transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and laws merchant."

§ 28. Functions and Powers: Under Federal Statutes.— Congress never has passed an act conferring upon the

tandia, Della Guirisprudenze Maritima Commerciale, Antica e Moderna; Boulay-Paty, Droit Comm.

[6] Opinion of Justices, 150 Mass. 586, 23 N. E. 850, 6 L. R. A. 842; Nicholls v. Webb, 8 Wheat. (U. S.) 326, 5 L. ed. 628.

[7] 29 Cyc. Law & Proc., p. 1081; 4 Am. & Eng. Ency. of Law, 2d ed., p. 79; Clerk v. Martin, 1 Salk. 129; Buller v. Crips, 6 Mod. 29; Norton v. Rose, 2 Wash. (Va.) 233; Davis v. Miller, 14 Gratt. (Va.) 1; Statute 3 & 4 Anne, c. 9.

"Bills of exchange originated with the revival of commerce after the Dark Ages, in Italy, whence their use spread into Western Europe. Their negotiability is due to the law-merchant. Promissory notes are said to be of great antiquity and to have been in use among the Romans; their negotiability, however, is due to the Statute 3 & 4 Anne, chapter 9, which declares that promissory notes shall have the same effect and be negotiable in like manner as inland bills of exchange according to the customs of merchants": 4 Am. & Eng. Ency. of Law, 2d ed., p. 79; Daniel on Negotiable Instruments, § 5.

notaries of the different states and territories a general power to administer oaths, and to take affidavits, acknowledgments, and depositions; therefore their authority in this regard is limited to those cases in which the power has been expressly conferred:[1]

The following are the laws now in force on the subject:

Definitions.—"And a requirement of an 'oath' shall be deemed complied with by making affirmation in judicial form": U. S. Rev. Stats., § 1, July, 1868, c. 186, § 104.

Election Cases.—A notary public may take testimony after issuing subpoena in contested election cases in his congressional district: U. S. Rev. Stats., § 110, Jan. 23, 1869, c. 15. See §§ 105–130.

Government Employees.—A notary public who is an officer, clerk or employee of any executive department of the United States shall not charge any fee for administering oaths of office to employees of such department required to be taken on appointment or promotion therein: U. S. Rev. Stats., § 170, Aug. 29, 1890, c. 820.

Postoffice Department.—A justice of the peace and therefore a notary public may administer oaths in relation to the examination and settlement of the accounts committed to the charge of the auditor of the postoffice department: U. S. Rev. Stats., § 298, June 8, 1872, c. 335, § 24.

Postal Service.—A notary public may administer the oath of office to any person employed in the postal service. The oath is as follows: "I, A B, do solemnly swear (or affirm, as the case may be) that I will faithfully perform all the duties required of me and abstain from everything forbidden by the laws in relation to the establishment of postoffices and post-roads within the United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control; and I also further swear (or affirm) that I will support

[1] United States v. Curtis, 107 U. S. 671, 2 Sup. Ct. Rep. 507, 27 L. ed. 534; United States v. Hall, 131 U. S. 50, 9 Sup. Ct. Rep. 663, 33 L. ed. 97; United States v. Manion, 44 Fed. 800.

the constitution of the United States; so help me God": U. S. Rev. Stats., § 391, March 5, 1874, c. 46.

Circuit Court Commissioners.—The office of circuit court commissioner was abolished by a law which went into effect June 30, 1897. By the same law United States commissioners were to be appointed and "all acts and parts of acts applicable to commissioners of the circuit courts, except as to appointment and fees, shall be applicable to United States commissioners appointed under this act." By section 863, below, notaries may do what commissioners of the United States circuit courts may do: U. S. Rev. Stats., § 627, May 28, 1896, c. 252, § 19.

Oath to Judges.—A notary public may administer the oath of office to the justices of the supreme court, the circuit judges, and the district judges: U. S. Rev. Stats., § 712, Sept. 24, 1789, c. 20, § 8.

Marshals and Deputy Marshals.—A notary public may administer the oath or affirmation of office to any marshal or deputy marshal. The following is the form: "I, A B, do solemnly swear (or affirm) that I will faithfully execute all lawful precepts directed to the marshal of the district of ————, under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal (or marshal's deputy, as the case may be) of the district of ————, during my continuance in said office. So help me God." The words "so help me God" shall be omitted in all cases where an affirmation is admitted instead of an oath: U. S. Rev. Stats., § 782, Sept. 16, 1850, c. 52, §§ 1, 2.

Oath to Court Clerks.—A notary public may administer the oath of office to any clerk or deputy clerk of a circuit or district court: U. S. Rev. Stats., § 794, June 30, 1870, c. 180, § 7.

Depositions De Bene Esse.—"The testimony of any witness may be taken in any civil cause depending in a district or circuit court by deposition de bene esse, when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which

the case is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is ancient and infirm. The deposition may be taken before any . . . . notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the cause. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition, to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition; and in all cases in rem, the person having the agency or possession of the property at the time of the seizure shall be deemed the adverse party, until a claim shall have been put in; and whenever, by reason of the absence from the district and want of an attorney of record or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such depositions as there shall be urgent necessity for taking, upon such notice as any judge authorized to hold courts in such circuit or district shall think reasonable and direct. Any person may be compelled to appear and depose as provided by this section, in the same manner as witnesses may be compelled to appear and testify in court": U. S. Rev. Stats., § 863, May 9, 1872, c. 146.

Mode of Taking Depositions De Bene Esse.—"Every person deposing as provided in the preceding section shall be cautioned and sworn to testify the whole truth, and carefully examined. His testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under his personal supervision, or by the deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing, be subscribed by the deponent": U. S. Rev. Stats., § 865, Sept. 24, 1789, c. 20, § 30.

Notaries may Take Depositions, Acknowledgments and Affidavits.—"Be it enacted, etc., That notaries public of the several states, territories, and the District of Columbia be, and they are hereby, authorized to take depositions, and do all other acts in relation to taking testimony to be used in the courts of the United States, take acknowledgments and affidavits, in the same manner and with the same effect as com-

missioners of the United States circuit court may now lawfully take or do": U. S. Rev. Stats., § 863, Aug. 15, 1876, c. 304.

Depositions may be Taken in Mode Prescribed by State Law. "Be it enacted, That in addition to the mode of taking the depositions of witnesses in causes pending at law or in equity in the district or circuit courts of the United States, it shall be lawful to take the depositions or testimony of witnesses in the mode prescribed by the laws of the state in which the courts are held": U. S. Rev. Stats., § 866, March 9, 1892, c. 14.

Depositions in Perpetuam Memoriam Rei.—"Any circuit court, upon application to it as a court of equity, may according to the usages of chancery, direct depositions to be taken in perpetuam rei memoriam, if they relate to any matters that may be cognizable in any court of the United States." This would be done through a commission; a notary would but carry out the commission as issued to him by the court: U. S. Rev. Stats., §§ 866–869.

Letters Rogatory.—". . . . When letters rogatory are addressed from any court of a foreign country to any circuit court of the United States, a commissioner of such circuit court designated by said court to make the examination of the witnesses mentioned in said letters, shall have power to compel the witnesses to appear and depose in the same manner as witnesses may be compelled to appear and testify in courts": U. S. Rev. Stats., § 875, Feb. 27, 1877, c. 69. See, also, U. S. Rev. Stats., §§ 4071–4074.

Practice in the United States Courts.—The supreme court has the power to regulate the practice of the circuit and district courts: U. S. Rev. Stats., § 917, Aug. 23, 1842, c. 188, § 6.

Oath to Persons Elected or Appointed to Office.—A notary public may administer the oath following to any person elected or appointed to any office of honor or profit either in the civil, military, or naval service, except the President of the United States: "I, A B, do solemnly swear (or affirm) that I will support and defend the constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obliga-

tion freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God": U. S. Rev. Stats., § 1756, May 13, 1884, c. 46; § 1757, Feb. 15, 1871, c. 53; § 1758, Aug. 6, 1861, c. 64, § 2.

West Point Cadets.—A notary public may administer the special oath taken by an appointee before entering the United States Military Academy: U. S. Rev. Stats., § 1758, Aug. 6, 1861, c. 64, § 2; § 1320, June 8, 1866, c. 110, § 2.

Justices of the Peace.—"In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of the peace of any state or territory, or in the District of Columbia, they may hereafter be also taken or made by or before any notary public duly appointed in any state, district, or territory, or any of the commissioners of the circuit courts, and, when certified under the hand and official seal of such notary or commissioner, shall have the same force and effect as if taken or made by or before such justice of the peace": U. S. Rev. Stats., § 1778, July 29, 1854, c. 159, § 1.[2]

State Legislators and State Officers.—A notary public may administer the following oath to members of state legislatures and to state officers: "I, A B, do solemnly swear that I will support the constitution of the United States." The notary "administering such oath shall cause a record or certificate thereof to be made in the same manner as, by the laws of the state, he is directed to record or certify the oath of office": U. S. Rev. Stats., §§ 1836, 1837, June 1, 1879, c. 1, § 3.

Naturalization Papers.—"Sec. 10. That in case the petitioner (for naturalization papers) has not resided in the state, territory, or district for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the state, provided that

2 It will be seen from this section that the notary's seal is necessary under this act. It is safe practice for the notary to affix his seal in all cases where he is authorized to act by a federal statute.

it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Immigration and Naturalization and the United States attorney for the district in which said witnesses may reside": U. S. Rev. Stats., § 2127, June 29, 1906, c. 3592, § 10. It should be stated here that the act does not specify the officers who may take the depositions.

Land Office Depositions.—"Sec. 4. That whenever the witness resides outside the county in which the hearing (before registers and receivers of the land office) occurs any party to the proceeding may take the testimony of such witness in the county of such witness' residence in the form of depositions by giving ten days' written notice of the time and place of taking such depositions to the opposite party or parties. The depositions may be taken before any United States commissioner, notary public, judge or clerk of a court of record. Subpoenas for witnesses before the officer taking depositions may issue from the office of the register or receiver, or may be issued by the officer taking the depositions, and disobedience thereof, as defined in this act, shall also be punished; and the witness shall receive the same fees and mileage and be subject to the same penalties in all respects as in the case of violation of a subpoena to appear before the register or receiver, and subject to the same limitations. The fees of the officer taking the depositions shall be the same as those allowed in the state or territorial courts, and shall be paid by the party taking the depositions, and an itemized account of the fees shall be made by the officer taking the depositions and attached to the depositions.

"Sec. 5. That whenever the taking of any depositions taken in pursuance of the foregoing provisions of this act is concluded the opposite party may proceed at once at his own expense to take depositions in his own behalf, at the same time and place and before the same officer; Provided, That he shall, before taking of the depositions in the first instance is entered upon, give notice to the opposing party, or any agent or attorney representing him in the taking of said depositions,

of his intention to do so'': U. S. Rev. Stats., § 2246, Jan. 31, 1903, c. 344, § 4.

Land Office Affidavits, etc.—Any United States commissioner, and therefore any notary public, may take all proofs, affidavits and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber culture, desert land, and timber and stone acts. The act goes on to say: ''That in case the affidavits, proofs, and oaths hereinbefore mentioned be taken out of the county in which the land is located the applicant must show by affidavit, satisfactory to the commissioner of the general land office, that it was taken before the nearest or most accessible officer qualified to take said affidavits, proofs, and oaths in the land districts in which the lands applied for are located; but such showing by affidavit need not be made in making final proof if the proof be taken in the town or city where the newspaper is published in which the final proof notice is printed. The proof, affidavit, and oath, when so made and duly subscribed, shall have the same force and effect as if made before the register and receiver, when transmitted to them with the fees and commissions allowed and required by law. . . . . That the fees for entries and for final proofs when made before any other officer than the register and receiver shall be as follows:

''For each affidavit, twenty-five cents.

''For each deposition of claimant or witness, when not prepared by officer, twenty-five cents.

''For each deposition of claimant or witness, prepared by the officer, one dollar.

''Any officer demanding or receiving a greater sum for such service shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by a fine not exceeding one hundred dollars'': U. S. Rev. Stats., § 2294, March 4, 1904, c. 394.

Citizenship: Mineral Patents.—A notary public may administer oaths or take affidavits required for proof of citizenship of all applicants for mineral patents who reside beyond the limits of the district wherein the claim is situated: U. S. Rev. Stats., § 2321, April 26, 1882, c. 106, § 2.

Affidavit of Work on Alaska Mining Claim.—A notary public may take the affidavit of a locator or owner of a mining claim in Alaska to the effect that he has performed one hundred dollars' worth of labor or made improvements to that amount during the past year: U. S. Rev. Stats., § 2324, March 2, 1907, c. 2559.

Affidavit of Claimant to Mining Right.—A notary public may take the affidavit of an adverse claimant or his duly authorized agent to a mining right which has been previously filed on, if the affiant at the time is beyond the limits of the district wherein the claim is situated: U. S. Rev. Stats., § 2326, April 26, 1882, c. 106.

Affidavits and Testimony of Mineral Land Proofs.—A notary public may take all affidavits concerning mineral lands and all testimony and proofs may be taken before him, and when duly certified by him shall have the same force and effect as if taken before the register and receiver of the land office: U. S. Rev. Stats., § 2335, May 10, 1872, c. 152, § 13.

Oath of the Collector of Duties.—A notary public may administer the oath of office to a collector of duties. The collector administers the oath to all his subordinates: U. S. Rev. Stats., § 2617, June 26, 1848, c. 71, § 6; § 2618, February 8, 1875, c. 36, § 11.

Importer's Affidavit.—A notary public may take the affidavit to an account of an importer to be given by the said importer to the collector of the district: U. S. Rev. Stats., § 2787, March 2, 1905.

Marine Protest.—"If any vessel from any foreign port, compelled by distress of weather, or other necessity, shall put into any port of the United States, not being destined for the same, the master, together with the mate or person next in command, may, within twenty-four hours after her arrival, make protest in the usual form upon oath, before a notary public or other person duly authorized, or before the collector of the district where the vessel arrives, setting forth the cause or circumstances of such distress or necessity . . . .": U. S. Rev. Stats., § 2891, March 2, 1799, c. 22, § 60.

Claims Against Departments.—A notary public may take the oath of allegiance and to support the constitution of the United States of a person prosecuting claims, either as attorney or on his own account, before any of the departments or bureaus of the United States: U. S. Rev. Stats., § 3478, July 17, 1862, c. 205, § 1; § 3479, July 17, 1862, c. 205, § 2.

Acknowledgments to Mortgages, etc.—A notary public may take acknowledgments to bills of sale, mortgages, hypothecations, conveyances, discharges of mortgages or other encumbrances of any vessel: U. S. Rev. Stats., § 4193, March 3, 1865, c. 101, § 1.

Inspectors' Oaths.—A notary public may administer oaths to inspectors of steam vessels when they verify certificates of inspection: U. S. Rev. Stats., § 4421, June 11, 1906, c. 3071.

False Acknowledgment: Punishment.—". . . . Every person before whom any declaration, affidavit, voucher, or other paper or writing to be used in the aid of the prosecution of any claim for pension or bounty land or. payment thereof purports to have been executed who shall knowingly certify that the declarant, affiant or witness named in such declaration, affidavit, voucher, or other paper or writing personally appeared before him and was sworn thereto, or acknowledged the execution thereof, when, in fact, such declarant, affiant, or witness did not personally appear before him or was not sworn thereto, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term of not more than five years": U. S. Rev. Stats., § 4746, July 7, 1898, c. 578.

Patents: Oaths.—A notary may take the oath of an applicant for a patent: U. S. Rev. Stats., § 4892, March 3, 1903, c. 1019, § 2.

Patents: Affidavits and Depositions.—A notary public may take affidavits and depositions required in cases pending in the patent office: U. S. Rev. Stats., § 4905, July 8, 1870, c. 230, § 43.

Trademarks.—A notary public may take the affidavit of the applicant for the registration of a trademark; or of the person filing a notice in opposition to the registration of a trademark;

likewise he may take the acknowledgment to the assignment of a trademark: U. S. Rev. Stats., §§ 4937–4947, Feb. 20, 1905, c. 592, §§ 2, 6, 10.

Copyrights: Printed in United States.—A notary public may take the affidavit of a person claiming a copyright on a book that the book was printed in the United States: U. S. Rev. Stats., tit. 60, "Patents and Copyrights," c. 3, § 16, March 4, 1909, c. 320, § 16.

Bankruptcy.—"Sec. 20. Oaths, affirmations.—Oaths required by this act, except upon hearings in court, may be administered by (2) officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the state where the same are to be taken. . . . . Any person conscientiously opposed to taking an oath may, in lieu thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath."

"Sec. 1. Meaning of words and phrases.—(17) 'Oath' shall include affirmation": U. S. Rev. Stats., §§ 4972–5132, July 1, 1898, c. 541, § 20.

Bankruptcy: Depositions.—"The right to take depositions in proceedings under this act shall be determined and enjoyed according to the United States laws in force, or such as may be hereafter enacted relating to the taking of depositions, except as herein provided": U. S. Rev. Stats., §§ 4972–5132, tit. 61, "Bankruptcy," § 21b.

Reports of National Banks.—A notary public may administer the oath or affirmation required to verify the returns made by the president or cashier of a national bank in his five yearly reports of the bank's resources and liabilities to the controller of the currency. The notary administering the oath must not be an officer of the bank: U. S. Rev. Stats., § 5211, Feb. 26, 1881, c. 82.

Protest of National Bank Notes.—"Whenever any national banking association fails to redeem in lawful money of the United States any of its circulating notes, upon demand of payment duly made during the usual hours of business, at the office of such association, or at its designated place of redemption, the holder may cause the same to be protested in

one package, by a notary public, unless the president or cashier of the association whose notes are presented for payment, or the president or cashier of the association at the place at which they are redeemable offers to waive demand and notice of the protest, and, in pursuance of such offer, makes, signs, and delivers to the party making such demand an admission in writing, stating the time of the demand, the amount demanded, and the fact of the nonpayment thereof. The notary public, on making such protest, or upon receiving such admission, shall forthwith forward such admission or notice of protest to the controller of the currency, retaining a copy thereof. If, however, satisfactory proof is produced to the notary public that the payment of the notes demanded is restrained by order of any court of competent jurisdiction, he shall not protest the same. When the holder of any notes causes more than one note or package to be protested on the same day, he shall not receive pay for more than one protest": U. S. Rev. Stats., § 5226, June 3, 1864, c. 106.

Depositions for Interstate Commerce Commission.—A notary may, when ordered by the Interstate Commerce Commission, take depositions in any proceeding or investigation pending before the commission if he is not counsel or attorney to either of the parties nor interested in the event of the proceedings or investigation: U. S. Rev. Stats., tit. 56A, "Regulation of Interstate and Foreign Commerce."

Interstate Commerce: Carriers and Railroad Owners' Reports.—A notary public may administer the oaths required to verify reports of common carriers and owners of railroads engaged in interstate commerce in their annual reports to the Interstate Commerce Commission: U. S. Rev. Stats., tit. 56A, Interstate Commerce, c. 1, § 20; Amendment of Feb. 4, 1887, c. 104, § 20.

Taxes on Legacies.—A notary public may take affidavits in matters connected with taxes on legacies: U. S. Rev. Stats., c. 11A, "War Revenue," April 12, 1902, c. 500, § 8.

Agreement: Carriers and Employees: Interstate Commerce Commission.—"Sec. 6. That every agreement of arbitration under this act shall be acknowledged by the parties before a

notary public or clerk of a district or circuit court of the United States, and when so acknowledged a copy of the same shall be transmitted to the chairman of the Interstate Commerce Commission, who shall file the same in the office of the said commission": U. S. Rev. Stats., tit. 56C, "National Trade Unions," June 1, 1898, c. 370, § 6.

False Oaths: Punishment.—"Sec. 31. Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments, shall knowingly make any false acknowledgment, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person with respect to any proposal, contract, bond, undertaking, or other matter, submitted to, made with, or taken on behalf of, the United States and concerning which an oath or affirmation is required by law or regulation made in pursuance of law, or with respect to the financial standing of any principal, surety, or other party to any such proposal, contract, bond, undertaking, or other instrument, shall be fined not more than two thousand dollars or imprisoned not more than two years, or both": U. S. Rev. Stats., tit. 70, "Crimes," c. 4, March 4, 1909, c. 321, § 31.

Besides the authority given a notary by the statutes enumerated he may take affidavits if he is so authorized by a rule of the court or by a regulation of the head of a department under the case of United States v. Bailey, 9 Pet. (U. S.) 230, 9 L. ed. 113; or by the custom of a department under the case of United States v. Winchester, 2 McLean (U. S.), 135, Fed. Cas. No. 16,739.

§ 29. Functions and Powers: Under the Laws of Other States.—Having discussed the powers of a Washington notary in foreign countries, and under the law-merchant and likewise the statutory powers conferred by United States statutes, we now come to the powers which are conferred on all notaries of the state of Washington by virtue of statutes in other states. These powers will be taken up under five heads: First, the power to take acknowledgments; secondly, the power to take affidavits; thirdly, the power to take depositions; fourthly, the power to administer

oaths; fifthly, the powers in regard to negotiable instruments.

Under the first topic, the power of a notary public of Washington to take an acknowledgment to be used in some other state, we must first state that the power to take acknowledgments is not one incident to the office of notary public. Whenever a notary has that power a statute must confer it.[1] Most of the states provide that a notary of another state, when authorized by the laws of the notary's state to take acknowledgments within his jurisdiction may take acknowledgments within his jurisdiction to be used in the sister state, provided the acknowledgment is accompanied with the proper authentication.[2] Just how these acknowledgments shall be taken is always regulated by statute. Therefore, in order to send an acknowledgment in good form to Texas, so that it would pass the land in Texas, it would be necessary for the notary of Washington to obtain the form of the Texas acknowledgment, to learn its proper place on the instrument, how the official should designate himself, whether a seal is needed, what it must certify, and any and all other requirements which may be set forth in the Texas statute.[3] As a usual custom these facts would be learned through a Texas attorney. After knowing the requirements of the Texas statute the next thing is to follow them explicitly; that means in every detail. If the Texas statute should say that the grantor shall take off his hat and hold up his left hand while taking the acknowledgment, then the notary should have the grantor take off his hat and hold up his left hand. Before a notary takes an acknowledgment in Washington to pass land in Texas he should be sure that the statutes of Texas designate a notary of another state as an officer having that power.

1 21 Am. & Eng. Ency. of Law, 2d ed., p. 563; vol. 1, pp. 493, 500; Bours v. Zachariah, 11 Cal. 281, 70 Am. Dec. 779.

2 21 Am. & Eng. Ency. of Law, 2d ed., p. 564; also vol. 1, p. 501; Goree v. Wadsworth, 91 Ala. 416, 8 South. 712.

3 See note 2. The forms necessary to follow in acknowledgments and any particulars of the law may be found in "Hubbell's Legal Directory." It is always well to use the latest edition; it is published every year.

Secondly, the power of notaries to take affidavits is also of purely statutory origin, but has been conferred in most, if not all, of the states.[4] The statutes of the state in which the affidavit is to be used will set forth the fact that a notary of a foreign state may take an affidavit to be used in that state, provided the affidavit is accompanied by a certificate setting forth the fact that the person before whom the affidavit was taken is a duly authorized and commissioned notary public, and is authorized by the laws of his state to administer oaths.[5] In some states a certificate of the notary himself to the effect that he is authorized to administer oaths is sufficient.[6] In the absence of such a statute, affidavits sworn to before a nonresident notary will not be recognized.[7] The stand taken by the Washington courts can be found in Duggan v. Washington Land and Logging Company.[a]

Thirdly, the power of notaries to take depositions within the state of their appointment for use in other states is purely statutory.[8] Reference should be made to the statutes of the state to which they desire to send the depositions.[9] These statutes generally set forth that depositions taken by notaries of other states may be used where, by the laws of their own states, the power to take depositions is conferred on notaries.[10] Without this authorization a Washington notary would have no authority to take depositions for use in other states.[11]

4 21 Am. & Eng. Ency. of Law, 2d ed., p. 564; Chandler v. Hanna, 73 Ala. 390; Keefer v. Mason, 36 Ill. 406; Figge v. Rowlen, 185 Ill. 234, 57 N. E. 195; Teutonia Loan etc. Co. v. Turrell, 19 Ind. App. 469, 65 Am. St. Rep. 419, 49 N. E. 852.

5 21 Am. & Eng. Ency. of Law, 2d ed., p. 565.

6 1 Ency. Pl. & Pr., p. 331.

7 Benedict v. Hall, 76 N. C. 113.

8 In re Turner, 71 Vt. 382, 45 Atl. 754; 21 Am. & Eng. Ency. of Law, 2d ed., p. 566; Midland Steel Co. v. Citizens' Nat. Bank, 34 Ind. App. 107, 72 N. E. 290; 29 Cyc. Law & Proc., p. 1084.

9 See note 8.

10 21 Am. & Eng. Ency. of Law, 2d ed., p. 566; and vol. 9, p. 298; Greene v. Tally, 39 S. C. 338, 17 S. E. 779.

11 McCormick v. Largey, 1 Mont. 158; Carter v. Ewing, 1 Tenn. Ch. 212; Lienpo v. State, 28 Tex. App. 179, 12 S. W. 588; 21 Am. & Eng. Ency. of Law, 2d ed., p. 566.

It was held in Patterson v. Patterson,[12] a Vermont case, that a deposition cannot be used in a foreign state when the notary is not authorized by the laws of his state to take depositions for use in other states. The Washington statute[13] says: "Every duly qualified notary public is authorized in any county in this state to take depositions and affidavits, and administer all oaths required by law to be administered." It is quite evident that our statute does not set out the fact that a notary may take depositions in Washington to be used in foreign states. It is, therefore, a question whether depositions taken here in Washington could be used in the state of Vermont, but we question whether this would be the ruling in other states. The Washington statute, as stated above, and Remington and Ballinger's Code, sections 1236 and 1237, taken together, must be considered in this connection, however.[b] [c] [d]

Fourthly, the power of notaries to administer oaths, except those necessarily taken in the transaction of commercial affairs, does not pertain to the office by usage or custom.[14] Whenever a notary, with the one exception just stated, has the power to administer oaths, it must be found in a statute. It has, however, been very generally conferred by statute.[15] There is a conflict of authority on the question whether one state will presume that a notary of another state has the authority to administer oaths. Alabama, Georgia, Illinois, Indiana and Michigan courts hold that no such presumption arises, while Maryland, Minnesota and the District of Columbia courts hold there is such a presumption.[16] The matter has never been passed on in Washington.

Fifthly, in regard to the powers of notaries of Washington over negotiable instruments, not by reason of the law-merchant, but by the statutory provisions of foreign states,

12 1 D. Chip. (Vt.) 200.

13 Laws 1890, p. 474, § 4; 1 H. C., § 332; Bal. Code, § 248; Rem. & Bal. Code, § 8298.

14 21 Am. & Eng. Ency. of Law, 2d ed., p. 567; Berkery v. Wayne Circuit Judge, 82 Mich. 160, 46 N. W. 436; Trevor v. Colgate, 181 Ill. 129, 54 N. E. 909; 29 Cyc. Law & Proc., p. 1088.

15 21 Am. & Eng. Ency. of Law, 2d ed., p. 567.

16 See note 15.

the notary will, of course, have to examine the statutes of the state into which the protest is to go. However, as the statute of Washington in regard to bills and notes and the protest thereof is as nearly perfect as any passed by sister states, it will be safe to say that if a notary receives a foreign bill or note to protest, the best rule he can take to follow is the Washington statute as to negotiable instruments, which will be found under the subject of "Protests, etc.," page 207.

We only wish to add in this connection that all affidavits and acknowledgments taken in Washington to be used in some sister state should be accompanied with the certificate of a county clerk or the secretary of state authenticating the signature and authority of the notary.[17]

[a] In Walter Duggan et al., Respondents, v. The Washington Land and Logging Company, Appellant, 10 Wash. 84, 38 Pac. 856 (November, 1894), Mr. Justice Stiles says: "The objection to the verification of the lien notices is overruled. It was made in the state of Oregon, before a notary public who certifies the jurat with his official seal. It is true that the propriety of admitting affidavits taken before notaries in a foreign jurisdiction has been denied by courts whose decisions are entitled to great weight, on the ground that while the authority of notaries to certify protests of commercial paper, etc., is found in the common law, their right to administer oaths springs entirely from statute: Johnson v. McGehee, 1 Ala. 186; Keefer v. Mason, 36 Ill. 406; Benedict v. Hall, 76 N. C. 113. But, on the other hand, courts of equal weight hold that by reason of the now universal custom in this country and England, to permit these officers to take and certify affidavits, the same verity should be accorded to a jurat attested by a notarial seal as is given to a certificate in a matter pertaining to the law-merchant: Pinkham v. Cockell, 77 Mich. 265, 43 N. W. 921; Conolly v. Riley, 25 Md. 402; Stephens v. Williams, 46 Iowa, 540; Silver v. Kansas City etc. R. R. Co., 21 Mo. App. 5; Wood v. St. Paul etc. R. R. Co., 42 Minn. 411, 44 N. W. 308, 7 L. R. A. 149. The last-named case contains a satisfactory statement of the reasons for the modern doctrine. In Harris v. Barber, 129 U. S. 366, 9 Sup. Ct. Rep. 314, 32 L. ed. 697, the federal supreme court seems to have assented to the same proposition. It seems difficult to discern any good reason for denying the sufficiency of an affidavit which is intended to furnish the basis of the record of a lien notice, because the

17 For copies of the certificates furnished by county clerks and the secretary of state, see pages 60 and 62.

verification is made before a foreign notary, when by our statute (Gen. Stats., § 1432), the certificate of the same officer to an acknowledgment of a deed is expressly recognized, and authorizes the record of the instrument."

[b] "Any witness may be subpoenaed and compelled, by any officer authorized to take depositions, to appear and give his deposition at any place within twenty miles of the abode of such witness, in like manner as he may be subpoenaed and compelled to attend as a witness in any court, and he shall suffer the same penalties for a failure to attend as are prescribed in section 1220": Laws 1891, p. 35, § 9; 2 H. C., § 1670; Bal. Code, § 6021; 1 Rem. & Bal. Code, § 1235.

[c] "The superior court shall have power to compel the attendance of witnesses, within this state, before notaries public, justices of the peace or any other person authorized by the laws of this state to take depositions in causes pending in any court of the state, or in any court of any other state, or in any court of the United States, or in any court of a foreign country": Laws 1901, p. 23, § 1; 1 Rem. & Bal. Code, § 1236.

[d] In Matter of the Petition of N. W. Bolster, Washington Decisions, vol. 17, No. 11, p. 425 (August 26, 1910), the superior court of the state of California in a cause pending therein issued a commission authorizing and empowering a Washington notary to take the depositions of certain witnesses and to require them to produce certain books and papers. On the receipt of the commission, the commissioner caused a subpoena to be issued to the witness E. J. Mathews requiring the witness to appear before him at a certain time and place to testify pursuant to the commission, and also to bring and produce before the commissioner, certain books, papers and documents belonging to the John J. Sesnon Company. The witness obeyed the subpoena in so far as to attend in person, but refused to bring the books and other documents described in the subpoena. The commissioner thereupon applied to the superior court of King county asking that court to require the witness to attend before him with the documents mentioned. The court, however, after a hearing, refused to grant the application and dismissed the proceedings, on the ground that the documents sought were "trade secrets of the John J. Sesnon Company, and as such . . . . privileged." The order of dismissal was appealed from and reversed by department one of the supreme court. The court held that sections 1236 and 1237 of Remington and Ballinger's Code authorized the court to compel the attendance of the witness before the notary. The question whether the Washington statute gives a notary of this state the power to take depositions in this state to be used in other states was not considered in the case: Read Rem. & Bal. Code, §§ 1236, 1237 and 8298 together with this decision.

§ 30. Functions and Powers: Under the Laws of Washington.—We now come to the powers of a notary in Washington. The Laws of 1890[1] set out these explicitly, so that we know he can "transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and laws merchant." In other words, all the powers he previously had under the law-merchant he now enjoys by statute. He may also take acknowledgments of all deeds and other instruments of writing, and certify the same in the manner required by law. He may take depositions and affidavits, and administer all oaths required by law to be administered. The Washington statute also sets out that every attorney at law who is a notary public may administer any oath to his client, and no pleading or affidavit shall, on that account, be held by any court to be improperly verified.[a] This section was cited in Spokane & Idaho Lumber Co. v. Loy, 21 Wash. 501, 58 Pac. 672, 60 Pac. 1119, and McLean v. Roller, 33 Wash. 166, 73 Pac. 1123.

[a] "Every duly qualified notary public is authorized in any county in this state,—

"1. To transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and laws merchant;

"2. To take acknowledgments of all deeds and other instruments of writing, and certify the same in the manner required by law;

"3. To take depositions and affidavits, and administer all oaths required by law to be administered; and every attorney at law who is a notary may administer any oath to his client, and no pleading or affidavit shall, on that account, be held by any court to be improperly verified": Laws 1890, p. 474, § 4; 1 H. C., § 332; Bal. Code, § 248; 2 Rem. & Bal. Code, § 8298.

[1] The notarial law was passed December 21, 1889, but is always referred to as "Laws 1890, p. 474." It is referred to in this book in that way so as not to confuse the reader.

CHAPTER V.

THE NOTARY PUBLIC: DISQUALIFICATIONS: DUTIES, ETC.

§ 32. Disqualifications: Acknowledgments: Affidavits: Depositions: Oaths: Protests.
§ 33. Duties and Liabilities: In General: His Bond.
§ 34. Duties and Liabilities: Limitation of Actions.
§ 35. Duties and Liabilities: Criminal.
§ 36. Records: Notary must Keep.
§ 37. Records: Deposited in County Clerk's Office on Death, Resignation or Removal.
§ 38. Records: As Evidence.
§ 39. Fees.
§ 40. Removal.
§ 41. Delegation of Authority.
§ 42. Notaries de Facto: Definition.
§ 43. Notaries de Facto: Are Their Acts Valid?
§ 44. Notaries ex Officio.

§ 32. Disqualifications: Acknowledgments: Affidavits: Depositions: Oaths: Protests.—Though a person may be eligible to hold the office of notary he may be disqualified to act in certain cases by reason of having an interest in the case.[1] The degree of interest which will render the notary incompetent cannot be summed up in any rule which will operate as a safe test in every case; each case must be decided on its own facts and particular circumstances.[2] To state the rule broadly: If the notary is a party to or directly and pecuniarily interested in the transaction, he is not capable of acting in that case.[3] For example, a notary who is a grantee or mortgagee in a conveyance or mortgage is disqualified to take the acknowledgment of the grantor or mortgagor;[4] likewise a notary who is a trustee in a deed of

[1] 1 Am. & Eng. Ency. of Law & Proc., p. 860; Horbach v. Tyrrell, 48 Neb. 514, 67 N. W. 485, 489, 37 L. R. A. 434; Green v. Abraham, 43 Ark. 420; 29 Cyc. Law & Proc., p. 1092.

[2] Horbach v. Tyrrell, 48 Neb. 514, 67 N. W. 485, 489, 37 L. R. A. 434; Leonhard v. Flood, 68 Ark. 162, 56 S. W. 781; 1 Am. & Eng. Ency. of Law & Proc., p. 862.

[3] See notes 1 and 2.

[4] Lee v. Murphy, 119 Cal. 364, 51 Pac. 549, 955; 1 Am. & Eng. Ency. of Law, 2d ed., p. 493;

trust;[5] and, of course, a notary who is the grantor could not take his own acknowledgment.[6] A notary beneficially interested in the conveyance by way of being secured thereby is not competent to take the acknowledgment of the instrument;[7] but where there are several grantees in a deed, each taking a separate and definite interest, the acknowledgment of the deed by one of the grantees as a notary will be valid as to all the grantees except himself.[8] In Washington the courts have held that an officer of a corporation may take the acknowledgment of a mortgage of which the corporation is a party, notwithstanding the fact that the said officer was the one who conducted the negotiations for the corporation.[a] And where the notary has no beneficial interest in the instrument, he is not disqualified from taking an acknowledgment by reason of the fact that he is the agent or attorney of one of the parties.[9] In Washington and most of the states it is held that relationship will not disqualify a notary from taking acknowledgments of conveyances, as in so doing he acts as a ministerial and not a judicial officer.[10] [b]

Wasson v. Connor, 54 Miss. 351; West v. Krebaum, 88 Ill. 263; Armstrong v. Combs, 15 N. Y. App. Div. 246, 44 N. Y. Supp. 171; Murray v. Tulare Irr. Co., 120 Cal. 311, 49 Pac. 563, 52 Pac. 586.

5 1 Am. & Eng. Ency. of Law, 2d ed., p. 493; Darst v. Gale, 83 Ill. 136; Dail v. Moore, 51 Mo. 589.

6 Davis v. Beazley, 75 Va. 491; Penn v. Garvin, 56 Ark. 511, 20 S. W. 410; Leftwich v. Richmond, 100 Va. 164, 40 S. E. 651.

7 Leonhard v. Flood, 68 Ark. 162, 56 S. W. 781.

8 Murray v. Tulare Irr. Co., 120 Cal. 311, 49 Pac. 563, 52 Pac. 586.

9 Woodland Bank v. Oberhaus, 125 Cal. 320, 57 Pac. 1070; 1 Am. & Eng. Ency. of Law, 2d ed., p. 493; Havemeyer v. Dahn, 48 Neb. 536, 58 Am. St. Rep. 706, 67 N. W. 489, 33 L. R. A. 332.

10 See § 12; 1 Am. & Eng. Ency. of Law, 2d ed., p. 494; Penn v. Garvin, 56 Ark. 511, 20 S. W. 410; Gibson v. Norway Sav. Bank, 69 Me. 579.

"Law Notes" for October, 1909, in its column of humor has the following:

"A Remarkable Feat.—On record in Bosque county, Texas, is a deed in which the separate acknowledgment of the feme covert grantor was taken by her husband, a justice of the peace, who duly certified under his hand and official seal that he examined her privily and apart from her husband."

In the case of affidavits the law governing the Washington notary is in the form of a statute. In 1889 the present notaries public law was passed; it says that "every attorney at law who is a notary public may administer any oath to his client, and no pleading or affidavit shall, on that account, be held by any court to be improperly verified." [c]

And it has been decided in two Washington cases that a surety on a bond who is a notary public may take the affidavit of the other sureties required by the statute. The court based its decision in both cases on the theory that the act of a notary in administering the oath is purely ministerial.[d] [e]

It may be said that generally a notary is incompetent to take depositions when he is interested in any way in the suit for which the deposition is being taken;[11] the same rule applies when the notary is a near relative of any of the parties to the suit;[12] or if he is the law partner of one of the parties,[13] or the stenographer of one of the party's attorney.[14]

Because the administration of an oath is purely ministerial, the fact that an officer administering it is interested in the proceeding in which it is to be used does not disqualify him.[15]

11 21 Am. & Eng. Ency. of Law, 2d ed., p. 571; vol. 9, p. 305; Tillinghast v. Walton, 5 Ga. 335; Glanton v. Griggs, 5 Ga. 424; McLean v. Adams, 45 Hun (N. Y.), 189; former agent: Smith v. Smith, 2 Greenl. (Me.) 408; former appearance as counsel: Whicher v. Whicher, 11 N. H. 348; Cutler v. Maker, 41 Me. 594; partner of counsel: Dodd v. Northrop, 37 Conn. 216; Floyd v. Rice, 28 Tex. 341.

12 9 Am. & Eng. Ency. of Law, 2d ed., p. 305; uncle: Bean v. Quimby, 5 N. H. 94; brother in law: Bryant v. Ingraham, 16 Ala. 116; within sixth degree: Call v. Pike, 66 Me. 350; but in Reed v. Newcomb, 62 Vt. 75, 19 Atl. 367, it was held that a deposition was not objectionable on the ground that it was taken before a notary who was second cousin to the plaintiff.

13 Dodd v. Northrop, 37 Conn. 216.

14 Knickerbocker Ice Co. v. Gray, 165 Ind. 140, 72 N. E. 869, 6 Ann. Cas. 607.

15 Peck v. People, 153 Ill. 454, 39 N. E. 117; McChesney v. Chicago, 159 Ill. 223, 42 N. E. 894; Lamagdelaine v. Tremblay, 162 Mass. 339, 39 N. E. 38. See Linck v. Litchfield, 141 Ill. 469, 31 N. E. 123; Yeagley v. Webb, 86 Ind. 424.

In the matter of the interest or relationship of the notary in protesting bills and notes it would seem that it does not invalidate the protest, though the notary is the son of the holder,[16] the cashier of a bank to which the paper belongs,[17] or the maker of a note and cashier of a bank to which the note belonged.[18]

[a] In the case of Keene Guaranty Savings Bank, Respondent, v. Abram E. Lawrence, Appellant, 32 Wash. 572 (September, 1903), an action was brought against Lawrence to foreclose a certain mortgage on lots in the city of North Yakima. Prior to the commencement of the foreclosure suit Lawrence had instituted an action to cancel the same mortgage as a cloud upon his title. The two actions were consolidated and tried as one, and from a judgment against Lawrence an appeal was taken. It appears in the facts of the case that one Thomas owned the property in question in 1889; that in July of that year he conveyed to one Cadwell. A number of changes took place which it is not necessary to go into, but it appears that on the sixteenth day of December, 1889, Cadwell made a mortgage to the Mason Mortgage Loan Company for ten thousand dollars upon this property, the mortgage being acknowledged before Allen C. Mason as a notary public, he at the time being president of the mortgage company. Later on Lawrence bought the property when sold by decree of the court and got a sheriff's deed. The Keene Bank, however, held a mortgage which was not canceled. The court said: "The validity of the mortgage to the Mason Mortgage Loan Company is attacked on the ground that the acknowledgment of the mortgagor was taken before a notary public, who was also at the same time the president and chief executive officer of the mortgage company, and who conducted the negotiations leading up to the loan. The mere fact that the notary in this case was an officer and stockholder in the corporation to whom the mortgage was executed would not preclude his taking the acknowledgment of the mortgagor. The taking of an acknowledgment by a notary public is a ministerial act, and may be performed by anyone qualified to act as notary."

[b] In Cora E. Nixon, Appellant, v. Mary D. Post et al., Respondents, 13 Wash. 181, 43 Pac. 23 (December, 1895), the question arose as to the validity of the acknowledgment of a grantor when the grantee is the wife of the person taking the acknowledgment. Mr. Chief Justice Hoyt said: "Upon the question as to the nature of the title conveyed by such deed must also depend the further question pre-

[16] Eason v. Isbell, 42 Ala. 456.

[17] Nelson v. Killingley First Nat. Bank, 69 Fed. 798, 16 C. C. A. 425.

[18] Dykman v. Northridge, 1 N. Y. App. Div. 26, 36 N. Y. Supp. 962.

sented by the appellant as to the right of the husband to take an acknowledgment of a deed in which his wife was named as grantee. It is not claimed that he could not properly take such acknowledgment if the property was deeded to the wife under such circumstances that it became her separate estate. Hence the determination of the nature of the title conveyed by the deed will also determine the question as to the regularity of the acknowledgment. . . . . The superior court properly found that the deed had been duly executed and delivered by the plaintiff and her husband to the defendant Mary D. Post, and that the circumstances surrounding the making and the delivery were such that the title conveyed vested in her as her separate estate."

[c] "Every duly qualified notary public is authorized in any county in this state,— . . . . 3. To take depositions and affidavits, and administer all oaths required by law to be administered; and every attorney at law who is a notary public may administer any oath to his client, and no pleading or affidavit shall, on that account, be held by any court to be improperly verified": Laws 1890, p. 474, § 4; 1 H. C., § 332; Bal. Code, § 248; 2 Rem. & Bal. Code, § 8298.

[d] In the case of Spokane and Idaho Lumber Company v. Loy, 21 Wash. 501, 58 Pac. 672, 60 Pac. 1119 (October, 1899), an action was brought by the respondent against the principal and his sureties in a statutory bond given by a contractor, who agreed to construct a public bridge in and for the city of Spokane, to recover a balance alleged to be due for lumber sold and delivered to such contractor. From a joint judgment in favor of the plaintiff and against all the defendants, three of the surety defendants appealed to the supreme court. One of the reasons set out in moving the court to strike from the files the appeal and supersedeas bond and to affirm the judgment of the court below was that the affidavit of the sureties attached thereto was insufficient in that the affidavit of the sureties Julia G. Kimball and August Ilse were taken before the other surety, Hinkle. At page 505, Mr. Justice Anders says: "The objection to the bond on the ground of insufficient execution is not well taken. It appears that one of the sureties in the appeal bond was a notary public, and as such took the affidavits of the other sureties required by the statute, and it is insisted by the learned counsel for the respondent that the bond is invalid upon that account. But we think counsel's position is clearly untenable. The statute (Bal. Code, § 248) provides that 'every duly qualified notary public is authorized in any county in this state to take depositions and affidavits and administer all oaths required by law to be administered'; and, in our opinion, the notary who took the affidavits of two of his cosureties was not disqualified, under the statute, by any interest he himself had in the bond. The substance of the affidavit of the sureties in such bonds is prescribed by law, and the act of the notary in administering the oath is purely

ministerial, and is not affected by his interest therein: Lynch v. Livingston, 6 N. Y. 422; Kuhland v. Sedgwick, 17 Cal. 123; Reavis v. Cowell, 56 Cal. 588. Besides, in this case the sureties attended before the court and justified at the instance of the respondent. The motion to dismiss the appeal for the reasons specified must be denied."

[e] In the case of Henry McLean, Appellant, v. Floyd H. Roller, Respondent, 33 Wash. 166, 73 Pac. 1123 (October, 1903), an appeal was taken from an order of the superior court in and for Skagit county, appointing Floyd H. Roller, and refusing to appoint Henry McLean, administrator of the estate of Emma Roller, deceased. Mr. Justice Anders, at page 168, says: "It appears that the principal in the appeal bond, as notary public, took the affidavits of the sureties attached to the bond, and for that reason and on that ground the respondent moves to dismiss the appeal in this cause. In Spokane and Idaho Lumber Co. v. Loy, 21 Wash. 501, 58 Pac. 672, 60 Pac. 1119, one of the sureties in the appeal bond, being a notary public, took the affidavit of the other sureties required by the statute, and for that reason it was contended that the bond was insufficient, and that the appeal should be dismissed. In relation to the motion, which was denied, we said: 'The statute (Bal. Code, § 248) provides that every duly qualified notary public is authorized in any county in this state . . . . to take depositions and affidavits and administer all oaths required by law to be administered; and, in our opinion, the notary who took the affidavits of two of his cosureties was not disqualified, under the statute, by any interest he himself had in the bond. The substance of the affidavit of the sureties in such bonds is prescribed by law, and the act of the notary in administering the oath is purely ministerial, and is not affected by his interest therein.' For the reasons stated in the opinion in that case, the motion to dismiss this appeal is denied."

§ 33. Duties and Liabilities: In General: His Bond.—It may be said that a notary owes his clients the general duty of integrity, diligence and skill; it is the notary's duty to inform himself of the facts to which he intends to certify and not to rely on hearsay.[1] The bond which he gives to the state of Washington, a copy of which is set out in a previous section,[2] says that he shall "faithfully discharge

1 In Stork v. American Surety Co., 109 La. 713, 33 South. 742, the court said: "In accepting the office," a notary "contracts the obligation to fill it intelligently and honestly": 29 Cyc. Law & Proc., p. 101; Fogarty v. Finlay, 10 Cal. 239, 70 Am. Dec. 714; Gage v. Dubuque etc. R. R. Co., 11 Iowa, 310, 77 Am. Dec. 145.

2 § 19.

the duties of his said office according to law and shall faithfully discharge the duties of his said office according to any laws which may be enacted subsequent to the execution" of the bond. For any breach of the conditions of the bond he and his sureties will be liable to an action.[3] In Schmitt v. Drouet,[4] the court said: "Before a notary and his surety can be held, it is necessary, therefore, to determine whether the act done or not done, committed or omitted, was or not authorized by law, was or not incumbent upon him, was or was not required of him, whether he was directed to do it, whether he has failed to discharge the duty, and whether injury has been sustained." But we should add here that when a notary undertakes to perform a certain act, he thereupon assumes certain responsibilities which, if he does not carry out by reason of dishonesty, lack of diligence or want of skill, and his client is thereby injured, he is liable for damages. The measure of such damages will be the loss sustained by reason of the notary's wrongful act or omission.[5] In a Missouri case[6] it was held that a notary's bond is strictly a bond of indemnity, that substantial damages cannot be recovered thereon if not suffered. By the law of 1869 the official bond of a notary is deemed a security to the state, and also to all persons severally, for the official delinquencies against which it is intended to provide.[a] When a notary or his sureties become liable on his bond, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action at law thereon in

[3] 29 Cyc. Law & Proc., p. 1104; Heidt v. Minor, 113 Cal. 385, 45 Pac. 700 (false certificate of acknowledgment); Fogarty v. Finlay, 10 Cal. 239, 70 Am. Dec. 714 (defective certificate of acknowledgment); Tevis v. Randall, 6 Cal. 632, 65 Am. Dec. 547 (failure to give notice of protest to indorsers); Wheeler v. State, 9 Heisk. (Tenn.) 393 (failure to give notice of protest); People v. Butler, 74 Mich. 643, 42 N. W. 273 (false certificate of acknowledgment).

[4] 42 La. Ann. 1064, 1067, 21 Am. St. Rep. 408, 8 South. 396.

[5] 29 Cyc. Law & Proc., p. 1105; McAllister v. Clement, 75 Cal. 182, 16 Pac. 775; Mahoney v. Dixon, 31 Mont. 107, 77 Pac. 519.

[6] State v. Thompson, 81 Mo. App. 549.

his own name against the notary and his sureties to recover the amount to which he may by reason thereof be entitled.[b] Before an individual begins such an action he must obtain leave of the court, or the judge thereof, where the action is triable, and upon such application must produce a certified copy of the bond and an affidavit of the plaintiff, or of some person in his behalf, showing the delinquency.[c] Nor is a judgment for one delinquency a bar to another action even by the same party.[d] A statute protects the surety from being compelled to pay more than one thousand dollars.[e]

[a] "The official bond of a public officer to the state, or to any county, city, town, or other municipal or public corporation of like character therein, shall be deemed a security to the state, or to such county, city, town, or other municipal or public corporation, as the case may be, and also to all persons severally, for the official delinquencies against which it is intended to provide": Laws 1869, p. 152, § 592; Cd. 1881, § 652; 2 H. C., § 694; Bal. Code, § 5684; 1 Rem. & Bal. Code, § 958.

[b] "When a public officer by official misconduct or neglect of duty shall forfeit his official bond, or render his sureties therein liable upon such bond, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action at law thereon in his own name against the officer and his sureties to recover the amount to which he may by reason thereof be entitled": Laws 1869, p. 152, § 593; Cd. 1881, § 653; 2 H. C., § 695, Bal. Code, § 5685; 1 Rem. & Bal. Code, 959.

[c] "Before an action can be commenced by a plaintiff, other than the state, or the municipal or public corporation named in the bond, leave shall be obtained of the court, or judge thereof, where the action is triable. Such leave shall be granted upon the production of a certified copy of the bond, and an affidavit of the plaintiff, or some person in his behalf, showing the delinquency. But if the matter set forth in his affidavit be such that, if true, the party applying would clearly not be entitled to recover in the action, the leave should not be granted. If it does not appear from the complaint that the leave herein provided for has been granted, the defendant, on motion, shall be entitled to judgment of nonsuit; if it does, the defendant may controvert the allegation, and if the issue be found in his favor, judgment shall be given accordingly": Laws 1869, p. 154, § 594; Cd. 1881, § 654; 2 H. C., § 696; Bal. Code, § 5686; 1 Rem. & Bal. Code, § 960.

[d] "A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same bond for another delinquency": Laws 1869, p. 153, § 595;

Cd. 1881, § 655; 2 H. C., § 697; Bal. Code, § 5687; 1 Rem. & Bal. Code, § 961.

[e] "In an action upon an official bond, if judgments have been recovered against the surety therein other than by confession, equal in the aggregate to the penalty, or any part thereof, of such bond, and if such recovery be established on the trial, judgment shall not be given against such surety for an amount exceeding such penalty, or such portion thereof as is not already recovered against him": Laws 1869, p. 153, § 596; Cd. 1881, § 656; 2 H. C., § 698; Bal. Code, § 5688; 1 Rem. & Bal. Code, § 962.

§ 34. Duties and Liabilities: Limitation of Actions.— As the usual contract made by a person with a notary is an unwritten one, the statute of limitations would bar any action brought three years after the cause of action shall have accrued.[1][a] [b] It would be possible, although probably it seldom has been done, for a person to make a written contract with a notary. In such a case the statute of limitations would not bar an action if brought within six years.[a] [c] In the case of an action for relief on the ground of fraud, the cause of action is not deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.[a] [d] The time during which an action might be brought against a notary would also be extended if the person entitled to bring the action were at the time the cause of action accrued either under the age of twenty-one years, or insane, or imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life.[e] The surety on the bond would be held, as a general rule, if the action is maintainable against the notary, for the bond reads that if the notary does not faithfully discharge the duties of his office the bond is to remain in full force and effect.[2][f]

[a] "Actions can only be commenced within the periods herein prescribed after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute; . . . ":

1 Spokane County v. Prescott, 19 Wash. 418, 67 Am. St. Rep. 733, 53 Pac. 661.

2 See, also, in this connection, 1 Rem. & Bal. Code, §§ 168, 170–175.

Laws 1891, p. 90, § 1; 2 H. C., § 111; Bal. Code, § 4796; Rem. & Bal. Code, § 155.

Note [a] is to be read in connection with notes [b], [c] and [d].

[b] "Within three years,—3. An action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument": Laws 1869, p. 8, § 28; Cd. 1881, § 28; 2 H. C., § 115; Bal. Code, § 4800; 1 Rem. & Bal. Code, § 159.

[c] "Within six years,—2. An action upon a contract in writing, or liability express or implied arising out of a written instrument": Laws 1854, p. 363, § 3; Cd. 1881, § 27; 2 H. C., § 113; Bal. Code, § 4798; 1 Rem. & Bal. Code, § 157.

[d] "Within three years,—4. An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud": Laws 1869, p. 8, § 28; Cd. 1881, § 28; 2 H. C., § 115; Bal. Code, § 4800; 1 Rem. & Bal. Code, § 159.

[e] "If a person entitled to bring an action mentioned in this chapter, except for a penalty on forfeiture, or against a sheriff or other officer, for an escape, be, at the time the cause of action accrued, either under the age of twenty-one years, or insane, or imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life, the time of such disability shall not be a part of the time limited for the commencement of action": Laws 1869, p. 10, § 38; Cd. 1881, § 37; 2 H. C., § 124; Bal. Code, § 4809; 1 Rem. & Bal. Code, § 169.

[f] See § 19 for copy of the bond.

§ 35. Duties and Liabilities: Criminal.—By the law of 1909[a] the words "officer" and "public officer" include all assistants, deputies, clerks and employees of any public officer, and all persons exercising or assuming to exercise any of the powers or functions of a public officer. By this act, then, all notaries[1] and those who act as notaries would be amenable to the law. By the same act the notary must not mutilate, destroy or falsify any of his records; if he does, he lays himself liable to imprisonment in the state penitentiary for not more than ten years or to a fine of five thousand dollars, or both, by one section,[b] and is guilty of a gross misdemeanor by another.[c] By the same act a notary will be guilty of a misdemeanor if he willfully

[1] A notary is a public officer: See § 11.

neglects the duties enjoined on him by law.[d] By the same act he is guilty of a gross misdemeanor if for a reward he permits another to perform any of his duties.[e] By the same act he is guilty of bribery should he ask, or receive, directly or indirectly, any compensation, gratuity or reward for violating his official duty in any action or proceeding, and is liable to imprisonment in the state penitentiary for ten years, or to a fine of five thousand dollars, or both.[f] By the same act he is guilty of forgery in the first degree, the punishment of which is imprisonment in the state penitentiary for not more than twenty years[2] for willfully certifying falsely to an acknowledgment or proof [g]; and of a gross misdemeanor for making a false certificate[h] or a false report.[i] By the same act, for making a false ship's protest with intent to defraud another he may be imprisoned in the state penitentiary for five years, fined one thousand dollars, or both.[j] By the same act, a person who is applying for appointment as a notary, but willfully exercises any of the functions before having duly qualified, is guilty of a gross misdemeanor.[k] By the same act, a notary who asks or receives, or agrees to receive, a fee or other compensation for his official service in excess of the fee allowed to him by statute is guilty of a misdemeanor.[l] By the same act, a person who falsely personates a notary and subscribes, verifies or acknowledges an instrument which may be recorded with intent that the same be issued as true shall be imprisoned in the state penitentiary for not more than ten years;[m] or if a person falsely personates a notary and purports to do an official act, whereby another is injured or defrauded, he is guilty of a gross misdemeanor.[n] By the same act, a notary, convicted of any felony or malfeasance in office, forfeits his office and can never afterward hold a public office in the state of Washington.[o] By the law of 1891 prosecutions for offenses, the punishment of which may be imprisonment in the penitentiary, must be within three years after their commission and for all others (excepting murder and arson where

[2] Laws 1909, p. 990, § 331; 1 Rem. & Bal. Code, § 2583.

death ensues), within one year after their commission.[p] [3] A notary's records are protected from mutilation by others by the new criminal law.[q] For federal criminal statutes, see pages 77 and 80.

[a] "In construing the provisions of this act, save when otherwise plainly declared or clearly apparent from the context, the following rules shall be observed: (24) the words 'officer' and 'public officer' shall include all assistants, deputies, clerks and employees of any public officer and all other persons exercising or assuming to exercise any of the powers or functions of a public officer": Laws 1909, p. 902, § 51; 1 Rem. & Bal. Code, § 2303.

[b] "Every officer who shall mutilate, destroy, conceal, erase, obliterate or falsify any record or paper pertaining to his office, or who shall fraudulently appropriate to his own use or to the use of another person, or secrete with the intent to appropriate to such use, any money, evidence of debt or other property, intrusted to him by virtue of his office, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both": Laws 1909, p. 919, § 96; 1 Rem. & Bal. Code, § 2348.

[c] "Every person who shall willfully or maliciously destroy, alter, erase, obliterate or conceal any letter, telegraph message, book or record of account, or any writing or instrument by which any claim, privilege, right, obligation or authority, or any right or title to property, real or personal, is, or purports to be, or upon the happening of some future event may be, evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, shall be guilty of a gross misdemeanor": Laws 1909, p. 1020, § 408; 1 Rem. & Bal. Code, § 2660.

[d] "Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their willful neglect to perform such duty, except where otherwise specially provided for, shall be a misdemeanor": Laws 1909, p. 894, § 16; 1 Rem. & Bal. Code, § 2268.

[e] "Every public officer who, for any reward, consideration or gratuity paid or agreed to be paid, shall, directly or indirectly, grant to another

[3] "A person convicted of a misdemeanor . . . . shall be punished by imprisonment in the county jail for not more than ninety days, or by a fine of not more than two hundred and fifty dollars": Laws 1909, p. 894, § 14; 1 Rem. & Bal. Code, § 2266.

"Every person convicted of a gross misdemeanor . . . . shall be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both": Laws 1909, p. 894, § 15; 1 Rem. & Bal. Code, § 2267.

the right or authority to discharge any function of his office, or permit another to perform any of his duties, shall be guilty of a gross misdemeanor": Laws 1909, p. 916, § 83; 1 Rem. & Bal. Code, § 2335.

[f] "Every judicial officer, and every person who executes any of the functions of a public office not hereinbefore specified, and every person employed by or acting for the state or for any public officer in the business of the state, who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion, judgment, action, decision or other official proceeding shall be influenced thereby, or that he will do or omit any act or proceeding or in any way neglect or violate any official duty, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both": Laws 1909, p. 911, § 69; 1 Rem. & Bal. Code, § 2321.

[g] "Every officer authorized to take a proof or acknowledgment of an instrument which by law may be recorded, who shall willfully certify falsely that the execution of such instrument was acknowledged by any party thereto, or that the execution thereof was proved, shall be guilty of forgery in the first degree": Laws 1909, p. 991, § 332; 1 Rem. & Bal. Code, § 2584.

[h] "Every public officer who, being authorized by law to make or give a certificate or other writing, shall knowingly make and deliver as true such a certificate or writing containing any statement which he knows to be false, in a case where the punishment thereof is not expressly prescribed by law, shall be guilty of a gross misdemeanor": Laws 1909, p. 927, § 128; 1 Rem. & Bal. Code, § 2380.

[i] "Every public officer who shall knowingly make any false or misleading statement in any official report or statement, under circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor": Laws 1909, p. 920, § 98; 1 Rem. & Bal. Code, § 2350.

[j] "Every person who shall prepare, make or subscribe a false or fraudulent manifest, invoice, bill of lading, ship's register, or protest, with intent to defraud another, shall be punished by imprisonment in the state penitentiary for not more than five years or by a fine of not more than one thousand dollars, or by both": Laws 1909, p. 1009, § 383; 1 Rem. & Bal. Code, § 2635.

[k] "Every person who shall falsely personate or represent any public officer, or who shall intrude himself into a public office to which he has not been duly elected or appointed, or who shall willfully exercise any of the functions or perform any of the duties of such officer, without having duly qualified therefor, as required by law, or who, having been an executive or administrative officer, shall willfully exercise any of the functions of his office after his right to do so has ceased, or wrongfully refuse to surrender the official seal or any books

or papers appertaining to such office, upon the demand of his lawful successor, shall be guilty of a gross misdemeanor": Laws 1909, p. 916, § 84; 1 Rem. & Bal. Code, § 2336.

[l] "Every public officer who shall ask or receive, or agree to receive a fee or other compensation for his official service, either—(1) In excess of the fee or compensation allowed to him by statute therefor . . . . commits extortion and is guilty of a misdemeanor": Laws 1909, p. 1001, § 360; 1 Rem. & Bal. Code, § 2612.

[m] "Every person who shall falsely personate another, and in such assumed character, shall—(4) Subscribe, verify, publish, acknowledge or approve a written instrument which by law may be recorded, with intent that the same may be delivered or issued as true; or (6) Do any other act in the course of any action or proceeding wherein, if it were done by the person falsely personated such person might in any event become liable to an action or special proceeding, civil or criminal, or to pay a sum of money, or to incur a charge, forfeiture, or penalty, or whereby any benefit might accrue to the offender or to any other person": Laws 1909, p. 1003, § 363; 1 Rem. & Bal. Code, § 2615.

[n] "Every person who shall falsely personate a public officer, civil or military, ... and in such assumed character shall do any act purporting to be official, whereby another is injured or defrauded, shall be guilty of a gross misdemeanor": Laws 1909, p. 1003, § 364; 1 Rem. & Bal. Code, § 2616.

[o] "The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his office, and shall disqualify him from ever afterwards holding any public office in this state": Laws 1909, p. 900, § 37; 1 Rem. & Bal. Code, § 2289.

[p] "Prosecutions for the offenses of murder and arson, where death ensues, may be commenced at any period after the commission of the offense; for offenses the punishment of which may be imprisonment in the penitentiary, within three years after their commission; and for all other offenses, within one year after their commission: Provided, that any length of time during which the party charged was not usually and publicly resident within this state shall not be reckoned within the one and three years respectively": Laws 1891, p. 46, § 2; 2 H. C., § 1188; Bal. Code, § 6780; 1 Rem. & Bal. Code, § 2005.

[q] "Every person who shall willfully and unlawfully remove, alter, mutilate, destroy, conceal or obliterate a record, map, book, paper, document or other thing filed or deposited in a public office, or with any public officer, by authority of law, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a

fine of not more than one thousand dollars, or by both": Laws 1909, p. 919, § 95; Rem. & Bal. Code, § 2347.

§ 36. Records: Notary must Keep.—Every notary should keep an official book, and in this he should enter all matters in connection with his office which may be of importance at some later time. While the Washington statute does not designate matters in general, it does specify that all notaries shall keep a true record of all notices of protest given or sent by him, with the time or manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with the copy of the instrument in relation to which the notice is served, and of the notice itself.[a] This book immediately becomes a public record of the state, and the notary, as such, has no property in it.[1] As was seen under the topic of "Criminal Law,"[2] he will be held responsible for the records which he may from time to time make as a public officer.

[a] "Every notary public is required to keep a true record of all notices of protest given or sent by him, with the time and manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with the copy of the instrument in relation to which the notice is served, and of the notice itself . . . .": Laws 1890, p. 474, § 6; 1 H. C., § 334; Bal. Code, § 250; 2 Rem. & Bal. Code, § 8300.

§ 37. Records: Deposited in County Clerk's Office upon Death, Resignation or Removal.—On the death of a notary or on his resignation or removal from office, or at the expiration of his term of office, provided his commission is not renewed, all his records and official papers, within three months, shall be deposited in the office of the county clerk

1 Under a statute providing that the custodian of notarial records shall hold the records of every notary, in the parish of Orleans, functus officio, it was held that a notary, son of a deceased notary, had no right to the notarial records of his father either as his son or as a notary: State v. Theard, 45 La. Ann. 680, 12 South. 892; State v. Laresche, 24 La. Ann. 148; Opinion of Justices, 150 Mass. 586, 23 N. E. 850, 6 L. R. A. 842; The Gallego, 30 Fed. 271, 275; McAfee v. Doremus, 5 How. (U. S.) 53, 12 L. ed. 46.

2 § 35, note [b].

of the county from which said notary was appointed. If a notary, on his resignation or removal from office, neglects for the period of three months to so deposit his records, he shall forfeit a sum not exceeding one thousand dollars, which may be recovered in a civil action by any person injured by such neglect. And if upon the death of a notary his executor or administrator fails within three months after his appointment to so deposit the deceased notary's records and official papers with the county clerk of the county in which said notary was appointed, he shall forfeit a like amount, which may be recovered in a civil action by any person injured by such neglect.[a]

[a] "On the death, resignation, or removal from office, and at the expiration of the term of office, of any notary public, provided his commission is not renewed, his records and all his official papers shall, within three months therefrom, be deposited in the office of the county clerk of the county from which such notary shall have been appointed, and if any notary public, on his resignation or removal from office, shall, for the space of three months, neglect to so deposit his records, he shall forfeit a sum not exceeding one thousand dollars, to be recovered in a civil action by any person injured by such neglect, and it shall be the duty of the executor or administrator of the estate of any notary public, deceased, to deposit the records and official papers of such notary with the said clerk, and within three months after his appointment, under like penalty": Laws 1890, p. 475, § 7; 1 H. C., § 335; Bal. Code, § 251; 2 Rem. & Bal. Code, § 8301.

§ 38. **Records: As Evidence.**—Full faith and credit are generally given to attestations of notaries public, especially in connection with commercial affairs.[1] And when by reason of death or removal the records are in the keeping of others than the notary himself, the record itself or a copy of the same duly certified is generally accepted.[2] In a Mississippi case the record of an absent foreign notary proved by the deposition of a person in whose custody it had been left during the notary's absence was admitted in

1 21 Am. & Eng. Ency. of Law, 2d ed., p. 575; Hill v. Norris, 2 Ala. 640; Spegail v. Perkins, 2 Root (Conn.), 274.

2 Opinion of Justices, 150 Mass. 586, 23 N. E. 850, 6 L. R. A. 842; Phillips v. Poindexter, 18 Ala. 579; Bryden v. Taylor, 2 Har. & J. (Md.) 396, 3 Am. Dec. 554; The Gallego, 30 Fed. 271.

evidence.[5] In Washington the statute says that the record of protest made by a notary, or a copy thereof, duly certified under the hand and seal of the notary public, or county clerk having the custody of the original record, shall be competent evidence to prove the facts therein stated, but the same may be contradicted by other competent evidence.[a] And it has been held also that a notary's records, not treated as official, may be used to refresh the memory of the notary when he testifies as a witness.[6]

[a] "Said record (of protest), or a copy thereof, duly certified under the hand and seal of the notary public, or county clerk having the custody of the original record, shall be competent evidence to prove the facts therein stated, but the same may be contradicted by other competent evidence": Laws 1890, p. 474, § 6; 1 H. C., § 334; Bal. Code, § 250; 2 Rem. & Bal. Code, § 8300.

§ 39. **Fees.**—In Washington the fees a notary is allowed are all set out in full.[a] "A notary is not entitled to fees for the performance of an act which is unnecessary or unauthorized;[1] but he can collect his fees although his services prove ineffective if the fault was of the person employing him."[2] A notary who asks or receives more than the statutory fee for any notarial work commits extortion and is guilty of a misdemeanor.[3] If a notary, besides performing some notarial act for a client, performs some unofficial services, he may, of course, charge for the same.[4]

[a] "Every notary public is entitled to demand and receive the fees herein enumerated:—

"1. Protest of a bill of exchange or promissory note, one dollar.

"2. Attesting any instrument of writing, with or without seal, fifty cents.

"3. Taking acknowledgment, two persons, with seal, fifty cents.

"4. Taking acknowledgment, each person over two, twenty-five cents.

5 Ellis v. Commercial Bank, 7 How. (Miss.) 294, 40 Am. Dec. 63.

6 Lindenberger v. Beall, 6 Wheat. (U. S.) 104, 5 L. ed. 216.

1 Hughes v. McDill, 1 Tex. App. Civ. Cas., § 1267; 21 Am. & Eng. Ency. of Law, 2d ed., p. 576.

2 See note 1.

3 § 35, note [l].

4 29 Cyc. Law & Proc., p. 1107; Reuscher v. Attorney General, 30 Ky. Law Rep. 109, 97 S. W. 397.

"5. Certifying affidavit, with or without seal, fifty cents.

"6. Registering protest of bill of exchange or promissory note, for nonacceptance or nonpayment, fifty cents.

"7. Being present at demand, tender or deposit, and noting the same, besides mileage at the rate of ten cents per mile, fifty cents.

"8. Noting a bill of exchange or promissory note, for nonacceptance or nonpayment, fifty cents.

"9. For copying any instrument or record, besides certificate and seal, per folio, fifteen cents.

"10. Each oath or affirmation without seal, twenty-five cents.

"11. For any instrument of writing, or depositions or affidavits written, exclusive of the certificate thereto, drawn by a notary public, for each hundred words,[b] twenty-five cents": Laws 1890, p. 475, § 8; 1 H. C., § 336; Laws 1893, p. 421, § 1; Laws 1903, p. 290, § 1; Laws 1907, p. 94, § 1; Bal. Code, § 252; 2 Rem. & Bal. Code, § 8302.

[b] "The term 'folio,' when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every two figures necessarily used as a word. Any portion of a folio, when in the whole draft or paper there should not be a complete folio, and when there shall be an excess over the last folio exceeding a quarter, it shall be computed as a folio. The filing of a paper shall be construed to include the certificate of the same": Laws 1869, p. 373, § 5; Code 1881, § 2093; 1 H. C., § 3022; Bal. Code, § 1612; Rem. & Bal. Code, § 500.

§ 40. Removal.—A notary public is appointed by the governor for four years, but may be removed by him at any time during the four years if the governor decides that he should not be allowed by reason of misconduct, malfeasance or incompetency to enjoy the privileges of the said office.[a] [b] [c] [d] [e]

[a] "Removal from Office.—All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law": Wash. Const., art. 5, § 3.

[b] "The governor of the state of Washington is hereby authorized and empowered to remove from office all state officers appointed by him not liable to impeachment for incompetency, misconduct or malfeasance in office": Laws 1893, p. 247, § 1; Bal. Code, § 107; 2 Rem. & Bal. Code, § 8994.

[c] "Whenever the governor is satisfied that any officer not liable to impeachment has been guilty of misconduct, or malfeasance in office, or is incompetent, he shall file with the secretary of state a statement showing his reasons with his order of removal, and the sec-

retary of state shall forthwith send a certified copy of such order of removal and statement of causes by registered mail to the last known postoffice address of the officer removed": Laws 1893, p. 284, § 2; Bal. Code, § 108; 2 Rem. & Bal. Code, § 8995.

[d] "The omission to specify or affirm in this act any ground of forfeiture of a public office or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, shall not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension": Laws 1909, p. 901, § 45; 2 Rem. & Bal. Code, § 2297.

[e] It would seem that by the constitutional provision, article 5, section 3, sections 8994 and 8995 of 2 Remington and Ballinger's Code, State v. Burke, 8 Wash. 412, 36 Pac. 281, and State ex rel. Howlett v. Cheetham, 19 Wash. 330, 53 Pac. 349, there is no question but that the governor may at any time remove a notary public for misconduct or malfeasance in office, and also that the notary removed would have no right to have a hearing although his office is for a fixed period.

§ 41. Delegation of Authority.—A notary's clerk has no right, in the absence of the notary, to take oaths, affidavits or acknowledgments and to attach the notary's seal thereto. He would thereby be laying himself open to a criminal prosecution, as would the notary himself, if he knew and countenanced such acts.[1] The question of how far a notary's clerk's acts are acceptable as the acts of the notary himself has never been taken to any final court of judicature in this country, except in the case of bills and notes.[2] In all these cases, with the exception of states which have a statute or which allow it by usage, it has been held that a presentment either for acceptance or payment by a notary's clerk is insufficient. A notary's privileges and rights are personal.[3]

1 § 35, notes [e], [f].

2 21 Am. & Eng. Ency. of Law, 2d ed., p. 577, note 3.

3 Sacrider v. Brown, 3 McLean (U. S.), 481, Fed. Cas. No. 12,205; Cribbs v. Adams, 13 Gray (Mass.), 597; Commercial Bank v. Varnum, 49 N. Y. 269; Chitty on Bills, 13th Am. ed., p. 517; Ocean Nat. Bank v. Williams, 102 Mass. 141; 3 Kent's Com., p. 94; Gawtry v. Doane, 51 N. Y. 84.

"The duty of the notary in making the demand for acceptance or payment is personal, and

§ 42. **Notaries De Facto: Definition.**—Lord Ellenborough, many years ago in England, defined an officer de facto to be "one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law." Some examples of notaries de facto would be the following: A present notary in Washington, assuming the law under which he was appointed to be unconstitutional; a notary beginning to officiate, although his term has not begun; a notary holding over after the expiration of his term; a person appointed a notary who is in fact an alien; a person appointed in this state who has not filed a bond to fulfill the requirements of the statute. If a person who has no reason whatever to think he is a notary should begin to act as a notary he would not be a notary de facto; he would be an intruder or usurper. If a person has reason to think that he has been appointed a notary, and then performs notarial acts, he would be a notary de facto, although by reason of some defect in his appointment or otherwise he is not a legally appointed notary.[1] A single act, however, will not constitute a person a de facto notary;[2] he must exercise the rights of a notary for some period of time.[3]

§ 43. **Notaries De Facto: Are Their Acts Valid?**—The validity of the acts of notaries de facto is often of great importance. The rule seems to be that as to the public and third persons his acts are valid and cannot be collaterally attacked.[4] This rule was laid down in Washington when yet a territory. In Bullene v. Garrison, decided in July, 1878, 1 Wash. Ter. 589, Mr. Justice Greene said:

cannot be performed by his clerk or a third person, and his notarial certificate must show it": 3 Kent's Com., p. 94.

1 29 Cyc. Law & Proc., p. 1075; Hamilton v. Pitcher, 53 Mo. 334; Smith v. Meador, 74 Ga. 416, 58 Am. Rep. 438; Bernier v. Becker, 37 Ohio St. 72; Hughes v. Long, 119 N. C. 52, 25 S. E. 743.

2 Biencourt v. Parker, 27 Tex. 558; Cary v. State, 76 Ala. 78; 8 Am. & Eng. Ency. of Law, 2d ed., p. 784.

3 Hughes v. Long, 119 N. C. 52, 25 S. E. 743, notes 1 and 2.

4 Cary v. State, 76 Ala. 78; Wilson v. Kimmel, 109 Mo. 260, 19 S. W. 24; Davidson v. State, 135 Ind. 254, 34 N. E. 972.

"Plaintiff in error contends that Maynard's deed to Garrison and Moxlie was not duly acknowledged. It purports to have been acknowledged before one Plummer, as notary public. The evidence shows that Plummer was exercising the functions of a notary, and publicly assuming to be such. His oath of office, official bond and notarial seal were all on file in the executive office of the territory. He was at least an officer de facto, and his right to the office could not be tried in this suit."

§ 44. **Notaries Ex Officio.**—In addition to notaries public many other officials may by virtue of their office administer oaths and take affidavits, acknowledgments and depositions.[1] Among those who can exercise all of these rights are judges of the supreme and superior courts, and, within their own jurisdictions, all other judicial officers. Commissioners of deeds and city clerks of the third class may take affidavits. The clerks of the supreme and superior courts, and their deputies, court commissioners, county auditors and their deputies, and commissioners of deeds may take acknowledgments. A long list of officials are given the power to administer oaths in certain cases. Depositions may be taken by supreme and superior court judges, by all other judicial officers, by the clerks of the supreme and superior courts, by mayors, by city clerks, by court commissioners. But these powers do not constitute these various officials notaries public. Their powers are delegated to them by statute, and they have no right to overstep those enumerated and attempt to perform other acts which a notary may do by virtue of his office.[2]

[1] "The constitution of Texas has recognized domestic justices of the peace as notaries ex officio, but it is said that such justices are not recognized as notaries by foreign governments: Gilleland v. Drake, 36 Tex. 676": 29 Cyc. Law & Proc., p. 1073, note 38.

[2] Some of the references are the following: Rem. & Bal. Code, §§ 85, 59, 60, 1233, 1239, 7696½, 1962, 1264, 77, 8305, 3926.

CHAPTER VI.

OATHS.

§ 45. History.
§ 46. Definitions: Oath.
§ 47. ——: Affirmation.
§ 48. Administration: What Constitutes.
§ 49. ——: Who may Take Oath.
§ 50. ——: Who may Administer: Ministerial Act.
§ 51. Form.
§ 52. Evidence of Administration.
§ 53. False Oaths: Punishment for.

§ 45. History.—The taking of an oath, or swearing, is a very old practice. It has been the custom of all civilized nations to have persons go through some form of pledge or avowal to God in order to insure truthfulness.[1] Oaths are a part of Christianity no more than of any other religion; nor are they a custom of courts alone.[2] According to "Best on Evidence" they were used before societies were formed or cities built.[3] We know that a Jew is sworn on the Pentateuch, or Old Testament, with his head covered;[4] a Mohammedan, on the Koran;[5] a Gentoo, by touching with his hand the foot of a Brahmin or priest of his religion; a Brahmin, by touching the hand of another such priest;[6] a Chinaman, by breaking a china saucer;[7] or by blowing out a candle.[8]

1 21 Am. & Eng. Ency. of Law, 2d ed., p. 744; Omychund v. Barker, 1 Atk. 45, 26 Eng. Reprint, 15; Perry v. Commonwealth, 3 Gratt. (Va.) 632.

2 See note 1; Clinton v. State, 33 Ohio St. 27; Best on Evidence, Chamberlayne's ed., § 56.

3 See note 2.

4 Strange, 821, 1113; Newman v. Newman, 7 N. J. Eq. 26; Sessenwein v. Palmer, 3 Quebec Pr. 110.

5 Rex v. Morgan, Leach C. C. 64.

6 Omychund v. Barker, 1 Atk. 45, 26 Eng. Reprint, 15.

7 Regina v. Entrehman, 1 Cromp. & M. 248, 25 Alb. L. J. 301; State v. Chyo Chiagk, 92 Mo. 395, 4 S. W. 704.

8 Bouv. Law. Dict. (Rawle's Rev.), tit. "Oath"; State v. Gin Pong, 16 Wash. 428, 47 Pac. 961 (February, 1897).

One of the first, if not the first, oaths we have any record of is found in the fourteenth chapter of the book of Genesis, the time of which is supposed to

While oaths are of very ancient origin, affirmations are modern, created by statute law.[9] They were first introduced to satisfy certain religious sects whose members believed that the Biblical admonition "Swear not at all" meant just what it said. Prominent among these were the Quakers, Moravians and Separatists.[10] The granting of the right to those who had religious scruples was soon followed by a granting of the same privilege to those who have conscientious scruples.[11] And now by statute in nearly all of the states a person may affirm instead of taking an oath. In Washington this right is protected by article 1, section 6, of the constitution,[a] and also by the Laws of 1869.[b] The constitution also sets forth in article 1, section 11, that no person shall be incompetent as a witness in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.[c]

[a] "Oaths—Mode of Administering.—The mode of administering an oath or affirmation shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath or affirmation may be administered": Wash. Const., art. 1, § 6.

be 1913 years before the coming of Christ. We find there these words: "And Abram said to the King of Sodom, I have lift up mine hand unto the Lord, the most high God, the possessor of heaven and earth, that I will not take anything that is thine, lest thou shouldest say, I have made Abram rich."

A writer in a recent number of "The Docket," a law magazine, in an article on "The Oath," says: "Almost universally the ancients swore by their deities, or some object that they worshiped, or which represented the object of worship. Thus, we find the ancient Indians swearing by a stream flowing from a fountain of unfailing water, representing, doubtless, the eternity and immortality of their gods. The Persians swore by the sun, which was regarded as their chief deity —the author of light and life and all blessings. The ancient Scythians swore by the air, the sustainer and promoter of life. . . . . In an early and solemn form of adjuration, the Roman juror took a pebble in his right hand and threw it away, using these words: 'If knowingly I speak falsely, may Diospiter cast me away, as I cast this stone away.'"

9 21 Am. & Eng. Ency. of Law, 2d ed., p. 744.

10 See note 9.

11 See note 9.

[b] "Any person who has conscientious scruples against taking an oath may make his solemn affirmation, by assenting, when addressed, in the following manner: 'You do solemnly affirm that,' etc., as in section 1265": Laws 1869, p. 379, § 5; 2 H. C., § 1697; Bal. Code, § 6058; 1 Rem. & Bal. Code, § 1268.

[c] "Art. 1, sec. 11. . . . . No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony": Amendment 4 to the constitution of the state of Washington, approved November, 1904.

§ 46. Definitions: Oath.—An oath is an outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God.[1] Another definition is: An oath is a solemn invocation of the vengeance of the Deity upon the witness if he do not declare the whole truth, so far as he knows it.[2] In its broadest sense, the term is used to include all forms of attestation by which a party signifies that he is bound in conscience to perform the act faithfully and truly.[3] The essential requisite of an oath at common law is belief by the witness or affiant in the existence of a God, who will punish him if he swears falsely, and an appeal to such God as the rewarder of truth and the avenger of falsehood.[4] In the state of Washington the oath is as follows: "You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between John Doe and Richard

1 Tyler on Oaths, 15.

2 1 Starkie on Evidence, 22.

3 Bouv. Law Dict. (Rawle's Rev.), tit. "Oath."

4 29 Cyc. Law & Proc., p. 1298: "In Blocker v.. Burness, 2 Ala. 354, it is held that the sanction of an oath is a belief that the Supreme Being will punish falsehood; and whether that punishment is administered by remorse of conscience, or in any other mode in this world, or is reserved for the future state of being, cannot affect the question, as the sum of the matter is a belief that God is the avenger of falsehood. . . . . The administration of an oath supposes that a moral and religious accountability is felt to a Supreme Being, and this is the sanction which the law requires upon the conscience of a person, before it admits him to testify: Wakefield v. Ross, 5 Mason, 16, 28 Fed. Cas. No. 17,050."

Roe shall be the truth, the whole truth and nothing but the truth, so help you God." The oath a notary would usually administer is as follows: "You do solemnly swear you will true answers make to such questions as you may be asked, and that the said answers shall be the truth, the whole truth, and nothing but the truth, so help you God."[a] If the person to be sworn is not a Christian, and the notary thinks a peculiar mode of swearing would be more solemn and obligatory, that mode may be adopted in his taking the oath. [b] [c] The words "oath," "affirmation," and "swear" all mean the same thing in the eyes of the law.[d]

[a] "An oath may be administered as follows: The person who swears holds up his hand, while the person administering the oath thus addresses him: 'You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between ——— and ——— shall be the truth, the whole truth, and nothing but the truth, so help you God.' If the oath be administered to any other than a witness giving testimony, the form may be changed to: 'You do solemnly swear you will true answers make to such questions as you may be asked,' etc.": Laws 1869, p. 378, § 2; 2 H. C., § 1694; Bal. Code, § 6055; 1 Rem. & Bal. Code, § 1265.

[b] "Whenever the court or officer before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing connected with or in addition to the usual form of administration, which, in witness' opinion, is more solemn or obligatory, the court or officer may, in its discretion, adopt that mode": Laws 1869, p. 379, § 3; 2 H. C., § 1695; Bal. Code, § 6056; 1 Rem. & Bal. Code, § 1266.

[c] "When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the (peculiar) ceremonies of his religion, if there be any such": Laws 1869, p. 379, § 4; 2 H. C., § 1696; Bal. Code, § 6057; 1 Rem. & Bal. Code, § 1267.

[d] "The term 'oath' shall include an affirmation and every other mode authorized by law of attesting the truth of that which is stated. A person who shall state any matter under oath shall be deemed to 'swear' thereto": Laws 1909, p. 920, § 102; 1 Rem. & Bal. Code, § 2354.

§ 47. Definitions: Affirmation.—An affirmation has been defined as a solemn declaration made under penalties of perjury by persons who conscientiously decline taking an oath, which declaration is in law equivalent to an oath. If a person has conscientious scruples against taking an oath,

the notary should have him give his assent to the following: "You do solemnly affirm that the evidence you shall give in the issue (or matter) now pending between John Doe and Richard Roe shall be the truth, the whole truth, and nothing but the truth, so help you God." Or in some cases the form would be: "You do solemnly affirm that you will true answers make to such questions as you may be asked, and that said answers shall be the truth, the whole truth, and nothing but the truth, so help you God." [a] [b]

[a] See § 46, notes [a] and [d].

[b] "Whenever an oath is required, an affirmation as required in the last section is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury equally with a false oath": Laws 1869, p. 379, § 6; 2 H. C., § 1698; Bal. Code, § 6059; 1 Rem. & Bal. Code, § 1269.

§ 48. **Administration: What Constitutes.**—The administration of an oath must necessarily vary with the person taking the oath, for it is to be administered in the way which most affects his conscience.[1] If he is a Christian, a usual form would be for him to stand with his head uncovered, with his right hand raised and giving attention to the words spoken by the notary. When the notary finishes repeating the oath he should say: "I do," or some other words of like meaning, showing that he gives assent to the promise or attestation. If the person to be sworn believes in a religion other than the Christian religion he should be sworn according to the peculiar ceremonies of his religion, if there are any such ceremonies.[2] After a person not a Christian is sworn according to his religion it would be perfectly allowable to swear him according to the statute. In State v. Gin Pong, 16 Wash. 428, 47 Pac. 961 (February, 1897), Mr. Justice Dunbar says:

[1] Gill v. Caldwell, 1 Breese (Ill.), 53; Commonwealth v. Buzzell, 16 Pick. (Mass.) 163; Newman v. Newman, 7 N. J. Eq. 26; State v. Chyo Chiagk, 92 Mo. 395, 4 S. W. 704; The Bark Merrimac, 1 Ben. (U. S.) 490, Fed. Cas. No. 9,474; 21 Am. & Eng. Ency. of Law, 2d ed., p. 750; 29 Cyc. Law & Proc., p. 1303; Bouv. Law Dict. (Rawle's Rev.), tit. "Oath."

[2] Omychund v. Barker, 1 Atk. 21, 26 Eng. Reprint, 15; Newman v. Newman, 7 N. J. Eq. 26.

"On the second proposition, it seems that the oath which was administered to the witnesses, who were Chinese, was administered according to the custom and religion of their country, viz., each witness blew out a candle, and his oath was that if he did not tell the truth he would be snuffed out as was the candle. But after this eastern form of oath was administered, the court also administered the form of oath prescribed by our statute, and the appellant insists that the taking of this second oath in some way weakened the influence of the other oath in the minds of the witnesses. We think this contention scarcely merits a discussion."[3]

§ 49. Administration: Who may Take Oath.—All persons who have sufficient intelligence to understand the nature of an oath, and who believe in the existence of a Supreme Being whose attributes impose upon their consciences a sense of responsibility for falsehood and a moral obligation to speak the truth when deposing under the sanction of an oath, are competent to take an oath.[1] For example, a child may be sworn if, after an examination by the notary, he decides that the child understands the nature of an oath.[a] [b] The notary should learn this fact by talking with the child and questioning it as to what telling the truth means and as to what will happen if he does not tell the truth.[2] In this state if the child is under ten years of age the notary should examine him especially along the lines of his capability of receiving true impressions from things which have taken place around him and also of his ability to tell about these impressions truthfully.[b] Intel-

3 Bow v. People, 160 Ill. 438, 43 N. E. 593. In Sullivan v. Flatonia First Nat. Bank, 37 Tex. Civ. App. 228, 83 S. W. 421, it was held that the administration of an oath over the telephone was not good, although the officer purporting to administer it knew and recognized the voice of the person purporting to take the oath, under a statute requiring the mode most binding on the conscience of the individual, and another providing that affidavits "may be made before" certain officers.

1 21 Am. & Eng. Ency. of Law, 2d ed., p. 747.

2 16 Am. & Eng. Ency. of Law, 2d ed., p. 267.

ligence and not age seems to be the proper test.[3] Before putting the child under oath the notary should decide whether it has sufficient mental capacity and a proper sense of moral obligation.[4] [c]

A deaf and dumb person who understands the nature and sanctity of an oath is competent to be sworn, if any person can be found who can communicate to him, by signs, the questions asked, and interpret his answers to the notary; or if he can write and read writing, and thus receive questions and give answers.[5] Neither a drunken person nor a person of unsound mind can be sworn.[b] Should the person to be sworn be unable to understand the English language the oath may be administered through the medium of an interpreter.

[a] "Every person of sound mind and suitable age and discretion, except as hereinafter provided, may be a witness in any action or proceeding": Laws 1854, p. 186, § 289; Code 1881, § 388; 2 H. C., § 1645; Bal. Code, § 5990; 1 Rem. & Bal. Code, § 1210.

[b] "The following persons shall not be competent to testify:—1. Those who are of unsound mind, or intoxicated at the time of their

[3] Note 2, p. 268; State v. Jackson, 9 Or. 457; Washburn v. People, 10 Mich. 372; People v. Bernal, 10 Cal. 66.

[4] 16 Am. & Eng. Ency. of Law, 2d ed., p. 270; Anonymous, 3 N. J. L. 487; Davis v. State, 31 Neb. 247, 47 N. W. 854. The following examples were taken from 16 Am. & Eng. Ency. of Law, 2d ed., p. 269:

In Missouri etc. R. Co. v. Johnson (Tex. Civ. App. 1896), 37 S. W. 771, a child of ten, who stated that it was wrong to tell a story, and that if he did the old buggerman would get him and burn him, was held to be competent.

In State v. Scanlan, 58 Mo. 204, a child of nine, who stated that she was the daughter of the defendant, that she knew her prayers, could read some, believed in God, and thought it wrong to tell lies, was held to be competent.

In Minton v. State, 99 Ga. 254, 25 S. E. 626, a child of eight, who stated that he did not know what an oath was, but also said he knew what it was "to go up in the courthouse and swear you have to tell the truth," that the law would punish him if he told a story, and that he was bound to tell the truth when sworn, was held to be competent.

In Parker v. State, 33 Tex. Cr. 111, 21 S. W. 604, 25 S. W. 967, a boy of twelve, who stated that "it was wrong to tell a lie," and that if he told a lie he would be punished, was held competent.

[5] 8 Am. & Eng. Ency. of Law, 2d ed., p. 844.

production for examination; and 2. Children under ten years of age who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly": Laws 1873, p. 106, § 384; Code 1881, § 391; 2 H. C., § 1648; Bal. Code, § 5993; 1 Rem. & Bal. Code, § 1213.

[c] In State v. Bailey, 31 Wash. 89, 71 Pac. 715 (February, 1903), Mr. Justice Hadley, in commenting on the testimony of a child of twelve years, said: "The capacity of a witness of tender years is a question for the discretion of the trial judge, and will not be disturbed except in cases of manifest abuse of discretion."

§ 50. Administration: Who may Administer: Ministerial Act.—As this book was written for notaries, it is sufficient to state that a notary public has the power to administer oaths.[a] [b] The administration of an oath being purely ministerial, the fact that the notary administering it is interested in the proceeding in which it is to be used does not disqualify him; but a notary cannot administer an oath to himself.[1] The question of interest is discussed under the head "Nature of the Office: Judicial or Ministerial."[2] A notary of Washington may administer an oath anywhere in the state.[c] And an attorney at law who is a notary may administer an oath to his client.[a]

[a] "Every duly qualified notary public is authorized in any county in this state,—. . . . 3. To take depositions and affidavits, and administer all oaths required by law to be administered; and every attorney at law who is a notary public may administer any oath to his client, and no pleading or affidavit shall, on that account, be held by any court to be improperly verified": Laws 1890, p. 474, § 4; 1 H. C., § 332; Bal. Code, § 248; 2 Rem. & Bal. Code, § 8298.

[b] "Every court, judge, clerk of a court, justice of the peace, or notary public is authorized to take testimony in any action, suit, or proceeding, and such other persons in particular cases as authorized by law. Every such court or officer is authorized to administer oaths and affirmations generally, and every such other persons in such particular case as authorized": Laws 1869, p. 378, § 1; 2 H. C., § 1693; Bal. Code, § 6094; 1 Rem. & Bal. Code, § 1264.

[c] "Every notary public shall be appointed for the state . . . .": Laws 1890, p. 473, § 2; 1 H. C., § 330; Bal. Code, § 246; 2 Rem. & Bal. Code, § 8296.

1 In re South Beaver Tp. Road, 8 Kulp (Pa.), 75. One would think it unnecessary to make such a statement if it were not for this case.

2 § 12.

§ 51. Form.—As stated before, the form of the oath must necessarily vary with the person taking it, as it must be in that form which will be most binding on the conscience of the affiant. If the person is a Christian, one of the following forms should be used:

FORM VII.

"You do solemnly swear (or affirm) that the evidence you shall give in the issue (or matter) now pending between John Doe and Richard Roe shall be the truth, the whole truth, and nothing but the truth, so help you God."[a] [b] [c] [d]

FORM VIII.

"You do solemnly swear (or affirm) that you will true answers make to such questions as you may be asked, and that the said answers shall be the truth, the whole truth, and nothing but the truth, so help you God."

FORM IX.

"You do solemnly swear (or affirm) that the contents of this affidavit are known to you and that the said facts are the truth to the best of your knowledge and belief, so help you God."

If the person objects, by reason of conscientious scruples, to "swearing," the word "affirm" can be used instead of "swear." It would seem, however, that he must have expressed some conscientious scruples before the notary would be justified in changing the words. It has been held by a number of states that where a statute lays down a particular form of oath or affirmation, that form must be followed.[1] But the fact that an oath was taken in an irregular manner would not prevent a prosecution for perjury.[e] If the person to be sworn is not a Christian, that form should be used which would be the most binding on his conscience; [f] [g] [h] it may be breaking a saucer, blowing out a candle, burning joss sticks, or kissing the foot of a priest.[2]

1 29 Cyc. Law & Proc. 1304; Perry v. Thompson, 16 N. J. L. 72; Shattuck v. Bascom, 105 N. Y. 39, 12 N. E. 283.

2 29 Cyc. Law & Proc., p. 1303.

[a] "An oath may be administered as follows: The person who swears holds up his hand, while the person administering the oath thus addresses him: 'You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between ———— and ———— shall be the truth, the whole truth, and nothing but the truth, so help you God.' If the oath be administered to any other than a witness giving testimony, the form may be changed to: 'You do solemnly swear you will true answers make to such questions as you may be asked,' etc.": Laws 1869, p. 378, § 2; 2 H. C., § 1694; Bal. Code, § 6055; 1 Rem. & Bal. Code, § 1265.

[b] "Any person who has conscientious scruples against taking an oath may make his solemn affirmation, by assenting, when addressed, in the following manner: 'You do solemnly affirm that,' etc., as in section 1265": Laws 1869, p. 379, § 5; 2 H. C., § 1697; Bal. Code, § 6058; 1 Rem. & Bal. Code, § 1268.

[c] "Whenever an oath is required, an affirmation as required in the last section is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury equally with a false oath": Laws 1869, p. 379, § 6; 2 H. C., § 1698; Bal. Code, § 6059; 1 Rem. & Bal. Code, § 1269.

[d] "The term 'oath' shall include an affirmation and every other mode authorized by law of attesting the truth of that which is stated. A person who shall state any matter under oath shall be deemed to 'swear' thereto": Laws 1909, p. 920, § 102; 1 Rem. & Bal. Code, § 2354.

[e] "It shall be no defense to a prosecution for perjury that an oath was administered or taken in an irregular manner . . . .": Laws 1909, p. 921, § 103; 1 Rem. & Bal. Code, § 2355.

[f] "Oaths—Mode of Administering.—The mode of administering an oath or affirmation shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath or affirmation may be administered": Wash. Const., art. 1, § 6.

[g] "When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the (peculiar) ceremonies of his religion, if there be any such": Laws 1869, p. 379, § 4; 2 H. C., § 1696; Bal. Code, § 6057; 1 Rem. & Bal. Code, § 1267.

[h] "Whenever the court or officer before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing connected with or in addition to the usual form of administration, which, in witness' opinion, is more solemn or obligatory, the court or officer may, in its discretion, adopt that mode": Laws 1869, p. 379, § 3; 2 H. C., § 1695; Bal. Code, § 6056; 1 Rem. & Bal. Code, § 1266.

§ 52. Evidence of Administration.—When a notary certifies that a certain person has sworn before him it is not

necessary for him to add in what manner the oath was administered. It will be presumed that he administered it in the legal way. If the person "affirms" instead of "swears," it will not be necessary to add anything to the words that he affirms; that is, no words in explanation of the fact why he affirmed. Nor, if the oath is administered in some peculiar manner, will it be necessary to set forth that fact and explain why that form was used. The law will presume, if nothing is said by way of explanation, that the ceremony most binding on the conscience of the affiant was administered.[1] After reciting the fact that it was "sworn to" and, if signed, "subscribed," the notary should add his name and date and also his official title and seal. These additions do not affect in any way the oath taken, but are useful in the matter of evidence.[2] The following is a form used very often:

FORM X.

WILLIAM STILES. [Seal]

Sworn to and subscribed before me this 20th day of September, 1910, at Seattle, Washington.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington, Residing at Seattle.

If the oath is to be used in any of the courts of Washington, it is not necessary for the notary to append an impression of his seal, but in all other cases when the notary signs an instrument as notary he must, in addition to his name and the words "Notary Public" add his place of resi-

1 21 Am. & Eng. Ency. of Law, 2d ed., p. 753; 29 Cyc. Law & Proc., p. 1305; Colvin v. People, 166 Ill. 82, 46 N. E. 737; Cross v. Barnett, 61 Wis. 650, 21 N. W. 832; State v. Freeman, 59 Vt. 661, 10 Atl. 752.

In State v. Welch, 79 Me. 99, 8 Atl. 348, it held that the certificate of the magistrate to whom a complaint is made, which recites the fact that the complainant made solemn affirmation to the complaint is conclusive, not only that the complainant was "conscientiously scrupulous of taking an oath," but that he formally "affirmed under pains and penalties of perjury," as required by statute.

2 21 Am. & Eng. Ency. of Law, 2d ed., p. 754.

dence and attach his official seal.[3] This will be considered more fully under "Affidavits."[4]

§ 53. False Oaths: Punishment for.—Any person taking a false oath is liable to be prosecuted for perjury. What constitutes perjury in the first degree and what constitutes perjury in the second degree are set forth in the following statutes, together with the punishments for the same:

"Every person who, in any action, proceeding, hearing, inquiry or investigation, in which an oath may lawfully be administered, shall swear that he will testify, declare, depose or certify truly, or that any testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed is true, and who in such action, proceeding, hearing, inquiry or investigation shall state or subscribe as true any material matter which he knows to be false, shall be guilty of perjury in the first degree and shall be punished by imprisonment in the state penitentiary for not more than fifteen years": Laws 1909, p. 920, § 99; 1 Rem. & Bal. Code, § 2351.

"It shall be no defense to a prosecution for perjury in the first degree that the defendant did not know the materiality of his false statement or that it did not in fact affect the proceeding in or for which it was made. It shall be sufficient that it was material and might have affected such proceeding": Laws 1909, p. 920, § 100; 2 Rem. & Bal. Code, § 2352.

"Every person who, whether orally or in writing, and whether as a volunteer or in a proceeding or investigation authorized by law shall knowingly swear falsely concerning any matter whatsoever, shall be guilty of perjury in the second degree and shall be punished by imprisonment in the state penitentiary for not more than five years or by imprisonment in the county jail for not more than one year": Laws 1909, p. 920, § 101; 1 Rem. & Bal. Code, § 2353.

"It shall be no defense to a prosecution for perjury that an oath was administered or taken in an irregular manner

[3] Laws 1890, p. 474, § 5; 1 H. C., § 333; Bal. Code, § 249; 2 Rem. & Bal. Code, § 8299; Gates v. Brown, 1 Wash. 470, 25 Pac. 914.

[4] § 66.

or that the defendant was not competent to give the testimony, deposition, certificate or affidavit of which falsehood is alleged. It shall be sufficient that he actually gave such testimony or made such deposition, certificate or affidavit": Laws 1909, p. 921, § 103; 1 Rem. & Bal. Code, § 2355.

"Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he knows to be false": Laws 1909, p. 921, § 105; 1 Rem. & Bal. Code, § 2357.

"Every person who, upon any trial, hearing, inquiry, investigation or other proceeding authorized by law, shall offer or procure to be offered in evidence, as genuine, any book, paper, document, record or other instrument in writing, knowing the same to have been forged or fraudulently altered, shall be punished by imprisonment in the state penitentiary for not more than ten years": Laws 1909, p. 921, § 106; 1 Rem. & Bal. Code, § 2358.

"Whenever it shall appear probable to a judge, justice of the peace, magistrate, or other officer lawfully authorized to conduct any hearing, proceeding or investigation, that a person who has testified before him has committed perjury in any testimony so given, or offered any false evidence, he may, by order or process for that purpose, immediately commit such person to jail or take a recognizance for his appearance to answer such charge. In such case he may detain any book, paper, document, record or other instrument produced before him or direct it to be delivered to the prosecuting attorney": Laws 1909, p. 921, § 107; 1 Rem. & Bal. Code, § 2359.[1]

[1] It is questioned whether the framers of the Criminal Code of 1909 had notaries in mind when they wrote section 107: 1 Rem. & Bal. Code, § 2359. Question: Has a notary the power to commit a person to jail if he thinks that person has committed perjury before his as an "officer"? If so, how would he proceed?

CHAPTER VII.

AFFIDAVITS.

§ 54. Definitions.
§ 55. Who may Make.
§ 56. The Oath.
§ 57. Notary may Take.
§ 58. Parts of an Affidavit.
§ 59. ——: The Title.
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§ 64. ——: Signature: Names.
§ 65. ——: Jurat: Forms.
§ 66. ——: Jurat: Necessity of: Place: Oath: "Before Me": Signature: Seal.
§ 67. Affidavits: Criminal Law.
§ 68. Affidavits: Forms: Interpreter's Oath.

§ 54. **Definition.**—An affidavit is a voluntary ex parte statement, formally reduced to writing, and sworn to or affirmed before some officer authorized by law to take it.[1] First, it must be voluntary. If it were not voluntary it might come under the head of depositions when the witness is compelled to attend and testify; but the word "affidavit" always carries with it the idea that it is voluntarily sworn to.[2] Secondly, it must be "ex parte." If it were not ex parte it would clearly be a deposition, for that marks the

1 1 Ency. of Pl. & Pr., p. 309. See § 56, note [a].

2 Bacon v. Magee, 7 Cow. (N. Y.) 515; Stimpson v. Brooks, 3 Blatchf. (U. S.) 456, Fed. Cas. No. 13,454; 1 Ency. of Pl. & Pr., p. 309. "The law presumes that the performance of every act required by it is voluntary, and no affidavit is valid unless obtained by legal means and for a legal purpose": Dudley v. McCord, 65 Iowa, 671, 22 N. W. 920. An affidavit is also voluntary in the sense of not being made under cross-examination: Robb v. McDonald, 29 Iowa, 330, 4 Am. Rep. 211; 3 Black. Com. 304; Gill v. Ward, 23 Ark. 16; Shelton v. Berry, 19 Tex. 155, 70 Am. Dec. 326; Gresley Eq. Ev., 413; Cox v. Stern, 170 Ill. 442, 62 Am. St. Rep. 385, 48 N. E. 906; State v. Headrick, 149 Mo. 396, 51 S. W. 99.

difference between affidavits and depositions.[3] Thirdly, it must be reduced to writing. The law knows no such thing as an unwritten affidavit.[4] Fourthly, the written statement must be sworn to or affirmed. The true test of the sufficiency of a paper as an affidavit is the possibility of assigning perjury on it if it is false.[5] Fifthly, it must be sworn to or affirmed before some officer authorized by law to take it. Under the Washington statute a notary is clearly such an officer,[a] although he would not have such power at common law.[6]

[a] See § 50, note [a].

§ 55. Who may Make.—From the point of view of the notary there are only two questions to be determined in deciding whether a person can make an affidavit. The first is the question as to the ability of the affiant to take an oath. That question has been considered under the title "Oaths" on page 113. Secondly, the affidavit must be made

3 Ex parte means "on the part of one party." It seems that the difference between a deposition and an affidavit is that the former is made after notice and the latter without notice: Atchison v. Bartholow, 4 Kan. 124; State v. Henning, 3 S. D. 492, 54 N. W. 536; Stimpson v. Brooks, 3 Blatchf. (U. S.) 456, Fed. Cas. No. 13,454; 1 Am. & Eng. Ency. of Law, 2d ed., p. 909; Gresley Eq. Ev., 413; Woods v. State, 134 Ind. 42, 33 N. E. 901; Bishop v. McQuerry, 13 Bush (Ky.), 418; 1 Ency. of Pl. & Pr., pp. 309, 310.

4 Affidavits must always be in writing: Windley v. Bradway, 77 N. C 333; Hawkins v. Gibson, 1 Leigh (Va.), 480; Shelton v. Berry, 19 Tex. 154, 70 Am. Dec. 326; Harris v. Lester, 80 Ill. 307; State v. Sullivan, 39 S. C. 400, 17 S. E. 865; 1 Ency. of Pl. & Pr., p. 310. The word "affidavit," ex vi termini, means an oath reduced to writing: Grove v. Campbell, 9 Yerg. (Tenn.) 10; Watt v. Carnes, 4 Heisk. (Tenn.) 534.

5 1 Ency. of Pl. & Pr., p. 310; Hyde v. Adams, 80 Ala. 111; Gaddis v. Durashy, 13 N. J. L. 324; Neal v. Gordon, 60 Ga. 112; Harris v. Heberton, 5 How. (Miss.) 575; Mairet v. Marriner, 34 Wis. 582; Miller v. Munson, 34 Wis. 579, 17 Am. Rep. 461.

6 Keefer v. Mason, 36 Ill. 406; State v. Green, 15 N. J. L. 88; Brooks v. Snead, 50 Miss. 418; Watt v. Carnes, 4 Heisk. (Tenn.) 534; Metcalf v. Prescott, 10 Mont. 293, 25 Pac. 1037; Garrard v. Hitsman, 16 N. J. L. 124; Hays v. Loomis, 84 Ill. 18.

by a person having knowledge of the facts.[1] As to when an affidavit must be made by certain parties, their agents, or attorneys to make them admissible in court the statutes must be referred to. To the notary the important questions are, Can A take an oath? Does he know the facts? and not, Will the court accept an affidavit made by A? But it may be noted here that where a statute prescribes a certain person to make an affidavit, no one else can make it.[2]

In many cases an agent or attorney who knows the facts may make an affidavit for the party when, on account of some good reason, such as sickness or absence from the jurisdiction, the party himself cannot make it. In such cases the agency should be shown in some way, and also the reason why the principal did not make the affidavit should be set forth.[3]

The courts have held that a partnership cannot make an affidavit in the firm name, though an affidavit signed "A and B, by B," has been held good as an affidavit of the agent.[4] Likewise an affidavit beginning "I, A B, state, etc.," and signed "A B & Co.," was held sufficient.[5] The proper forms, however, would be as follows:

FORM XI.

"I, A B, do hereby certify that I am the senior member of the firm of A B & Co., the plaintiff in the above action, that . . . ."

FORM XII.

"I, John Doe, do hereby certify that I am treasurer for the Hudson Realty Company, that I had full charge of the purchasing of rights of way for the Kittitas Railroad Com-

1 Cheek v. James, 2 Heisk. (Tenn.) 170; Rausch v. Moore, 48 Iowa, 611, 30 Am. Rep. 412; Will v. Lytle Creek Water Co., 100 Cal. 344, 34 Pac. 830.

2 In re Heath, 40 Kan. 333, 19 Pac. 926; Shattuck v. Myers, 13 Ind. 46, 74 Am. Dec. 236; 2 Cyc. Law & Proc., p. 5.

3 2 Cyc. Law & Proc., p. 5; 1 Ency. of Pl. & Pr., p. 327.

4 Norman v. Horn, 36 Mo. App. 419; Bennett v. Gray, 82 Ga. 592, 9 S. E. 469.

5 Fortenheim v. Claflin, 47 Ark. 49, 14 S. W. 462.

pany and know personally all the facts in the matter concerning which the above-entitled suit is brought."

In the case of a private corporation, an agent or officer duly authorized by the statutes to make oaths on behalf of the corporation may make all affidavits.[6] In regard to a municipal corporation it will depend on the statutes and charters as to who can make affidavits. In some a councilman, in others the mayor or city attorney, may take the oath on behalf of the municipality.[7]

It has been held that an affidavit made by a party as "guardian" is his individual affidavit.[8] Several persons may swear to and sign the same statement of facts in a single affidavit.[9]

§ 56. The Oath.—Before an affidavit has any value whatever it must be sworn to or affirmed by the affiant.[1] Just what forms must be gone through with for the notary to certify the affidavit has been considered under the subject "Oaths," found on page 112. It may be added here, however, that in swearing an affidavit, a solemn or corporal oath has been held not essential.[2] It is not necessary that the affiant "hold up his hand and swear"; all that is necessary is that both affiant and notary understand that an oath is taken.[3] Circumstances must show that there was an oath or affirmation made.[4][a]

[a] "It does not appear from the record that the paper was in fact sworn to. . . . . In other words, the paper upon its face does not show that it is an affidavit, and there is no proof in the record to supplement the showing upon the face of the paper": Tacoma Grocery Co. v. Draham, 8 Wash. 263, 40 Am. St. Rep. 907, 36 Pac. 31, Hoyt, J. (February, 1894).

6 St. Louis R. R. Co. v. Fowler, 113 Mo. 458, 20 S. W. 1069.

7 Wheeling v. Black, 25 W. Va. 266; Corpenny v. Sedalia, 57 Mo. 88.

8 Wade v. Roberts, 53 Ga. 26.

9 Taylor v. State, 48 Ala. 180.

1 Cantwell v. State, 27 Ind. 505; Kehoe v. Rounds, 69 Ill. 351; Cosner v. Smith, 36 W. Va. 788, 15 S. E. 977; Doty v. Boyd, 46 S. C. 39, 24 S. E. 59.

2 McCain v. Bonner, 122 Ga. 842, 51 S. E. 36.

3 2 Cyc. Law & Proc., p. 17; Dunlap v. Clay, 65 Miss. 454, 4 South. 118.

4 1 Ency. of Pl. & Pr., p. 324.

§ 57. Notary may Take.—A notary public may take affidavits under the Laws of 1890.[a] As to when a notary may take affidavits to be used in the courts of the United States or otherwise under the United States government, see the topic "Federal Statutes," on page 69.

[a] "Every duly qualified notary public is authorized in any county in this state,—3. To take depositions and affidavits, and administer all oaths required by law to be administered; and every attorney at law who is a notary public may administer any oath to his client, and no pleading or affidavit shall, on that account, be held by any court to be improperly verified": Laws 1890, p. 474, § 4; 1 H. C., § 332; Bal. Code, § 248; 2 Rem. & Bal. Code, § 8298.

§ 58. Parts of an Affidavit.—According to the definition,[1] an affidavit is a statement "formally" reduced to writing. From the cases we find that the formal parts necessary to an affidavit are: the title, the venue, date, signature, jurat and authentication.[2] Besides these formal parts every affidavit contains a "body," the statements made by the affiant as being true to his own knowledge. These different parts of every affidavit will now be considered in their order.

§ 59. Parts of an Affidavit: The Title.—If the affidavit is one which is intended for use in some trial or proceeding, the title of the case should precede the affidavit.[3] This is not absolutely demanded if the identity of the case and the affidavit is shown in the body of the affidavit or by reference to other papers duly entitled; but it is considered better form to give the affidavit a title of its own. Care should be taken to make the title an exact copy of the title of the action, as otherwise it would be rejected unless the

1 § 54.

2 1 Ency. of Pl. & Pr., p. 311; Beebe v. Morrell, 76 Mich. 114, 15 Am. St. Rep. 288, 42 N. W. 1119; 2 Cyc. Law & Proc., p. 17.

3 "The general rule in regard to the entitling of affidavits undoubtedly is that they should be regularly entitled in the court in which they are made or intended to be used": By Justice Cole in Vinson v. Norfolk etc. R. Co., 37 W. Va. 598, 16 S. E. 802; 2 Archb. Pr. 899; 3 Chit. Pr. 538; 2 Burr. Pr. 342; Parks v. State, 110 Ga. 760, 36 S. E. 73; Goldstein v. Whelan, 62 Fed. 124.

mistake could be overcome by references in the body of the affidavit.[2] Of course, if a suit has not been begun the affidavit should not be entitled.[3] The following is a title:

FORM XIII.

In the Superior Court of the State of Washington in and for the County of King.

John Doe, Plaintiff,
vs.
Richard Roe, Defendant.

No. ——.
Affidavit.

If there are several parties to the suit it will generally be sufficient to entitle the affidavit as follows:[4]

FORM XIV.

In the Superior Court of the State of Washington in and for the County of King.

John Doe et al., Plaintiffs,
vs.
Richard Roe et al., Defendants.

No. ——.
Affidavit.

2 1 Ency. of Pl. & Pr., p. 311; Watt v. Bradley, 95 Cal. 415, 30 Pac. 557; Whipple v. Williams, 1 Mich. 115; Watson v. Reissig, 24 Ill. 281, 76 Am. Dec. 746; Hill v. McBurney Oil Co., 112 Ga. 788, 38 S. E. 42, 52 L. R. A. 398; Dunham v. Rappleyea, 16 N. J. L. 75.

An affidavit which does not show that it was taken for use in a certain case, either in the body of the affidavit or by a title, should not be considered: Johnson v. Tanner, 126 Ga. 718, 56 S. E. 80.

3 West v. Woolfolk, 21 Fla. 189; Cheadle v. Riddle, 6 Ark. 480; 1 Ency. of Pl. & Pr., p. 312; Ex parte La Farge, 6 Cow. (N. Y.) 61; Haight v. Turner, 2 Johns. (N. Y.) 371; Stacy v. Farnham, 2 How. Pr. (N. Y.) 26; Hawkins v. State, 136 Ind. 630, 36 N. E. 419; Kinney v. Heald, 17 Ark. 397.

4 Seymour v. Bailey, 66 Ill. 288; Maury v. Van Arnum, 1 Hill (N. Y.), 370; White v. Hess, 8 Paige (N. Y.), 544; Hubby v. Harris, 63 Tex. 456. Contra, Arnold v. Nye, 11 Mich. 456; 2 Cyc. Law & Proc., p. 21.

§ 60. **Parts of an Affidavit: The Venue.**—The venue of an affidavit consists of those words which show where the affidavit was taken. The following is a venue, and should be placed directly after the title:

FORM XV.

State of Washington,
County of King,—ss.[1]

It means that the notary was in King county, Washington, when he administered the oath of the affidavit. In earlier times the venue was considered so essential that without it an affidavit, otherwise in good form, would be re-

[1] The question is often asked, What do the two letters "ss" mean? The authorities say that "ss" is the abbreviation of the Latin word "scilicet" (for scire licet—it is granted to know) and means, to wit, namely, that is to say. How the second "s" became attached to the first "s," which is undoubtedly the first letter of "scire," seems to be a question. One writer says that in old manuscripts and books the abbreviation for "et" (like the "et" in licet) closely resembled a "z." We have an example of that in "viz.," which is the same as "viet," which is the abbreviation for "videlicet." "Videlicet" now means the same as "scilicet." How the "z" evoluted into an "s" we do not know, unless the sounds of the two letters being alike had something to do with it: An Etymological Dictionary of the English Language (2d ed.), by Skeat; The Americana, vol. 1, tit. "Abbreviations"; Stanford Dictionary of Anglicized Words and Phrases; Century Dictionary and Cyclopedia; McCord Mercantile Co. v. Glenn, 6 Utah, 139, 21 Pac. 500; Cook v. Staats, 18 Barb. (N. Y.) 407; Blair v. West Point Mfg. Co., 7 Neb. 146; Byrd v. Cochran, 39 Neb. 109, 58 N. W. 127; Smith v. Collier, 3 N. Y. St. Rep. 172.

The venue should be given. Facts are not to be inferred from affidavits when the party has it in his power to state them positively: Brooks v. Hunt, 3 Caines (N. Y.), 128.

The word "venue" was originally spelled "visne," which word came from the low Latin word "visnetum," meaning neighborhood. In early days the jury was always chosen from among the men of the neighborhood who knew all the facts of the case, just the opposite from our present theory of choosing a jury. The venue showed the county in which the facts were alleged to have occurred: Bouv. Law Dict. (Rawle's Rev.), tit. "Venue."

"And the form of the affidavit, which was settled so long ago as the reign of King Charles the Second (1649–1685), has been ever most religiously adhered to": Tidd's Practice, p. *609.

jected;[2] but this stringent rule has been changed.[3] The purpose of the venue is to show that the officer who administered the oath acted within his jurisdiction, and if this can be shown from the affidavit without a venue it will be accepted.[4] But it is always good practice to use it.

When a notary of Washington takes an affidavit in a county in which he does not reside, he should place the venue in the county in which he is at the time of the administration of the oath. A notary of Washington may exercise his power in any county in the state, and the venue should show where he was at that time. As to how a notary should sign if in a county in which he does not reside, see the section on "Authentication," page 136.

When an affidavit is taken before a notary to be used in the United States courts the venue should be:

2 Lane v. Morse, 6 How. Pr. (N. Y. Sup. Ct.) 394; Blair v. West Pt. Mfg. Co., 7 Neb. 146; Brooks v. Hunt, 3 Caines (N. Y.), 128; Cook v. Staats, 18 Barb. (N. Y.) 407; Smith v. Richardson, 1 Utah, 194; Burns v. Doyle, 28 Wis. 460; Barhyat v. Alexander, 59 Mo. App. 188; Thompson v. Burhans, 61 N. Y. 52.

3 State v. Henning, 3 S. D. 492, 54 N. W. 536; Rex v. Emden, 9 East, 437, 103 Eng. Reprint, 640; Barnard v. Darling, 1 Barb. Ch. (N. Y.) 219; Stone v. Williamson, 17 Ill. App. 175; Reavis v. Cowell, 56 Cal. 588; Bennett v. Benson, 25 N. J. L. 166. "But while it is proper and usual to prefix a venue to an affidavit, and particularly desirable when the officer administering the oath has jurisdiction in more than one county, we are of opinion that the absence of a venue is not fatal to an affidavit": Young v. Young, 18 Minn. 94.

4 Snell v. Eckerson, 8 Iowa, 284; People v. Cady, 105 N. Y. 299, 11 N. E. 810; Stone v. Miller, 60 Iowa, 243, 14 N. W. 781; Cook v. Staats, 18 Barb. (N. Y.) 407, from which we learn that where the affidavit shows by its venue that it was taken in one county, while it is signed by an officer appointed for another county, it cannot be read. Under that law a notary could act only within the county for which he was appointed; Rahilly v. Lane, 15 Minn. 447; State v. Central Pac. R. Co., 17 Nev. 259, 30 Pac. 887; Wood v. Blythe, 46 Wis. 650, 1 N. W. 341.

FORM XVI.

United States of America,
Western District of Washington,
Northern Division,—ss.[5]

§ 61. **Parts of an Affidavit: Date.**—While a date is not an essential part of an affidavit, the notary should see that the affidavit is dated.[1] It is his duty to see that the affidavit is in good form; that would call for a date.

§ 62. **Parts of an Affidavit: Body.**—The body of the affidavit consists of the statements to which the affiant desires to make oath. The following are forms often used in introducing the body of the affidavit:

FORM XVII.

"Richard Roe, of the City of Seattle, County of King and State of Washington, being duly sworn on his oath, deposes and says: that he is the defendant in the above-entitled action; that he has reason to believe and does believe that he cannot have a fair and impartial trial before the justice before whom this action is brought, etc."

In the above introduction it will be noticed that the case is not set out, but merely referred to; a title would be absolutely necessary.

FORM XVIII.

"Richard Roe, being duly sworn on his oath, deposes and says, that he is a resident of the city of Seattle, county of King and state of Washington; that for the past five years he has been a resident of the said city, county and state; that he is of the age of twenty-one years; that he is the plaintiff in the action now pending in the superior court of King county, state of Washington, in which John Stiles is the defendant; that he makes this affidavit for the purpose of procuring a writ of attachment in said action in the manner provided by law, etc."

In the above introduction the case is set out so that it would fix the action in which it is to be used though not

[5] Sterrick v. Pugsley, 1 Flipp. (U. S.) 350, 22 Fed. Cas. No. 13,379, and U. S. Rev. Stats., § 863, Aug. 15, 1876, c. 304.

[1] Freas v. Jones, 15 N. J. L. 20.

headed by a title of the cause. Another introduction of the body setting forth the date and place is as follows:

FORM XIX.

"Richard Roe personally appears before me, John Doe, a notary public, in and for the state of Washington, residing at Seattle, and now on the 10th day of December, 1910, at 9 o'clock A. M. in my office, 304 Central Building, in the said city of Seattle, county of King and state of Washington, being first duly sworn on his oath, doth depose and say that he is a resident of the town of Bremerton, county of Kitsap and state of Washington; that . . . ."

The body of the affidavit should be composed of clear concise statements of those facts which the affiant desires to swear to. If they are facts within the "personal knowledge" of the affiant, they should be thus set out and not in the form "on information and belief." The affidavit should not be worded so that it might be construed in two ways; the language should be so clear that there could be no mistake as to what facts the affiant means to take an oath to.

An affidavit should state facts and not conclusions; the court draws the conclusions from the facts set before it.

In writing an affidavit care should be taken to keep it free from interlineations and erasures. If it is necessary to erase or write in words, the notary should write his initials in the margin opposite the change to show that the change was made before the oath was taken. Examples of such correction are made on pages 138, 139.

When the affiant is a foreigner and an interpreter is used, such fact should be noted and also that the interpreter took an oath that he understands both languages and would correctly interpret the words of the affiant. It makes no difference in what language the affidavit is, provided it is shown that the affiant understood the oath he took.

§ 63. **Parts of an Affidavit: Signature.**—The affiant, after having read over the contents of the instrument, or after the instrument has been read to him, should sign his name directly under the statement.[1] If he is unable to write by reason of ignorance, the notary should write his name thus:

1 Hathaway v. Scott, 11 Paige (N. Y.), 173; 1 Ency. of Pl. & Pr., p. 315; Norton v. Hauge, 47 Minn. 405, 50 N. W. 368; Alford

FORM XX.

his
JOHN X DOE.
mark

either having the affiant make the cross in the center or, at least, have him touch the pen as the notary makes the cross.[2]

If the affiant cannot write his name or make a mark by reason of disease or natural infirmities the affidavit will be valid without it.[3] In such a case the notary should note the fact on the affidavit, saying, for example:

FORM XXI.

"Signature was not made because affiant's hands are so badly burned he cannot use them."

If an affidavit is not signed by the affiant, but it clearly appears by whom it was made and that the oath was properly certified, the affidavit will be held valid by a majority of the courts unless there is a statute or a rule of the court requiring a signature.[4]

An agent cannot make an affidavit in his principal's name;[5] nor can a partnership make an affidavit. If an affidavit is signed with a partnership name, it will be consid-

v. McCormac, 90 N. C. 151; Lynn v. Morse, 76 Iowa, 665, 39 N. W. 203; Crenshaw v. Taylor, 70 Iowa, 386, 30 N. W. 647; Norman v. Horn, 36 Mo. App. 419; Hargadine v. Van Horn, 72 Mo. 370; Noble v. United States, Dev. Ct. of Cl. 83.

2 Perjury is assignable where a mark is made: United States v. Mallard, 40 Fed. 151, 5 L. R. A. 816.

3 Soule v. Chase, 1 Rob. (N. Y.) 222.

4 Watts v. Womack, 44 Ala. 605; Armstrong v. Austin, 45 S. C. 69, 22 S. E. 763, 29 L. R. A. 772; Bloomingdale v. Chittenden, 75 Mich. 305, 42 N. W. 836; 2 Am. Dig., p. 27, and cases cited there.

5 Coppock v. Smith, 54 Miss. 640. In Spencer v. Bell, 109 N. C. 39, 13 S. E. 704, it was held that an affidavit signed "J. M. S., per D. M. S.," sufficiently showed that it was made for the plaintiff, although it should have been signed "D. M. S., agent for J. M. S."

ered the affidavit of the one who signed the partnership name.[6] The affiant should sign his own name.

The notary should be very careful that the name of the affiant, if it appears in the body of the affidavit, be in the same form as that signed at the end.[7] For example, if the body of the affidavit refers to her as Jane Doe, the affiant should not sign Mrs. John Doe. The name should be written in the body of the affidavit as the affiant is accustomed to sign her name. A foreigner should sign an affidavit written in English in the English equivalent of his name.

§ 64. Parts of an Affidavit: Signature: Names.—That naturally brings us to the question as to what a person's name is from the legal point of view. One man signs John Henry Johnson Doe. Is that his name, or is some part of it sufficient? Another signs Richard H. Roe. Is the "H." a part of his name?

The proper and approved form of designating persons is to set out the full Christian name and surname, thus:

FORM XXII.

John Doe.[1]

Initials are said to be no legal part of a name.[2] Initials should not be used instead of full Christian names in legal

6 Randall v. Baker, 20 N. H. 335. In Missouri an affidavit subscribed with a firm name is a nullity: Norman v. Horn, 36 Mo. App. 419; Fortenheim v. Claflin, 47 Ark. 49, 14 S. W. 462.

7 In Raley v. Warrenton, 120 Ga. 365, 47 S. E. 972, it was held that the signature "M. V. Raley" was sufficient, where the affidavit began: "Personally comes Mrs. Joseph Raley"; but that case does not alter the fact that good practice demands the names to be the same.

1 United States v. Upham, 43 Fed. 68; Elberson v. Richards, 42 N. J. L. 69; Slocum v. McBride, 17 Ohio, 607; Gardner v. McClure, 6 Minn. 250; Gunn v. Haworth, 159 Ind. 419, 64 N. E. 911. In the name John Doe, "John" is the Christian, baptismal or given name, and "Doe" is the surname, family name, or patronymic.

2 Taylor v. State, 100 Ala. 68, 14 South. 875; Monroe Cattle Co. v. Becker, 147 U. S. 57, 13 Sup. Ct. Rep. 217, 37 L. ed. 72; Norris v. Graves, 4 Strob. L. (S. C.) 32; Slingluff v. Gainer, 49 W. Va. 9, 37 S. E. 771; 14 Ency. of Pl. & Pr., p. 273; Allen v. Taylor, 26

papers.[3] But if initials are used the law demands that they be correctly given.[4]

By custom a woman at marriage loses her own surname and acquires that of her husband.[5] When Jane Doe marries Richard Roe, her name becomes

FORM XXIII.

Jane Roe.

The law knows no such name as Mrs. Roe.[6] In writing persons' names as well as other words in a legal document abbreviations should not be used. For example, "Geo." should not be written for "George," nor "Bart." for "Bartholomew," nor "Jos." for "Joseph." While the courts may often take judicial notice of the abbreviation as standing for the name intended, it is not good practice.[7] The general rule to be kept in mind and which is the only one to be followed in unusual cases is that a name is the designation by which a person is known in the community and the requirement in full is certainty of identification.[8] There-

Vt. 601; Doane v. Glenn, 1 Colo. 502; State v. Martin, 10 Mo. 391; Beattie v. National Bank, 174 Ill. 571, 66 Am. St. Rep. 318, 51 N. E. 602.

3 Monroe Cattle Co. v. Becker, 147 U. S. 57, 13 Sup. Ct. Rep. 217, 37 L. ed. 72; Norris v. Graves, 4 Strob. L. (S. C.) 32; 14 Cyc. Pl. & Pr., p. 273.

4 The courts are divided as to the use of initials: State v. Hughes, 1 Swan (Tenn.), 261; State v. Dudley, 7 Wis. 664; King v. Clark, 7 Mo. 269; Bowen v. Mulford, 10 N. J. L. 230; Claflin v. Chicago, 178 Ill. 549, 53 N. E. 339.

5 Freeman v. Hawkins, 77 Tex. 498, 19 Am. St. Rep. 769, 14 S. W. 364; Peterson v. Little, 74 Iowa, 223, 37 N. W. 169; Ansley v. Green, 82 Ga. 181, 7 S. E. 921; Bouv. Law Dict. (Rawle's Rev.), tit. "Name"; 1 Cyc. Pl. & Pr., p. 46; vol. 14, p. 292; 21 Am. & Eng. Ency. of Law, 2d ed., p. 312.

6 Schmidt v. Thomas, 33 Ill. App. 109; State v. Richards, 42 N. J. L. 69; State v. Gibbs, 44 N. J. L. 169; Gatty v. Field, 9 Ad. & E. 431.

7 1 Cyc. Pl. & Pr., p. 46; 21 Am. & Eng. Ency. of Law, 2d ed., p. 309; Wilson v. Shannon, 6 Ark. 196; Garrison v. People, 21 Ill. 535; 2 Roll. Abr. 155; Curtis v. Marrs, 29 Ill. 508. It may be added here that the best practice demands that all words be written out in full and not abbreviated: 1 Cyc. Pl. & Pr., p. 42.

8 Laflin Powder Co. v. Steytler, 146 Pa. 443, 23 Atl. 215, 14 L. R. A. 690.

fore, if there are now persons like the negro, who, during slavery, often had but one name, the use of one name in the instrument would be sufficient.[9]

§ 65. Parts of an Affidavit: Jurat: Forms.—The jurat consists of the statement of the notary properly placed directly after the signature of the affiant stating that the same was sworn to or affirmed before him.[1] The following is a common form of jurat and sufficient in all cases where no special form is prescribed by statute:

FORM XXIV.

Subscribed and sworn to before me this 10th day of December, 1910.

[Notary's Seal] JOHN DOE,
Notary Public of the State of Washington, Residing at Seattle.

A more complete form and one that will often be of value by reason of statutes in some states[2] is the following, which might be said to be a full jurat:

FORM XXV.

Subscribed and *sworn to* before me this *10th* day of *December, 1910,* at *Seattle, King County,* Washington, by *William Stiles,* and I do hereby certify that I am a notary public of the state of Washington, having been duly appointed, commissioned and sworn; that a notary of Washington is authorized to take affidavits; that the said affidavit was sworn to

[9] Boyd v. State, 7 Coldw. (Tenn.) 69.

[1] Bouv. Law Dict. (Rawle's Rev.), tit. "Jurat." Where an affirmation is made instead of an oath, it is not necessary for the certificate of the officer to state that the affirmant was conscientiously scrupulous of taking an oath. It is the duty of the officer to satisfy himself on that point, and, in the absence of proof to the contrary, it must be presumed that he discharged his duty: Loney v. Bailey, 43 Md. 10; United States v. McDermott, 140 U. S. 153, 11 Sup. Ct. Rep. 746, 35 L. ed. 391; Lutz v. Kinney, 23 Nev. 279, 46 Pac. 257.

[2] 2 N. J. Gen. Stats., p. 2334, § 37.

before me within my jurisdiction; and that my commission does not expire until *January 23, 1912.*

[Notary's Seal] *JOHN DOE,*
Notary Public in and for the State of Washington, residing at *Seattle.*

[The words in italics should be changed to suit the occasion.]

§ 66. Parts of an Affidavit: Jurat: Necessity of: Place: Oath: "Before Me": Signature: Seal.—The jurat is no part of the affidavit proper;[1] but becomes of great importance in proving the authenticity of the instrument because it is considered prima facie evidence that the statements therein were sworn to by the affiant.[2] It makes no difference in what part of the affidavit it is found, so long as the facts are embodied therein.[3] Custom, however, demands that it be placed directly after the signature of the affiant.[4] Custom, likewise, demands that it contain the words "before me," or some equivalent words,[5] and a date.[6] And by statute in this state the notary's seal must be affixed and the notary's signature must be followed by the words "Notary Public," to which must be added his place of residence in all cases except when the affidavit is to be used in the courts of Washington, when

1 Veal v. Perkerson, 47 Ga. 92; 1 Ency. of Pl. & Pr., p. 316; 2 Cyc. Law & Proc., p. 27; Garrard v. Hitsman, 16 N. J. L. 124; Bantley v. Finney, 43 Neb. 794, 62 N. W. 213.

2 Bantley v. Finney, 43 Neb. 794, 62 N. W. 213; Smith v. Johnson, 43 Neb. 754, 62 N. W. 217; Cleveland v. Stanley, 13 Ind. 549; 1 Ency. of Pl. & Pr., p. 316; Alford v. McCormac, 90 N. C. 151.

3 2 Cyc. Law & Proc., p. 27; Kleber v. Block, 17 Ind. 294; Noble v. United States, Dev. Ct. Cl. (U. S.) 83; Hanson v. Cochran, 9 Houst. (Del.) 192.

4 Kirby v. Gates, 71 Iowa, 100, 32 N. W. 191.

5 2 Cyc. Law & Proc., p. 28; Clement v. Bullens, 159 Mass. 193, 34 N. E. 173; Smart v. Howe, 3 Mich. 590.

6 The date in a jurat is prima facie evidence of the time it was sworn to. If it were not dated it could be proved in court, on objection raised, when the oath was administered: Schoolcraft v. Thompson, 7 How. Pr. (N. Y.) 446; Freas v. Jones, 15 N. J. L. 20. Good practice, however, demands that the jurat be dated. The notary should be sure that it is.

the seal is not necessary.[a] It is hardly necessary to add that the words "sworn to" or "affirmed" must appear in the jurat, for they are the very life of it. If a Seattle notary take an affidavit in Spokane county, he should place the venue in Spokane county, as explained on page 127; but he should always after his name write the words, "Notary Public in and for the State of Washington, residing at Seattle."

To impress upon the notary the importance of the signature of the affiant, and of all the parts of the jurat, there is no case in all the books more striking than a Washington case, that of Tacoma Grocery Co. v. Draham, 8 Wash. 263, 40 Am. St. Rep. 907, 36 Pac. 31, in which the opinion was handed down by Judge Hoyt in February, 1894. In that case the validity of certain judgments and sales depended upon the regularity of certain attachment proceedings. We cannot do better than to quote the language of the learned judge on this occasion: "It is contended on the part of the respondent that the judgment under which this sale was made was absolutely void, for the reason that the court never obtained any jurisdiction of the subject matter. The ground of such contention is, that there was no affidavit filed with the clerk as a foundation for the attachment proceedings.

"Upon this question the record shows that a paper was filed in the form of an affidavit signed by a person who represented himself as the attorney for the plaintiff, but there is nothing upon the face thereof to show that it was ever sworn to. Such being the case, the question is presented as to the force to be given such paper. If it should be treated as having no effect, then it must follow that the attachment proceedings founded thereon were absolutely void. It does not appear from the record that the paper was in fact sworn to. If it did, it is probable that under our liberal statute as to amendment of all papers in attachment proceedings, the omission of the officer to sign the jurat could be treated as a clerical error, and the proceedings sustained. But, in the absence of proof to that effect, there is nothing to show that the facts set up in such paper ever had their truth vouched for by the oath of any person. In other words, the paper upon its face does not show that it is an affidavit, and there is no proof

in the record to supplement the showing upon the face of the paper. It must, therefore, for the purposes of this case, be considered as no affidavit at all, and it must follow that there was no foundation whatever for the issuing of the writ of attachment, and that it was absolutely void. Some cases have been cited by counsel for appellant where the absence of the signature of the officer to the jurat has been held not to be fatal to the proceedings. . . . . There it was made clearly to appear to the court that the affidavit had been in fact sworn to, and it was held that, as the required facts had been set forth in the form of an affidavit, and their truth vouched for by the oath of the party, he should not be deprived of his rights by reason of the inadvertent omission of the officer to sign the jurat."

[a] "It shall not be necessary for a notary public, in certifying an oath to be used in any of the courts in this state, to append an impression of his official seal, but in all other cases when the notary public shall sign any instrument officially, he shall, in addition to his name and the words 'notary public,' add his place of residence and affix his official seal": Laws 1890, p. 474, § 5; 1 H. C., § 333; Bal. Code, § 249; 2 Rem. & Bal. Code, § 8299.

The verification of a lien notice must have affixed thereto the official seal of the notary taking the acknowledgment, as such a notice is not intended primarily for use in court, and is therefore not within the exception provided for by Laws of 1890, page 474, Gates v. Brown, 1 Wash. 470, 25 Pac. 914 (December, 1890), opinion by Judge Scott.

The omission of the notary to affix his seal to the jurat in a lien notice sworn to before him renders the notice invalid; the omission cannot be cured by the introduction of proof, on the trial to foreclose the lien, that the notice had been in fact sworn to: Stetson & Post Mill Co. v. McDonald et al., 5 Wash. 496, 32 Pac. 108 (January, 1893), opinion by Judge Scott.

§ 67. **Affidavits: Criminal Law.**—The law as to making false affidavits by the notary has been considered under another section, page 96.[a]

[a] "The making of a deposition, certificate or affidavit shall be deemed to be complete when it is subscribed and sworn to or affirmed by the defendant with intent that it be uttered or published as true": Laws 1909, p. 921, § 104; Rem. & Bal. Code, § 2356.

§ 68. Affidavits: Forms: Interpreter's Oath.

FORM XXVI.

In the *Superior* Court of the State of Washington, in and for the County of *King*.

John Doe,
Plaintiff,
vs.
Richard Roe,
Defendant.

No. ——
Affidavit.

State of Washington,
County of *King*,—ss.

Richard Roe, of the City of *Seattle*, County of *King*, and State of Washington, being duly sworn on his oath, deposes and says, that he is the ~~plaintiff~~ defendant in the above-entitled action; that he has reason to believe and does believe, etc.

J. S.

RICHARD ROE.

Sworn and subscribed to before me this *10th* day of *December, 1910.*

[Notary's Seal] *JOHN STILES*,
Notary Public of the State of Washington, residing at *Seattle*.

[The words in italics must be changed to suit the case.]

The explanation of the "J. S." in this form and the "J. D.'s" in Form XXVII will be found in section 62.

FORM XXVII.

State of Washington,
County of *King*,—ss.

Richard Roe, being duly sworn on his oath deposes and says, that he is now a resident of the *City of Seattle*, County of *King*, and State of Washington; that for the five years previous to the *1st of January, 1909, he was a resident of Ellensburg, Kittitas County, Washington; that while residing at Ellensburg, John Stiles, who claimed to be of New York City, came to him on or about the 15th day of June, 1908, at his office in Ellensburg, and there offered to sell to him certain stock he, the said John Stiles, had in gold mines in Alaska.*

J. D.

J. D.

.....

.....

RICHARD ROE.

Subscribed and sworn to before me this *10th* day of *December, 1910*, at *Seattle, King* County, Washington, by *Richard Roe*, and I do hereby certify that I am a notary public of the State of Washington, having been duly appointed, commissioned and sworn; and that the said affidavit was sworn to before me within my jurisdiction; and that my commission does not expire until *January 23, 1912.*

[Notary's Seal] *JOHN DOE,*
Notary Public in and for the State of Washington, residing at *Seattle.*

[The words in italics must be changed to suit the case.]

The explanation of the "J. D.'s" in this form and "J. S." in Form XXVI will be found in section 62.

FORM XXVIII.

Interpreter's Oath.

You do solemnly swear that you are conversant with the *Polish* language and that you will true interpretation make of all statements made in the taking of this *affidavit* according to the best of your skill and understanding, so help you God?

[The words in italics must be changed to suit the case.]

FORM XXIX.

Jurat When Oath is Taken Through an Interpreter.

Sworn to and subscribed before me this 10th day of December, 1910. And I hereby certify that the said affidavit was made through an interpreter, who first took an oath before me that he is conversant with the language of affiant and the English language and that he would true interpretation make of all statements in the taking of the affidavit.

FORM XXX.

In the Justice's Court for Kittitas County, State of Washington: Before John Moe, Esq., Justice of the Peace.

Richard Roe, Plaintiff, vs. John Stiles, Defendant.	}	No. —— In Attachment. Affidavit.

State of Washington,
County of Kittitas,—ss.

John Jones, being duly sworn, on his oath says, that he is agent for the defendant in the above-stated case; that a writ of attachment was issued out of the justice's court for Kittitas County, John Moe, Esq., justice of the peace, against the goods and chattels, rights and credits, moneys and effects of the said John Stiles, at the suit of the said Richard Roe, by virtue of an affidavit made by the said Richard Roe, filed in said court, in which the said Richard Roe states that at the time of issuing said writ of attachment John Stiles, the defendant herein, was not resident within the state of Washington.

Deponent states that the said John Stiles is at the present time and has been continuously for the past ten years a resident of the city of Tacoma, county of Pierce, and state of Washington; and that this affidavit was sworn to because the said John Stiles has been for the past two weeks on a business trip to various towns in the state of Idaho and will not return until the 15th of the present month.

JOHN JONES.

Sworn to and subscribed before me this 10th day of December, 1910.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington, residing at Ellensburg.

FORM XXXI.

Affidavit of Nonmarriage.

State of Washington,
County of King,—ss.

William Stiles, of lawful age, being first duly sworn, upon his oath doth depose and say: I now reside, and for the ten years last past have resided at Renton, in the county of King and state of Washington; and for the five years last past before his death was a neighbor of Richard Roe; I was on the 10th day of December, 1910, and for a long time prior and subsequent thereto personally and well acquainted with Richard Roe, the grantee named in a deed dated the 1st day of February, 1910, conveying to said grantee the following described real estate in the county of King and state of Washington, to wit: Lot 47 in block 157, map of Seattle tide lands, which deed is recorded in Vol. 74 of Deeds at page 27 of the records in the office of the auditor of said King county, being File No. 40,760 of said records, the said Richard Roe being the grantor who conveyed said real estate to William Jones by the deed dated the 1st day of August, 1910, recorded in Vol. 80 of said records at page 300, File No. 46,010; I know of my own personal knowledge that the said Richard Roe was an unmarried person and a bachelor from the time he received the said first-mentioned conveyance until he conveyed the same as above set forth. Further affiant saith not.

WILLIAM STILES.

Subscribed and sworn to before me on this 10th day of December, 1910.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington, residing at Seattle.

FORM XXXII.

Affidavit of Identity.

State of Washington,
County of King,—ss.

William Stiles, of full age, being first duly sworn upon his oath doth depose and say: I now reside and for the ten years last past have resided at Renton in the county of King and state of Washington; I was on the 10th day of December, 1910, personally and well acquainted with Richard Roe, the grantee named in a certain quitclaim deed executed by Frank Smith to said Richard Roe, bearing date the 1st day of February, 1910, and conveying to said grantee the following described real estate in the county of Chehalis and state of Washington, to wit: Southeast quarter (SE. ¼) of section four (4), township twenty (20) north, of range thirteen (13), E. W. M., which deed is recorded in Vol. 72 of Deeds, at page 71 of the records in the office of the auditor of said Chehalis County, being File No. 40,750 in said records; I know of my personal knowledge that the said Richard Role is the identical person who executed the deed conveying said real estate to William Jones on the 1st day of August, 1910, by the deed recorded in Vol. 72 of said records at page 40, the same being File No. 42,760; I know that the correct name of said person is Richard Roe and that the same was written in said last-mentioned deed as Richard Role by mistake.

WILLIAM STILES.

Subscribed and sworn to before me on this 10th day of December, 1910.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington residing at Seattle.

FORM XXXIII.

Affidavit and List of Creditors.

I hereby certify that the following is a true, full and correct list of the names and addresses of all the creditors of William Stiles, doing business at No. 4750 First Avenue

South in the city of Seattle, in the state of Washington, on this 10th day of December, 1910, together with the amount of indebtedness due or owing, or to become due or owing by him to each of such creditors, at the time their stock of shoes was sold to William Stiles.

CREDITORS.

Names	Addresses	Amount

WILLIAM STILES.

State of Washington,
County of King,—ss.

Before me personally appeared William Stiles, who, being by me first duly sworn, upon his oath doth depose and say that the foregoing statement contains the names of all the creditors of William Stiles; together with their addresses, and that the amount set opposite each of said respective names is the amount now due and owing, and which shall become due and owing by him to such creditors, and that there are no creditors holding claims due, or which shall become due for or on account of goods, wares or merchandise purchased upon credit or on account of money borrowed to carry on the business of which said goods are a part, other than as set forth in said statement, and in this affidavit, within the personal knowledge of the affiant.

WILLIAM STILES.

Subscribed and sworn to before me this 10th day of December, 1910.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington residing at Seattle.

FORM XXXIV.

In Bankruptcy.

Proof of Unsecured Debt.

In the District Court of the United States for the Eastern District of Washington.

In the Matter of Richard Roe, Bankrupt. } In Bankruptcy. No. ——.

United States of America,
Eastern District of Washington,
State of Washington,
County of Spokane,—ss.

At Spokane, in said Eastern district of Washington, on the 10th day of December, A. D. 1910, came John Jones, of Spokane, in the county of Spokane, in said Eastern district of Washington, and state of Washington, and made oath and says that the said Richard Roe, the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of the said petition, and still is justly and truly indebted to said deponent in the sum of one thousand dollars and —— cents, with interest from January 1, 1906, at six (6) per cent per annum; that the consideration of said debt is as follows: Money lent at different times; that no part of said debt has been paid; that there are no setoffs or counterclaims to the same; that said debt became due on the 10th day of January, A. D. 1908, and is evidenced and set forth in the statement hereto attached, marked "Exhibit A" and made a part hereof.

That said debt consists of an open account of several items maturing at different dates; that the average due date thereof is ————; that no note has been received for such account, nor any judgment rendered thereon, and that deponent has not, nor has any person by his order or to his

knowledge or belief, for his use, had or received any manner of security for said debt whatever.

JOHN JONES,
Creditor.

Subscribed and sworn to before me, this 10th day of December, A. D. 1910.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington residing at Spokane.

FORM XXXV.

In Bankruptcy.

Proof of Secured Debt.

In the District Court of the United States for the Western District of Washington, Southern Division.

In the Matter of Richard Roe, Bankrupt. } In Bankruptcy.

At Seattle, in said district of Western Washington, on the 10th day of December, A. D. 1910, came John Jones, of Seattle, in the county of King, in said district of Western Washington, and made oath, and says that Richard Roe, the person by whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of five hundred dollars and —— cents; that the consideration of said debt is as follows: One black horse known by the name of "Jack," sixteen hands high, with two white front feet; that no part of the said debt has been paid; that there are no setoffs or counterclaims to the same; and that the only securities held by this deponent for said debt are the following: (Here state securities.)

JOHN JONES,
Creditor.

Sworn and subscribed to before me this 10th day of December, 1910.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington residing at Seattle.

CHAPTER VIII.

ACKNOWLEDGMENTS.

§ 69. Object of Acknowledgment.
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§ 83. Certificate of Authenticity and Conformity.
§ 84. Amendment of Certificate.
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§ 87. Miscellaneous Statutes of Washington: Husband and Wife: Power of Attorney: Acknowledgment of Indians: Recording Plat: Telegraphing Instrument for Record: Sale of Homestead: Registered Land.
§ 88. Validating Acts.

§ 69. Object of Acknowledgment.—The object of all the laws on acknowledgments is, to place a protection around deeds or other important instruments, from the point of view of the purchaser; to make it more certain that the person named in a deed or instrument intended to transfer the property or right. This is accomplished by compelling the grantor to appear before a public officer and there to state that he is the grantor in the instrument and that he means to transfer the right set forth in the instrument. By demanding that all deeds [a] and certain other instruments be

acknowledged before certain public officers before they can be placed on record[b] at the county or state offices it makes acknowledgment obligatory, as said instruments are not fully effective until recorded. Before a person can acknowledge his signature he must find some public officer with whom he is personally acquainted, and that is a further protection.

In some states an instrument is not effective until acknowledged although completed in every other respect.[1] But in most states it is good between the parties though not acknowledged; in other words the acknowledgment is not part of the deed.[2] As a general rule, the two powers which accompany acknowledgment are, first, to entitle the instrument to registration; and, secondly, to render the instrument admissible as evidence.[3] The practice of acknowledging instruments is a creation of modern statutes; it was unknown to the common law.[4] An agreement to convey need not be acknowledged.[c] [d] [e]

[a] "A deed shall be in writing, signed by the party bound thereby, and acknowledged by the party making it, before some person authorized by the laws of this state to take acknowledgment of deeds": Laws 1888, p. 50, § 2; 1 H. C., § 1423; Bal. Code, § 4518; 2 Rem. & Bal. Code, § 8746.

[b] "He (county auditor) must, upon the payment of his fees for the same, record separately in large and well-bound books in a plain hand,—

"1. Deeds, grants and transfers of real property, mortgages and releases of mortgages of real estate, powers of attorney to convey real

1 Parrott v. Kumpf, 102 Ill. 423; 1 Am. & Eng. Ency. of Law & Pr., p. 824; Lewis v. Herrera (Ariz.), 85 Pac. 245; 208 U. S. 309, 28 Sup. Ct. Rep. 412, 52 L. ed. 506.

2 1 Am. & Eng. Ency. of Law & Prac., p. 824.

3 1 Am. & Eng. Ency. of Law & Prac., p. 826; Reed v. Ukiah Bank, 148 Cal. 96, 82 Pac. 845; Linton v. National L. Ins. Co., 104 Fed. 584, 44 C. C. A. 54; Robinson v. Robinson, 116 Ill. 250, 5 N. E. 118. In Sicard v. Davis, 6 Pet. (U. S.) 124, 8 L. ed. 342, Chief Justice Marshall said: "The acknowledgment or the proof which may authorize the admission of the deed to record, and the recording thereof, are provisions which the law makes for the security of creditors and purchasers."

4 Gould v. Howe, 131 Ill. 490, 23 N. E. 602; Moore v. Thomas, 1 Or. 201; French v. Gray, 2 Conn. 92.

estate, and leases which have been acknowledged or proved. . . . . " Laws 1893, p. 284, § 11; Bal. Code, § 411; 2 Rem. & Bal. Code, § 8786.

[c] Oregon R. and N. Co. v. Day, 3 Wash. Ter. 252, 14 Pac. 588, January, 1887, Mr. Justice Turner: "Admitting the validity of the agreement, and we may say in passing, that we see no necessity that an agreement to convey land should be sealed or acknowledged. . . . . "

[d] Baker-Boyer National Bank v. Walter Hughson and John R. Reavis, 5 Wash. 100, 31 Pac. 423, decided October 22, 1892: "This action was brought to recover the amount alleged to be due upon a certain promissory note given by defendants to one Culver, and by him indorsed to plaintiff. . . . . Two things are alleged in the answer to show want of consideration for the note: First, that the contract for a deed for the real estate which was to be conveyed to the defendants, for the part payment of which said note was given, was not acknowledged, and was, therefore, void. Under the decisions of this court this objection is without force, as we have held in several cases that a contract for the conveyance of real estate was entirely valid without any acknowledgment: See Langert v. Ross, 1 Wash. 250, 24 Pac. 443; Vail v. Tillman, 2 Wash. 476, 27 Pac. 76."

[e] Anderson v. Wallace Lumber and Mfg. Co., 30 Wash. 150, 70 Pac. 247, October, 1902, Chief Justice Reavis: "It is maintained by counsel for respondent that such contract for the conveyance of real property, to be valid, must comply in its form with sections 4517 and 4518, Ballinger's Code [2 Rem. & Bal. Code, §§ 8745, 8746], which prescribe that all conveyances of real estate, and all contracts creating or evidencing any encumbrance thereon, shall be by deed, and that such deed shall be signed and acknowledged. It may be observed that these sections relate only to conveyances, and to contracts creating or evidencing encumbrances; they do not necessarily include agreements to convey."

§ 70. Definition.—An acknowledgment is a formal declaration or admission before an authorized court or public officer, by a person who has executed an instrument, that such instrument is his act and deed.[1] The word is also used to designate the certificate of the officer, stating that the instrument was acknowledged.[2]

1 1 Am. & Eng. Ency. of Law & Prac., p. 820; De Wolfskill v. Smith, 5 Cal. App. 175, 89 Pac. 1001; Taylor v. United States, 45 Fed. 531; Strong v. United States, 34 Fed. 17.

2 See Rogers v. Pell, 154 N. Y. 518, 49 N. E. 75, wherein it was held that an instrument was not "duly acknowledged" unless there was not only the oral acknowledgment but the written certificate also. Vann, J., said: "The word as commonly used by the legislature, the courts, and the bar, means both the act and the written evidence thereof made by the officer."

§ 71. **Nature of Act.**—By the great weight of authority the taking of an acknowledgment is held to be a ministerial act, though in New Jersey, Mississippi, North Carolina, Texas, Virginia, and a few other states it is held to be a judicial act.[1] In Washington the supreme court has held that it is merely ministerial in its nature.[a] A full discussion of this subject can be found on page 40, section 12.

[a] Keene Guaranty Savings Bank v. Lawrence, 32 Wash. 577, 73 Pac. 680, September, 1903: "The taking of an acknowledgment by a notary public is a ministerial act, and may be performed by anyone qualified to act as notary: Spokane and Idaho Lumber Co. v. Loy, 21 Wash. 501, 58 Pac. 672, 60 Pac. 1119; Nixon v. Post, 13 Wash. 181, 43 Pac. 23, December, 1895, Hoyt, C. J." Where land is deeded to a wife as her separate property, the acknowledgment of the grantors may be taken before the grantee's husband, if he is authorized to take acknowledgments.

§ 72. **Notary may Take: Washington Statutes.**—According to the laws of 1879 [a] and 1890 [b] a notary public of Washington may take acknowledgments.

[a] "Acknowledgments of deeds, mortgages, and other instruments in writing may be taken, in this state, before a . . . . qualified notary public": Laws 1879, p. 110, § 1; Code of 1881, § 2315; 1 H. C., § 1430; Bal. Code, § 4526; 2 Rem. & Bal. Code, § 8754.

[b] "Every duly qualified notary public is authorized in any county in this state,—

"(2) To take acknowledgments of all deeds and other instruments of writing and certify the same in the manner required by law": Laws 1890, p. 474, § 4; 1 H. C., § 332; Bal. Code, § 248; 2 Rem. & Bal. Code, § 8298.

§ 73. **Notary may Take: When Disqualified.**—The subject of the disqualification of a notary of the state of Wash-

[1] 1 Am. & Eng. Ency. of Law & Prac., p. 868; Woodland Bank v. Oberhaus, 125 Cal. 320, 57 Pac. 1070; People v. Bartels, 138 Ill. 322, 27 N. E. 1091; Commonwealth v. Johnson, 123 Ky. 437, 124 Am. St. Rep. 368, 96 S. W. 801, 13 Ann. Cas. 716; Barnard v. Schuler, 100 Minn. 289, 110 N. W. 966; Albany County Sav. Bank v. McCarty, 149 N. Y. 71, 43 N. E. 427; Riddle v. Keller, 61 N. J. E. 513, 48 Atl. 818; Harmon v. Magee, 57 Miss. 410; Greenleaf-Johnson Lumber Co. v. Leonard, 145 N. C. 339, 50 S. E. 134; Nicholson v. Gloucester Charity School, 93 Va. 101, 24 S. E. 899.

ington to take certain acknowledgments has been considered before, section 32, page 87.

§ 74. Jurisdiction.—A notary is given the power to take acknowledgments anywhere in the state of Washington by the Laws of 1890.[a] [b]

[a] "Every notary public shall be appointed for the state, and shall hold his office for four years, unless sooner removed by the governor": Laws 1890, p. 473, § 2; 1 H. C., § 330; Bal. Code, § 246; 2 Rem. & Bal. Code, § 8296.

[b] See § 72, note [b].

§ 75. Who may Make Acknowledgments: In General: Agent: Partnership: Corporation: Infant: Insane Person: Intoxicated Person: Married Woman.—The proper and only persons to acknowledge the execution of an instrument are, of course, the persons who execute it. Any other acknowledgment, except by a lawfully authorized agent, is of no effect.[1] If there are several grantors each should acknowledge his signature.[2] An acknowledgment may be made by a duly authorized agent or attorney.[3] When an agent or attorney makes an acknowledgment the certificate must show that it is made on behalf of the principal.[4] [a] There should be a recital in the certificate to the effect that he is the duly authorized agent; the proof of the agent's authority need not be stated in the certificate.[5] [a]

Ordinarily, an instrument running in the name of a partnership and signed with the firm name may be acknowl-

1 1 Am. & Eng. Ency. of Law & Prac., p. 848; Middlesborough Water Works Co. v. Neal, 105 Ky. 586, 49 S. W. 428, where a subscribing witness acknowledged; Hunter v. Bryan, 6 N. C. 178, 5 Am. Dec. 526.

2 1 Am. & Eng. Ency. of Law & Prac., pp. 848, 849.

3 Richmond v. Voorhees, 10 Wash. 320, 38 Pac. 1014; see § 69, note [b]; 1 Am. & Eng. Ency. of Law & Prac., p. 966; Wright v. Raddin, 100 Mass. 319. "Power to acknowledge is implied from a power of attorney to execute the instrument": Robinson v. Mauldin, 11 Ala. 977.

4 Pfeiffer v. Cressey, 85 Ill. App. 111; Campbell v. Hough, 73 N. J. Eq. 601, 68 Atl. 759.

5 Detroit v. Jackson, 1 Doug. (Mich.) 106; 1 Am. & Eng. Ency. of Law & Prac., p. 967.

edged by any one of the partners.[6] Each member of a limited partnership in the state of Washington, however, must acknowledge the certificate drawn in duplicate under the law of 1869. [b] The acknowledgment of a corporation may be made by the president, vice-president, secretary, treasurer, or any authorized officer or agent. [c] An acknowledgment may be made by an infant, but that will not prevent him from revoking the transfer.[7] The acknowledgment by an infant, in open court, of a deed executed by him does not render it irrevocable.[8] An acknowledgment by an insane person could be set aside upon showing that fact.[9] Likewise the acknowledgment of an intoxicated person if the degree of intoxication were such that he is deprived of his understanding.[10] The acknowledgment of a married woman in this state is taken just the same as that of a man or single woman.

[a] Richmond v. Voorhees et al., 10 Wash. 316, 38 Pac. 1014, December, 1894, Hoyt, J.: "The mortgage is further attacked upon the ground that the certificate of acknowledgment does not show that it was ever acknowledged by Mary A. Voorhees in person, or by Peter Voorhees as her attorney in fact. Such certificate contains the usual recital of the appearance and acknowledgment of the instrument by Peter Voorhees, and thereafter the following: 'And I do further certify that personally appeared Peter Voorhees, personally known to me to be the same person whose name is subscribed to the within instrument as the attorney in fact of Mary A. Voorhees, his wife, and the said Peter Voorhees duly acknowledged to me that he subscribed the name of Mary A. Voorhees thereto as principal, and his own as attorney in fact; and that said Peter Voorhees acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.' And in our opinion it showed a sufficient acknowledgment by the husband in behalf of the wife, as well as in his own behalf. If it had been intended thereby only to certify the acknowledgment by the husband for himself, there would have been no need of that

6 1 Am. & Eng. Ency. of Law & Prac., p. 965; Klumpp v. Gardner, 114 N. Y. 153, 21 N. E. 99.

7 22 Cyc. Law & Proc., p. 531; Hastings v. Dollarhide, 24 Cal. 195; MacGreal v. Taylor, 167 U. S. 688, 17 Sup. Ct. Rep. 961, 42 L. ed. 326.

8 Slaughter v. Cunningham, 24 Ala. 260, 60 Am. Dec. 463.

9 22 Cyc. Law & Proc., p. 1171.

10 14 Cyc. Law & Proc., p. 1103; Wright v. Waller, 127 Ala. 557, 29 South. 57, 54 L. R. A. 440.

part of the certificate of acknowledgment above set forth. Hence, there could have been but one purpose on the part of the acknowledging officer in including it in his certificate, and that was to show a proper acknowledgment by the attorney in fact for and on behalf of his principal."

[b] "The persons forming such partnership shall make and severally subscribe a certificate, in duplicate, and file one of such certificates with the county auditor of the county in which the principal place of business of the partnership is to be. Before being filed, the execution of such certificate shall be acknowledged by each partner subscribing it, before some officer authorized to take acknowledgment of deeds, and such certificate shall contain the name assumed by the partnership and under which its business is to be conducted, the names and respective places of residence of all the general and special partners, the amount of capital which each special partner has contributed to the common stock, the general nature of the business to be transacted, and the time when the partnership is to commence, and when it is to terminate": Laws 1869, p. 380, § 3; 1 H. C., § 2919; Bal. Code, § 3612; Rem. & Bal. Code, § 8361.

[c] See p. 157.

§ 76. Who may Make Acknowledgment: Age of Grantor. By statute in this state a male must be twenty-one (21) years of age and a female eighteen (18) years of age before they are able to transfer real property.[a] But a female married to a man of full age is deemed and taken to be of full age.[b] A husband who is a minor becomes by the case of In re Hollopeter, 52 Wash. 41, 132 Am. St. Rep. 952, 100 Pac. 159, 21 L. R. A., N. S., 847, of full age in the eyes of the law upon the performance of the marriage ceremony.

[a] "Males shall be deemed and taken to be of full age for all purposes at the age of twenty-one years and upwards; females shall be deemed and taken to be of full age at the age of eighteen years and upwards": Laws 1866, p. 92, § 1; Cd. 1881, § 2363; 1 H. C., § 1416; Bal. Code, § 4511; 2 Rem. & Bal. Code, § 8743.

[b] "All females married to a person of full age shall be deemed and taken to be of full age": Laws 1863, p. 434, § 2; Cd. 1881, § 2364; 1 H. C., § 1417; Bal. Code, § 4512; 2 Rem. & Bal. Code, § 8744.

§ 77. Who may Make Acknowledgments: Signature of Grantor: Private Seal.—The question of the proper manner for a person to sign his name is taken up under the subject of affidavit; it will be found on page 132, section 64. It

might be added here, however, that a private seal, that is, a piece of red paper or sealing wax, immediately after the grantor's name, is not necessary since the law of 1888.[a]

[a] "The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments and contracts in writing is hereby abolished, and the addition of a private seal to any such instrument or contract in writing hereafter made shall not affect its validity or legality in any respect": Laws 1888, p. 50, § 3, and page 184, § 1; 1 H. C., § 1427; Bal. Code, § 4523; 2 Rem. & Bal. Code, § 8751.

§ 78. Time of Taking.—The acknowledgment should be taken after the deed or instrument is otherwise complete; a notary should refuse to take an acknowledgment where there are blanks left in a deed to be filled in afterward.

As to whether an acknowledgment taken on a legal holiday or Sunday is valid depends on the statutes of the state. There is no statute in Washington which would make the act invalid.

§ 79. Certificate of Acknowledgment: How Taken: Identity: Explanation of Instrument: Unequivocal Acknowledgment.—The ancient custom of taking acknowledgments in open court[1] has degenerated into a very unceremonious proceeding. There are some requirements, however, which must be followed:

First, the notary must be sure of the identity of the person appearing before him; that is, he must be certain that the person named in the deed or other instrument and the person who desires to acknowledge his signature are one and the same person. The statute setting forth the certificate says, "to me known to be the individual described in and who executed the within instrument."[2] If the notary has known the person for four or five years there would then be no question, but if someone brings a stranger to him, and after an introduction would ask the notary to take the acknowledgment of the stranger, it would be incumbent upon

1 Merritt v. Yates, 71 Ill. 636; 23 Am. Rep. 128; 1 Am. & Eng. Ency. of Law & Prac., p. 873.

2 2 Rem. & Bal. Code, § 8761; Bal. Code, § 4533.

the notary to satisfy himself to the degree of care and diligence of a reasonably prudent man that the stranger is the person he claims to be.[3] In some cases an introduction by a reliable person known to the officer has been regarded as sufficient.[4] Just what the courts of Washington would demand in the way of personal friendship or acquaintanceship, or how far they would accept an introduction just before an acknowledgment, it has never been necessary for them to decide. If the notary is to take the acknowledgment of a person he has never before known, it would be safe practice to follow the courts of New York and Minnesota and demand sworn testimony of two persons as to his identity.[5]

Secondly, if there is any question as to the ability of the person to understand the meaning and contents of the deed or instrument, it is incumbent upon the notary to make a full explanation of the contents thereof. If he is a man of intelligence and states that he knows the contents, that would be sufficient; otherwise the notary should satisfy his own mind that the grantor appreciates his act. At times this would necessitate an interpreter of some foreign language or of the deaf and dumb signs.[6][a]

Thirdly, the notary should, after satisfying himself of the identity of the person and that he knows the contents of the

[3] Barnard v. Schuler, 100 Minn. 289, 110 N. W. 966; Lindley v. Lindley, 92 Tex. 446, 49 S. W. 573.

[4] 1 Am. & Eng. Ency. of Law & Prac., p. 875.

[5] People v. Schooley, 87 Hun (N. Y.), 391, 35 N. Y. Supp. 429; Bidwell v. Sullivan, 17 App. Div. (N. Y.) 629, 45 N. Y. Supp. 530; Barnard v. Schuler, 100 Minn. 289, 110 N. W. 966. The California statute requires the oath of a credible witness: Joost v. Craig, 131 Cal. 504, 82 Am. St. Rep. 374, 63 Pac. 840. The Missouri statute requires the sworn testimony of at least two credible witnesses: State v. Ryland, 163 Mo. 280, 63 S. W. 819.

[6] Where the grantor is old, decrepit, and ignorant, it is the duty of the officer authenticating the execution of the deed to make known to him its contents by such means as will enable him to comprehend the nature and effect of his act. A simple, formal reading of the instrument is insufficient: Lyons v. Van Riper, 26 N. J. Eq. 337; 1 Am. & Eng. Ency. of Law & Prac., p. 875; Pfeiffer v. Riehn, 13 Cal. 643; Taylor v. Noel (Tenn.), 59 S. W. 377; Morrison v. Morrison, 27 Gratt. (Va.) 190.

deed or instrument, either see the signature written or ask him if that is his signature, and then whether he acknowledges that "he signed and sealed the same as his free and voluntary act for the uses and purposes therein mentioned."[7] The acknowledgment must be unequivocal; a casual admission in the presence of an officer by a person who has signed a conveyance, that he executed it, does not authorize the officer to make a certificate that it was acknowledged.[8]

"In order to call into exercise the authority of the officer to make the certificate, the grantor must appear before him for the purpose of acknowledging the instrument, and his admission that he had executed it must be made with a view to give it authenticity," are the words of a Texas court.[9]

[a] Jackson v. Tatebo, 3 Wash. 464, 28 Pac. 916, January, 1892, Dunbar, J.: "The evidence in this case conclusively shows that the plaintiff was an ignorant, unlettered Indian; that his knowledge of the English language was exceedingly limited; that he had no knowledge whatever of legal transactions or the force or effect of legal instruments. It is not disclosed by the testimony whether Tatebo was an Indian or not; but from the whole history of the case we think probably he was a half-breed Indian. At all events, he seems to be related to the Indians, and related by marriage to Jackson. The evidence shows that he was a sharp, shrewd, energetic man, and that he acted as Jackson's agent and confidential adviser, and that Jackson placed confidence in him. This is shown by Tatebo's testimony, as also by Jackson's. It also shows that he had been employed as deputy United States marshal and deputy constable, and was frequently employed as a detective. We think sufficient is established, and in fact uncontroverted, to shift the burden of proof and place it upon defendant to show that the import of the deed was understood by Jackson at the time he signed it.

" 'When an action is brought to set aside a deed executed by a person unable to read for misrepresentation of its contents or effects, the burden of proof rests upon the defendant. In a case of this kind, part of the necessary proof of the execution of the instrument consists in showing that it was read or its contents made known to the grantor. An acknowledgment, however, according to the statute, before an officer designated by the law, is equivalent to proof that the grantor possessed

7 2 Rem. & Bal. Code, § 8761; Bal. Code, § 4533.

8 1 Am. & Eng. Ency. of Law & Prac., p. 873, and notes 9, [a).

9 Breitling v. Chester, 88 Tex. 586, 32 S. W. 527.

knowledge of its contents, if the acknowledgment contains a certificate that the officer made known the contents to the grantor before acknowledgment': Devlin on Deeds, § 229.

"But in this instance the certificate of the officer who took the acknowledgment fails to show that he made known the contents of the deed to Jackson before acknowledgment. 'To read an instrument in English to a person who is unable to understand the language would seem to be insufficient': Devlin on Deeds, § 228. In this case there is a plain contradiction between the plaintiff and the defendant in regard to the understanding of the grantor with reference to the instrument executed. Jackson positively swears that when Tatebo interpreted the deed to him he interpreted it as a power of attorney to sell; that he thought it was a power of attorney; that it was a power of attorney that he had agreed to give, and that he had no thought of executing any other instrument; that he never had received a cent from Tatebo in consideration of the execution of said instrument. Mr. Tatebo swears that he interpreted the deed just as it was written, and that Jackson understood it and consented to it, and that he had paid Jackson, in consideration therefor, the sum of one hundred dollars in money, and agreed to perform other services. Tustin, who drew the deed, swears that he read the same to Jackson, but does not swear that Jackson understood it. In fact, it is pretty plain that he did not understand it, and that it was conceded that he did not, or there would have been no necessity for an interpretation. No one else who was there understood the language in which the deed was interpreted."

§ 80. Certificate of Acknowledgment: Forms.—The forms of certificates to be used for individuals and corporations are found in the laws of 1886 and 1903.[a] [b] It will be noticed that they need only be followed "substantially,"[c] so that a certificate in different words but containing all the material facts would be sufficient. It is good practice, however, to follow the forms word for word.

[a] A certificate of acknowledgment, substantially in the following form, shall be sufficient:

FORM XXXVI.

State of Washington,
County of ————,—ss.

I (here give name of officer and official title) do hereby certify that on this ——— day of ————, 18—, personally appeared before me (name of grantor, and if acknowledged by wife, her name, and add "his wife"), to me known to be the individual or individuals described in and who executed the within instrument, and acknowledged that he (she or they) signed and sealed the same as his (her or their) free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this ——— day of ———, A. D. 18—.

———,
(Signature of officer):

Laws 1886, p. 179, § 7; Laws 1888, p. 52, § 2; 1 H. C., § 1437; Bal. Code, § 4533; 2 Rem. & Bal. Code, § 8761.

[b] Certificates of acknowledgments of an instrument acknowledged by a corporation substantially in the following form shall be sufficient:

FORM XXXVII.

State of ———,
County of ———,—ss.

On this ——— day of ———, A. D. 190—, before me personally appeared ———, to me known to be the (president, vice-president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporation seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

———,
(Signature and title of officer):

Laws 1903, p. 245, § 1; 2 Rem. & Bal. Code, § 8761½.

[c] Kley v. Geiger, 4 Wash. 484, 30 Pac. 727, June, 1892, Scott, J.: "The objection to the acknowledgment is, that the officer before whom the same was taken did not certify that said defendants executed said mortgage freely and voluntarily. The acknowledgment does state that said parties appeared before such officer, and acknowledged that they signed and executed the same, and contains the further statement that upon the separate examination of the said Ida Geiger apart from her husband she acknowledged that she signed the same voluntarily. There is no force in the objection to the acknowledgment. Section 1435 of the General Statutes [Rem. & Bal. Code, § 8759], which was in force at that time, provides that certificates of acknowledgment shall recite in substance that the deed, mortgage or instrument was acknowledged by the person or persons whose name or names are signed thereto as grantor. Section 1437 [Rem. & Bal. Code, § 8761], which was also in force at that time, provides that the certificate of acknowledgment substantially in the form there given shall be sufficient, which form contains a recital that the execution of the instrument was the free and voluntary act of the party executing the same. It does not provide that this form of acknowledgment shall be exclusive, and we are satisfied the acknowledg-

ment which was taken wherein the defendants acknowledged that they signed and executed the mortgage, without any further statement that they voluntarily did the same, was sufficient."

Johnson v. Irwin, 16 Wash. 652, 48 Pac. 346, March, 1897, Dunbar, J.: "We also think that the mortgage was sufficiently acknowledged to entitle it to record." The opinion does not show how it was acknowledged, but the syllabus to 48 Pac. 346 says: "Where the acknowledgment merely recites that the grantors 'duly acknowledged the execution of the same.'"

FORM XXXVIII.

Acknowledgment of Man and Wife.

State of Washington,
County of King,—ss.

I, John Doe, a notary public, in and for the State of Washington, do hereby certify that on this 10th day of December, 1910, personally appeared before me William Stiles, and Jane Stiles, his wife, to me known to be the individuals described in and who executed the within instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 10th day of December, A. D. 1910.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington, Residing at Seattle.

FORM XXXIX.

Acknowledgment of Attorney in Fact.

State of Washington,
County of King,—ss.

I, John Doe, a notary public in and for the state of Washington, residing at Seattle, in the county and state aforesaid, duly commissioned, sworn and qualified, do hereby certify that on this 10th day of December, A. D. 1910, before me personally appeared William Stiles, to me known to be the individual described in, and who executed the within instrument as the attorney in fact of Frank Stiles, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed as attorney in fact for said Frank Stiles in the capacity and for the uses and purposes therein mentioned.

Given under my hand and official seal this 10th day of December, A. D. 1910.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington, Residing at Seattle.

FORM XL.

Acknowledgment as Individual and as Attorney in Fact.

State of Washington,
County of King,—ss.

I, John Doe, a notary public in and for the state of Washington, residing at Seattle, in the above-named county and state, duly commissioned, sworn and qualified, do hereby certify that on this 10th day of December, A. D. 1910, before me personally appeared William Stiles, to me known to be the individual described in, and who executed the within instrument for himself and also as the attorney in fact for Frank Stiles, and acknowledged to me that he signed and sealed the same as his own free and voluntary act and deed for himself, and also as his free and voluntary act and deed as attorney in fact for said Frank Stiles, in the capacity and for the uses and purposes therein mentioned.

Given under my hand and official seal this 10th day of December, A. D. 1910.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington, Residing at Seattle.

FORM XLI.

Acknowledgment For All States.[1]

United States of America,
State of Washington,
County of King,—ss.

I, John Doe, a notary public, in and for the state of Washington, duly appointed, commissioned and sworn, as a notary for said state, residing therein and acting as such officer, do hereby certify that on the 10th day of December, in the year 1910, there appeared before me in person, William Stiles, known to me, and known to me to be the identical person who is described as a party grantor to a certain deed bearing date December 9, 1910, and hereto annexed, and who having been first informed of the contents thereof, signed the said deed before me and in the presence of the two subscribing legal witnesses and acknowledged that he signed, sealed, and delivered the said

[1] This form of acknowledgment, while containing much that is not needed in many states, contains all that is needed in any state, unless the state has a statutory form which must be followed. If there is a statutory form it may be found in Hubbell's Legal Directory. The notary is cautioned to use the latest edition; it is published yearly. There are so many different requirements in the various states for the acknowledgments of married women and corporations that forms for married women and corporations for all states do not appear feasible.

deed before me and in the presence of the said witnesses, and that he executed the same freely and voluntarily for the uses, purposes and considerations therein expressed and desired the same to be recorded as such.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the city of Seattle, county of King and state of Washington, the day and year in this certificate first above written.

[Seal of John Doe] JOHN DOE,
Notary Public in and for the State of Washington, Residing at Seattle.

My Commission expires September 30, 1914.

(1)————————,
(2)————————,
Witnesses.

FORM XLII.

In Bankruptcy.

General Letter of Attorney in Fact When Creditor is not Represented by Attorney at Law.

In the District Court of the United States for the Eastern District of Washington.

In the Matter of Richard Roe, Bankrupt. } In Bankruptcy.

To William Stiles, Spokane, Washington:

I, John Jones, of Walla Walla, in the county of Walla Walla and state of Washington, do hereby authorize you or any one of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other place and time as may be appointed by the court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of the said bankrupt, and for me to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

In witness whereof I have hereunto signed my name and affixed my seal the 10th day of December, A. D. 1910.

JOHN JONES. [Seal]

Signed, sealed and delivered in presence of
FRANK JONES.
JAMES SMITH.

Acknowledged before me this 10th day of December, A. D. 1910.
[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington residing at Seattle.

FORM XLIII.

Bargain and Sale Deed.

Statutory Form.

The grantor, William Stiles, a bachelor, of Seattle, in the county of King and state of Washington, for and in consideration of one thousand dollars, in hand paid, bargains, sells and conveys to John Jones (husband of Mary Jones), of Renton, in the county of King and state of Washington, the following described real estate: Lot 15, in block 40, Seattle tide lands, according to map of said tide lands on page 40, volume 2, filed in office of Board of State Land Commissioners at Olympia, Washington, March 1, 1895, situated in the county of King, state of Washington.

Dated this 10th day of December, 1910.

WILLIAM STILES.

State of Washington,
County of King,—ss.

I, John Doe, a notary public, do hereby certify that on this 10th day of December, 1910, personally appeared before me William Stiles, to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 10th day of December, A. D. 1910.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington, Residing at Seattle.

FORM XLIV.

Quitclaim Deed.

Statutory Form.

The grantor, William Stiles, bachelor, of Seattle, in the county of King and state of Washington, for the consideration of one thousand dollars in hand paid, conveys and quitclaims to Jane Roe, a spinster,

of the county of King, in the state of Washington, all interest in the following described real estate: Southeast quarter (SE. ¼) of section four (4), township twenty (20) north, of range thirteen (13), E. W. M., situated in the county of Spokane, state of Washington.

Dated this 10th day of December, 1910.

WILLIAM STILES

[The acknowledgment would follow the form after the bargain and sale deed.]

FORM XLV.

Warranty Deed.

Statutory Form.

The grantors, William Stiles and Jane Stiles, husband and wife now and at the time of acquiring title to the hereinafter described premises, of Seattle, in the county of King and state of Washington, for and in consideration of one thousand dollars in hand paid, conveys and warrants to John Jones (the husband of Mary Jones), the grantee, the following described real estate: (describe land here) situated in the county of Chehalis, state of Washington.

Dated December 10, 1910.

WILLIAM STILES.
JANE STILES.

[The acknowledgment would follow the form after the bargain and sale deed.]

FORM XLVI.

Community Interest Deed.

This indenture, made this 10th day of December, 1910, between Richard Roe, husband of Jane Roe, of the county of King, state of Washington, the party of the first part, and Jane Roe, wife of Richard Roe, of the same place, the party of the second part,

Witnesseth; That the said party of the first part, for and in consideration of the love and affection which the said party of the first part has and bears unto the said party of the second part, as also for the better maintenance, support, protection and livelihood of the said party of the second part, does by these presents give, grant, alien and confirm unto the said party of the second part, and to her heirs and assigns forever, all those certain lots, pieces or parcels of land situate, lying and being in the county of King, state of Washington, bounded and particularly described as follows, to wit: (Describe land here.) Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, and remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

RICHARD ROE. [Seal]

[The acknowledgment would follow the form after the bargain and sale deed.]

FORM XLVII.

Mortgage for Real Estate.

Statutory.

The mortgagor, William Stiles (husband of Jane Stiles), of Seattle, in the county of King and state of Washington, mortgages to John Jones, a bachelor, of the same place, to secure the payment of one thousand dollars, lawful money of the United States, together with interest thereon at the rate of six per cent per annum until paid, according to the terms and conditions of two certain promissory notes bearing date December 10, 1910, made by William Stiles, payable, the first one year from date hereof and the second two years from date hereof, to the order of John Jones, the following described real estate: (describe land here) situated in the county of King, state of Washington.

Dated this 10th day of December, 1910.

WILLIAM STILES.

Signed, sealed and delivered in presence of
FRANK JOHNSON.
HENRY JAMES.

[The acknowledgment would follow the form after the bargain and sale deed.]

FORM XLVIII.

Chattel Mortgage.

Know All Men by These Presents, That I, William Stiles, of Seattle, Washington, party of the first part, for and in consideration of five hundred dollars paid by John Jones, of Renton, Washington, party of the second part, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, convey and mortgage unto John Jones, party of the second part, all that personal property now being, located and kept at No. 147 Second avenue, in the city of Seattle, county of King and state of Washington, and described as follows: (here describe each article which the chattel mortgage is to cover): Being all the property located at that place and owned by the party of the first part. To have and to hold the said granted and bargained goods unto the said John Jones, his heirs, executors, administrators or assigns, to his and their only proper use, benefit and behoof forever. And he hereby covenants to defend the title to the granted premises against the lawful claims of all persons.

Provided, nevertheless, and these presents are upon the express condition, that if William Stiles or his heirs, executors, administrators or assigns shall pay unto the grantee, or his heirs, executors, administrators or assigns, the sum of five hundred dollars, according to the tenor and terms of one certain promissory note made by the grantor, for five hundred dollars, dated Seattle, Washington, November 28, 1910, and payable at the Georgetown National Bank on the 28th day of November, 1911, with interest at seven (7) per cent per annum, and shall perform and observe all covenants and conditions hereinafter contained, then this mortgage and the notes hereby secured shall be void, otherwise to remain in full force and effect.

It is agreed that time shall be material, and the essence of this mortgage, and if default be made in the payment of the notes hereby secured and the interest thereon, or any part thereof, when due, then said notes, except interest thereon for unexpired time, shall, at the option of the owner thereof, become at once due and payable without further notice, and suit in foreclosure of this mortgage may be commenced at once; and in the judgment and decree of such foreclosure, a reasonable attorney's fee shall be included in the judgment and in case such foreclosure suit is settled before judgment is recorded therein, such attorney's fee shall nevertheless be paid; and if the debt and interest, or any installment thereof, secured by this mortgage are not paid when due, such sums so overdue shall bear interest at the rate of seven (7) per cent per annum from maturity until paid.

In witness whereof, said party of the first part has hereunto set his hand and seal this the 10th day of December, 1910.

WILLIAM STILES. [Seal]

Signed, sealed and delivered in presence of
SAMUEL STILES.
FRANK MILES.

State of Washington,
County of King,—ss.

I, John Doe, a notary public, do hereby certify that on this 10th day of December, 1910, personally appeared before me William Stiles, to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 10th day of December, A. D. 1910.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington, Residing at Seattle.

State of Washington,
County of King,—ss.

William Stiles, the mortgagor in the foregoing mortgage named, being first duly sworn, on his oath deposes and says that the aforesaid mortgage is made in good faith, and without any desire to hinder, delay or defraud any creditor or creditors.

WILLIAM STILES.

Sworn and subscribed to before me this 10th day of December, 1910.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington, Residing at Seattle.

The notary should follow the examples given below in describing the grantors and grantees in deeds. The purpose of such descriptions is to assist those making title searches, many years, possibly, after all the parties to the deed are dead. Attorneys who have made a special study of the question are now writing them in their deeds:

FORM XLIX.

"I, Richard L. Roe, husband of Jane J. Roe."

"I, Jane J. Roe, wife of Richard L. Roe."

"I, Richard L. Roe, widower, husband of the late Mary Roe at the time I acquired the hereinafter described premises."

"I, Jane J. Roe, widow of the late Richard L. Roe, who died January, 1905."

"To Richard Roe (husband of Jane Roe)," when he is the grantee.

"To Jane Roe (wife of Richard Roe)," when she is the grantee.

"I, John Doe, widower now and at the time I acquired the hereinafter described premises and during all the time intervening."

"I, Richard L. Roe, bachelor."

"I, Jane J. Roe, spinster."

"Spinster" describes a woman who has never been married. "Bachelor" describes a man who has never been married. The word "unmarried" should not be used; it may

mean spinster, widow, divorcee, bachelor, widower or a man who has been divorced. It would be a good rule to show the approximate date of the marriage of the grantors in every deed.

§ 81. Certificate of Acknowledgment: By Whom Written: Time of Writing: Place.—The certificate should be made out by the notary, preferably at the time the signature is acknowledged, and should be written on or attached to the instrument acknowledged, but there is no particular place for it. It is generally placed just after the signature of the person acknowledging.

§ 82. Certificate of Acknowledgment: Venue: Date: Signature of Officer: Official Designation: Seal.—The venue should be as follows:

FORM L.

State of Washington,
County of King,—ss.

if the notary resides and is then in King county; if he is in some other county temporarily, for instance, Spokane, it would be:

FORM LI.

State of Washington,
County of Spokane,—ss.

no matter where he resides. The reason is that a notary in Washington is a state officer.

The date should be carefully filled in, as that is a very important fact in a certificate. The certificate itself must show whether the notary was at that time qualified to take acknowledgments. Just after the certificate the notary should sign his name in the same manner it is on his seal. If his seal says John B. Smith, he should sign

FORM LII.

John B. Smith

and not J. B. Smith. After his name he should add "notary public in and for the state of Washington residing in

————."[a] Just at the end of the certificate an impression of his seal should be placed. If this is not done the certificate of acknowledgment will be of no validity.[b]

[a] Sullivan v. Treen, 13 Wash. 261, 43 Pac. 38, December, 1895, Hoyt, C. J.: "The statute of 1893 (Laws 1893, p. 34, § 5) authorized an amendment of notices of lien when the interest of third parties would not be affected thereby, and under this provision the court allowed this lien notice to be amended by the addition of the place of residence of the notary."

[a] Griffin v. Catlin et al., 25 Wash. 474, 87 Am. St. Rep. 782, 65 Pac. 755, July, 1901, Per Curiam: "There are but two points made in the argument for appellants: That the mortgage was not acknowledged as required by law, and was invalid; and that the residence of the notary was not added to the certificate—it was regular in all other respects. The acknowledgment conforms to the form specified in section 4533, Ballinger's Code [Rem. & Bal. Code, § 8761], which section declares: 'A certificate of acknowledgment, substantially in the following form shall be sufficient.' There are some cases, as Gates v. Brown, 1 Wash. 470, 25 Pac. 914, and Stetson-Post Mill Co. v. McDonald, 5 Wash. 496, 32 Pac. 108, cited by appellants to sustain their contention, but in those cases the official seal was omitted, which was a material defect. The omission of the notary's place of residence is not a material defect."

[b] "It shall not be necessary for a notary public, in certifying an oath to be used in any of the courts of this state, to append an impression of his official seal, but in all other cases when the notary public shall sign any instrument officially, he shall, in addition to his name and the words 'Notary Public,' add his place of residence and affix his official seal": Laws 1890, p. 474, § 5; 1 H. C., § 333; Bal. Code, § 249; 2 Rem. & Bal. Code, § 8299.

§ 83. **Certificate of Authenticity and Conformity.**—After the acknowledgment has been filled out as set forth in the foregoing sections, the instrument, if it is to be used in some sister state or foreign country, should be taken to the county clerk or secretary of state for a certificate of authenticity to be added. This matter has been fully considered before at page 57, section 26 and following.

§ 84. **Amendment of Certificate.**—If a deed or other instrument is acknowledged in legal form before a notary, and he makes an incorrect certificate or no certificate at all,

it has been held, in some jurisdictions, that he may, during his continuance in office,[1] correct the certificate to conform to the facts or attach a certificate if he failed so to do at the time the acknowledgment was taken;[2] but by the weight of authority the notary should have the party reappear before him and take a new acknowledgment.[3]

§ 85. Notary's Liability for False or Defective Certificate: Damages.—If, through gross negligence or from malice, a notary makes a false certificate of acknowledgment, he and his sureties will be liable on his bond for all damages resulting directly from his wrongdoing and in no way brought about by the action of the party injured.[4] In a case in California[5] the notary failed to show in his certificate that the grantor was personally known to him, or that he was identified in a sufficient manner, and the court held that he was guilty of gross and culpable negligence and was liable on his official bond to the party injured. In a Michigan case[6] the notary certified that a certain person

[1] 1 Am. & Eng. Ency. of Law & Prac., p. 911; McKellar v. Peck, 39 Tex. 381; Carlisle v. Carlisle, 78 Ala. 542; Cook v. Pitman, 144 N. C. 530, 119 Am. St. Rep. 985, 57 S. E. 219.

[2] 1 Am. & Eng. Ency. of Law & Prac., p. 911; Jordan v. Corey, 2 Ind. 385, 52 Am. Dec. 516; Westhafer v. Patterson, 120 Ind. 459, 16 Am. St. Rep. 330, 22 N. E. 414; Hanson v. Cochran, 9 Houst. (Del.) 184, 31 Atl. 880.

[3] 1 Am. & Eng. Ency. of Law & Prac., p. 914; Cahall v. Citizens' Mut. Bldg. Assn., 61 Ala. 232; Sullivan v. Chambers, 18 R. I. 799, 31 Atl. 167; Griffith v. Ventress, 91 Ala. 366, 24 Am. St. Rep. 918, 9 South. 312, 11 L. R. A. 193; Merritt v. Yates, 71 Ill. 636, 23 Am. Rep. 128; Enterprise Transit Co. v. Sheedy, 103 Pa. 492, 49 Am. Rep. 130; Stone v. Sledge, 87 Tex. 49, 47 Am. St. Rep. 65, 26 S. W. 1068.

[4] State v. Meyer, 2 Mo. App. 413; People v. Bartels, 138 Ill. 322, 27 N. E. 1091; Bartels v. People, 152 Ill. 557, 38 N. E. 898; Stevenson v. Brasher, 90 Ky. 23, 13 S. W. 242; 1 Am. & Eng. Ency. of Law, 2d ed., p. 555. In the case of Emmerling v. Graham, 14 La. Ann. 389, it was held that no action would lie against the notary as the holder allowed the statute of limitations to run: Heidt v. Minor, 113 Cal. 385, 45 Pac. 700; State v. Ryland, 163 Mo. 280, 63 S. W. 819; Crosthwait v. Pitts, 139 Ala. 421, 36 South. 83.

[5] Fogarty v. Finlay, 10 Cal. 239, 70 Am. Dec. 714.

[6] People v. Colby, 39 Mich. 456; People v. Cole, 139 Mich. 312, 102 N. W. 856.

appeared before him personally and acknowledged that he executed a certain mortgage. As a matter of fact, the person did not appear and his name was not signed to the instrument; the court held that the notary was guilty of malfeasance and liable on his official bond. To recover damages, however, for a false certificate of acknowledgment, the party claiming them must prove a clear and intentional dereliction of duty.[4] If a notary certifies that he personally knew the one making the acknowledgment, when as a matter of fact he did not, he will be liable in an action for damages. It is his duty to know.[5]

The damages in cases of the negligence of the notary in taking and certifying the acknowledgment of a mortgage is the amount of the debt and interest intended to be secured by the mortgage.[6]

§ 86. Notary's Liability for False Certificate: Criminal. The matter of the criminal liability of a notary public has been considered before, on page 96, section 35.

§ 87. Miscellaneous Statutes of Washington: Husband and Wife: Power of Attorney: Acknowledgment of Indians: Recording Plat: Telegraphing Instrument for Record: Sale of Homestead: Registered Land.—The husband has control of all community property, but the wife must join in the execution and acknowledgment.[a] The husband and wife may make an agreement concerning the status or disposition of community property to take effect upon the death of either, but the agreement must be acknowledged.[b] The husband or wife may convey to the other; conveyance must be acknowledged.[c] Either husband or wife may make a power of attorney for conveyance of his separate real or personal estate; conveyance must be acknowl-

4 Commonwealth v. Haines, 97 Pa. 228, 39 Am. Rep. 805; Henderson v. Smith, 26 W. Va. 829, 53 Am. Rep. 139; Browne v. Dolan, 68 Iowa, 645, 27 N. W. 795.

5 Cameron v. Culkins, 44 Mich. 531, 7 N. W. 157; State v. Meyer, 2 Mo. App. 413; Hattan v. Holmes, 97 Cal. 208, 31 Pac. 1131; Bartels v. People, 45 Ill. App. 306.

6 Fogarty v. Finlay, 10 Cal. 239, 70 Am. Dec. 714.

edged.[d] [e] Husband or wife may make power of attorney to the other authorizing sale or other disposition of his or her community interest; same must be acknowledged. [f]

Since 1899 a notary public may take the acknowledgment of an Indian desiring to sell his real property.[g] Whenever a person, to comply with law, shall offer a "plat" for record at the auditor's office of the county in which the land lies, he must first have the same acknowledged.[h] Any power of attorney duly proved or acknowledged and certified so as to be entitled to record may be sent by telegraph for record.[i]

In conveying or encumbering the homestead of a married person, both husband and wife must execute and acknowledge the instrument.[j]

A power of attorney dealing in any way with registered land must be acknowledged.[k]

[a] "The husband has the management and control of the community real property, but he shall not sell, convey, or encumber the community real estate, unless the wife join with him in executing the deed or other instrument of conveyance by which the real estate is sold, conveyed or encumbered, and such deed or other instrument of conveyance must be acknowledged by him and his wife . . . .": Code 1881, § 2410; 1 H. C., § 1400; Bal. Code, § 4491; 2 Rem. & Bal. Code, § 5918.

[b] "Nothing contained in any of the provisions of this chapter, or in any law of this state, shall prevent the husband and wife from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property, then owned by them or afterwards to be acquired, to take effect upon the death of either. But such agreement may be made at any time by the husband and wife by the execution of an instrument in writing under their hands and seals, and to be witnessed, acknowledged, and certified in the same manner as deeds to real estate are required to be, under the laws of the state, and the same may at any time thereafter be altered or amended in the same manner . . . .": Code 1881, § 2416; 1 H. C., § 1401; Bal. Code, § 4492; 2 Rem. & Bal. Code, § 5919.

[c] "A husband may give, grant, sell, or convey directly to his wife, and a wife may give, grant, sell, or convey directly to her husband his or her community right, title, interest, or estate in all or any portion of their community real property. And every deed made from husband to wife, or from wife to husband, shall operate to

divest the real estate therein recited from any or every claim or demand as community property, and shall vest the same in the grantee as separate property. The grantor in all such deeds, or the party releasing such community interests or estate, shall sign, seal, execute and acknowledge the deed, as a single person, without the joinder therein of the married party therein named as grantee . . . .": Laws 1888, p. 52, § 1; 1 H. C., § 1443; Bal. Code, § 4539; 2 Rem. & Bal. Code, § 8766.

[d] "A husband or wife may make and execute powers of attorney for the sale, conveyance, transfer, or encumbrance of his or her separate estate, both real and personal, without the other spouse joining in the execution thereof. Such power of attorney shall be acknowledged and certified in the manner provided by law for the conveyance of real estate. Nor shall anything herein contained be so construed as to prevent either husband or wife from appointing the other his or her attorney in fact for the purposes provided in this section": Laws 1888, p. 53, § 2; 1 H. C., § 1444; Bal. Code, § 4540; 2 Rem. & Bal. Code, § 8767.

[e] "Any conveyance, transfer, deed, lease, or other encumbrances executed under and by virtue of such power of attorney [2 Rem. & Bal. Code, § 8767] shall be executed, acknowledged, and certified in the same manner as if the person making such power of attorney had been unmarried": Laws 1888, p. 53, § 3; 1 H. C., § 1445; Bal. Code, § 4541; 2 Rem. & Bal. Code, § 8768.

A certificate of acknowledgment may be made by a husband as attorney in fact for his wife: Richmond v. Voorhees, 10 Wash. 320, December, 1894, opinion by Judge Hoyt.

[f] "A husband may make and execute a letter of attorney to the wife, or the wife may make and execute a letter of attorney to the husband, authorizing the sale or other disposition of his or her community interest or estate in the community property, and as such attorney in fact to sign the name of such husband or wife to any deed, conveyance, mortgage, lease, or other encumbrance, or to any instrument necessary to be executed by which the property conveyed or transferred shall be released from any claim as community property. And either said husband or said wife may make and execute a letter of attorney to any third person to join with the other in the conveyance of any interest either in separate real estate of either, or in the community estate held by such husband or wife in any real property. And both husband and wife owning community property may jointly execute a power of attorney to a third person authorizing the sale, encumbrance, or other disposition of community real property, and so execute the necessary conveyance or transfer of said real estate": Laws 1888, p. 53, § 4; 1 H. C., § 1446; Bal. Code, § 4542; 2 Rem. & Bal. Code, § 8769.

[g] "Any Indian who owns within this state any land or real estate allotted to him by the government of the United States may with the consent of Congress, either special or general, sell or convey by deed made, executed and acknowledged before any officer authorized to take acknowledgments to deeds within this state, any stone, mineral, petroleum or timber contained on said land or the fee thereof and such conveyance shall have the same effect as a deed of any other person or persons within this state; it being the intention of this section to remove from Indians residing in this state all existing disabilities relating to alienation of their real estate": Laws 1899, p. 155, § 1; 2 Rem. & Bal. Code, § 8780.

[h] "Every person whose duty it may be to comply with the foregoing regulations shall at or before the time of offering such plat for record, acknowledge the same before the auditor of the proper county, or any other officer who is authorized by law to take acknowledgments of deeds, a certificate of which acknowledgment shall be indorsed on or annexed to such plat and recorded therewith . . . .": Laws 1863, p. 431, § 4; Code 1881, § 2331; 1 H. C., § 745; Laws 1893, p. 419, § 1; Bal. Code, § 1262; 2 Rem. & Bal. Code, § 7833.

[i] "Any power of attorney, or other instrument in writing, duly proved or acknowledged, and certified so as to be entitled to record, may, together with the certificate of its proof or acknowledgment, be sent by telegraph, and telegraphic copy, or duplicate thereof, shall, prima facie, have the same force and effect, in all respects, and may be admitted to record and recorded in the same manner and with like effect, as the original": Laws 1866, p. 74, § 13; Code 1881, § 2354; 1 H. C., § 1554; Bal. Code, § 4364; 2 Rem. & Bal. Code, § 9309.

[j] "The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife": Laws 1895, p. 110, § 6; Bal. Code, § 5219; 1 Rem. & Bal. Code, § 534.

"The homestead consists of the dwelling-house, in which the claimant resides, and the land on which the same is situated, selected as in this chapter provided": Rem. & Bal. Code, c. 3; Laws 1895, p. 109, § 1; Bal. Code, § 5214; Rem. & Bal. Code, § 528.

[k] "Any person may by attorney convey or otherwise deal with registered land, but the letters or power of attorney shall be acknowledged and filed with the registrar of titles, and registered. Any instrument revoking such letters, or power of attorney, shall be acknowledged in like manner": Laws 1907, p. 718, § 54; 2 Rem. & Bal. Code, § 8862.

§ 88. **Validating Acts.**—From time to time laws are passed to validate deeds which have been placed on record,

but which are defective in the want of a seal, or in having been taken by a notary after his term of office has expired, or for other reasons.[a] The following is a list of validating statutes in this state: Laws of 1866, page 93; Laws of 1871, page 83; Laws of 1873, pages 466, 477, 481; Laws of 1875, page 103; Laws of 1877, page 313; Laws of 1879, pages 110, 157; Laws of 1888, page 184; Laws of 1889, page 476; Laws of 1893, page 283; Laws of 1903, page 14.

[a] "Special Legislation.—The legislature is prohibited from enacting any private or special laws in the following cases:—

. . . . . .

"9. From giving effect to invalid deeds, wills, or other instruments.

. . . . . .

"12. Legalizing, except as against the state, the unauthorized or invalid act of any officer": Wash. Const., art. 2, § 28.

CHAPTER IX.

DEPOSITIONS.

§ 89. Introduction: History.
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§ 92. Notary Public may Take.
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§ 111. Depositions: How Taken.
§ 112. ——: How Taken: How Returned.
§ 113. ——: Attaching Exhibits.

§ 89. Introduction: History.—When, under the admiralty law, a witness is in a foreign country or without the jurisdiction of a trial court, "letters rogatory" are issued to a court of the foreign country. Thereupon the foreign judge, by reason of the law of nations, examines the witness himself or appoints a commissioner to do so.[1] In

1 See §§ 28, 91; 1 Greenl. Ev., § 320; Bouv. Law Dict. (Rawle's Rev.), tit., "Letters Rogatory"; Nelson v. United States, Pet. (C.

England the courts of chancery likewise exercised the power of examining witnesses out of their jurisdiction by commissions directed to foreign magistrates.[2] At common law, the courts coerced litigants into allowing the other party to take depositions by consent, by delaying the case. But later on that procedure was abandoned, as it was considered an unwarranted use of power. Then it was that statutes were passed allowing a party to a cause, by following the statute in all its details, to obtain the testimony of a person who could not be called as a witness.[3] Because these statutes are in derogation of the common law they must be strictly complied with, otherwise the depositions taken under them will not be admissible.[4]

§ 90. **Definition.**—The word "deposition," as used in this chapter, is taken to mean the written testimony of a witness taken out of court before a notary or other person duly authorized to take it, and which is intended to be used upon the trial of some cause in court or before some officer or commission appointed by statute.[1] A deposition is different from an affidavit, in that a deposition is evidence given by a witness under interrogatories written down by an official person; while an affidavit is the mere voluntary act of the party making the oath, and may be, and generally

C.) 235, Fed. Cas. No. 10116; Kuehling v. Leberman, 9 Phila. (Pa.) 163.

2 1 Greenl. Ev., §§ 320, 251; Payne v. Danley, 18 Ark. 441, 68 Am. Dec. 187; 9 Am. & Eng. Ency. of Law, 2d ed., p. 299.

3 13 George III, c. 63; 1 William IV, c. 22; Calliaud v. Vaughan, 1 Bos. & P. 210; 9 Am. & Eng. Ency. of Law, 2d ed., p. 299; 1 Greenl. Ev., § 321.

4 Frye v. Barker, 2 Pick. (Mass.) 65; Bird v. Halsy, 87 Fed. 671; Dye v. Bailey, 2 Cal. 383; 9 Am. & Eng. Ency. of Law, 2d ed., p. 300, and cases there cited.

1 Black's Law Dict., tit., "Deposition"; Bouv. Law Dict. (Rawle's Rev.), tit. "Deposition"; Stimpson v. Brooks, 3 Blatchf. (U. S.) 456, Fed. Cas. No. 13,454. "A deposition is a written declaration under oath made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine, or upon written interrogatories": Dak. Code Civ. Proc., § 5279. As to the use of depositions before the Interstate Commerce Commission, see U. S. Rev. Stats., § 866, and following.

"In common parlance, and in some clauses of the statute,

is, taken without cognizance of the one against whom it is to be used.[2]

§ 91. When Depositions may be Taken.—It may be desirable to take depositions for use in some foreign country, in the courts of the United States, in the courts of some sister state, or in the courts of the state of Washington.

First, we will consider depositions to be used in some foreign country. As a general rule, when the court of one country desires to use the testimony of a person in some foreign country, it issues to some court in the foreign country "letters rogatory," by which it requests the foreign court to take the desired testimony and forward it to the trial court.[1] Very often the court, upon the receipt of "letters rogatory," appoints by a commission some notary public to take the desired testimony. He is instructed by the commission to return the testimony or interrogatories and answers to the court issuing the commission, whereupon they are forwarded to the foreign court. As a general rule, the "letters rogatory" will be accompanied with interrogatories, and it will be the duty of the notary to carry out the commission issued to him in the same manner he would were the testimony to be used in some court in Washington.

In considering when depositions may be taken for use in the courts of the United States we need but refer to the United States statute under section 28, page 70, title "Depositions de Bene Esse." There we find they may be taken "when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States,

'deposition' is often used to designate the document containing the interrogatories, answers and certificate of the magistrate; while in other sections it is more appropriately used to designate the narrative of the witness, made under the sanction of an oath, and reduced to writing": Fuller v. Hodgdon, 25 Me. 243.

2 Stimpson v. Brooks, 3 Blatchf. (U. S.) 456, Fed. Cas. No. 13,454.

1 9 Am. & Eng. Ency. of Law, 2d ed., p. 298; see § 89; Nelson v. United States, Pet. (C. C.) 236, note a, Fed. Cas. No. 10,116.

or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from the place of trial, or when he is ancient and infirm."[2]

If the depositions are to be taken under the section of the United States laws just quoted, the notary should first be satisfied in some manner that some one of the causes therein set forth is true. As a general rule, however, the attorney desiring to take depositions will have the notary appointed by a commission out of the circuit or district court to take the testimony, and it will then be the duty of the notary to carry out the commission according to the laws of Washington.[3]

In taking depositions for use in some sister state the notary should follow the commission as issued to him by the court of that state and supplement his instructions from the sister state with the laws of Washington whenever it is necessary to do so.

That brings us to the question of when depositions may be taken to be used in the courts of Washington. We find that there are four cases under which they may be taken for use in the superior courts: first, when the witness resides out of the county and is more than twenty miles from the

[2] U. S. Rev. Stats., § 782.

"For this purpose the residence of the witness is not to be determined by applying with great strictness the rules of domicile, and his deposition usually may be taken at his place of business, if within a different state from his home": 9 Am. & Eng. Ency. of Law, 2d ed., p. 309.

A witness lives at a greater distance than one hundred miles from the place of trial if he is sojourning there for any lawful purpose: Mutual Benefit Life Ins. Co. v. Robison, 19 U. S. App. 266, 58 Fed. 723, 7 C. C. A. 444, 22 L. R. A. 325.

The distance is to be computed upon the way of usual travel from the residence of the witness to the place of trial: In re Foster, 44 Vt. 570; and by the usual land route, though there is a nearer and more used route by water: Marston v. Forward, 5 Ala. 347.

The distance from the place of trial is to be determined by the usual, ordinary, and shortest route of public travel, and not by a mathematically straight line between the place of residence and the place of trial: Jennings v. Menaugh, 118 Fed. 612; Powers v. Powers (Ky. 1899), 52 S. W. 845.

[3] U. S. Rev. Stats., § 866.

place of trial; secondly, when the witness is about to leave the county, and go more than twenty miles from the place of trial, and there is probability that he will continue absent when testimony is required; thirdly, when the witness is sick, infirm, or aged, so as to make it probable that he will not be able to attend at the trial; fourthly, when the witness resides out of the state.[a] There are also two reasons upon which depositions may be taken for use before justices of the peace. The first is when such witness resides, or is about to go more than twenty miles from the place of trial; the second is when he is so sick, infirm or aged, as to make it probable that he will not be able to attend at the trial.[b]

It is to be understood that in all the cases set out in this section the testimony of the witness must be material and necessary.

[a] "The testimony of a witness may be taken by deposition, to be read in evidence in an action, suit, or proceeding commenced and pending in any court in this state, in the following causes:—

"1. When the witness resides out of the county, and more than twenty miles from the place of trial;

"2. When the witness is about to leave the county, and go more than twenty miles from the place of trial, and there is probability that he will continue absent when testimony is required;

"3. When the witness is sick, infirm, or aged, so as to make it probable that he will not be able to attend at the trial;

"4. When the witness resides out of the state": Laws 1877, p. 89, § 411; Cd. 1881, § 409; 2 H. C., § 1666; Bal. Code, § 6017; 1 Rem. & Bal. Code, § 1231.

[b] "Either party, in an action depending before a justice of the peace, may cause a deposition of a witness therein to be taken, when such witness resides, or is about to go more than twenty miles from the place of trial, or is so sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial": Laws 1854, p. 234, § 66; Cd. 1881, § 1878; Bal. Code, § 6749; 1 Rem. & Bal. Code, § 1907.

§ 92. Notary Public may Take.—A notary public may take depositions to be used in a foreign country if he is appointed by a commission out of a federal court. It need hardly be said that a United States court would not issue

such a commission to him if he were not designated by a United States law as an officer qualified to take depositions to be used in the courts of the United States. A notary is given that power by the Revised Statutes, sections 863, and 866, "Depositions de Bene Esse," "Notaries may Take Depositions," and "Depositions may be Taken in Mode Prescribed by State Laws," as found on pages 70–72.[a]

As to taking depositions for use in the courts of other states, a notary of Washington may take them if he has been designated in a commission issued out of the court of some other state. In many states a commission may be issued in blank to a notary public, leaving the name of the notary to be filled in when the deposition is taken; but in others a blank commission is invalid.[1] If a blank commission was agreed to by the parties, however, it would be held valid.[2] An interesting question in this connection presents itself when we come to interpret the Law of 1901, page 23, section 1 (1 Rem. & Bal. Code, § 1236), which deals with the power of compelling the attendance of witnesses before notaries. This discussion is taken up under section 109, page 196. It becomes important in this connection when a notary of Washington wants to examine a person of this state under a commission from a foreign state, but the witness refuses to appear.

A notary is given the broad power "to take depositions" by the laws of 1890;[b] but it will be noticed that the law does not specifically state that a notary may take depositions to be used in a foreign state. This law undoubtedly gives him full power to take depositions to be used in the courts of this state.

[a] Phelps v. S. S. City of Panama, 1 Wash. Ter. 615, July, 1877, Chief Justice Lewis.

Following the federal admiralty practice, the Washington territorial court decided a deposition for use in admiralty could be taken before a notary public.

1 Brackett v. Nikirk, 20 Ill. App. 525; Dumont v. McCracken, 6 Blackf. (Ind.) 355; Turner v. Patterson, 5 Dana (Ky.), 292; Worsham v. Goar, 4 Port. (Ala.) 441; Rupert v. Grant, 6 Smedes & M. (Miss.) 433.

2 Carlyle v. Plumer, 11 Wis. 99; Hall v. Lay, 2 Ala. 529.

[b] "Every duly qualified notary public is authorized in any county in this state,—

"1. . . . .

"2. . . . .

"3. To take depositions and affidavits, and administer all oaths required by law to be administered . . . .": Laws 1890, p. 474, § 4; 1 H. C., § 332; Bal. Code, § 248; 2 Rem. & Bal. Code, § 8298.

§ 93. Notary may Take: When Disqualified.—The subject of the notary being disqualified to take depositions in any case is treated under section 32, page 89.

§ 94. Whose Depositions may be Taken.—The depositions of either of the parties to the suit may be taken at the instance of a coparty,[1] or they may be taken at the instance of the adverse party,[2] [a] [b] and, of course, the depositions of witnesses who are not parties may be taken.[3] In all these cases it is presumed that the parties are not precluded from giving their testimony for any other reason. The testimony of a corporation may be taken by taking the depositions of its officers and agents.[4]

[a] "A party to an action or proceeding may be examined as a witness, at the instance of the adverse party, or of one of several adverse parties, and for that purpose may be compelled in the same manner and subject to the same rules of examination as any other witness to testify at the trial, or he may be examined on a commission": Laws 1854, p. 189, § 305; Code 1881, § 403; 2 H. C., § 1660; Bal. Code, § 6008; 1 Rem. & Bal. Code, § 1225.

[b] "A party to an action or proceeding, having filed interrogatories to be answered by the adverse party, ... shall not thereby be precluded from examining such adverse party as a witness at the trial, nor from taking his deposition to be read at the trial": Laws 1891, p. 34, § 4; 2 H. C., § 1663; Bal. Code, § 6011; 1 Rem. & Bal. Code, § 1228.

1 Respass v. Morton, Hard. (Ky.) 226; Shufelt v. Power, 10 How. Pr. (N. Y.) 286; 13 Cyc. Law & Proc., p. 839.

2 Ex parte Miller, 11 Ohio S. & C. Pl. Dec. 69, 12 Ohio Cir. Dec. 102. In the United States courts the deposition of a party cannot be taken at the instance of his adversary, although permissible by the state practice: Ex parte Fisk, 113 U. S. 713, 5 Sup. Ct. Rep. 724, 28 L. ed. 1117; Turner v. Shackman, 27 Fed. 183.

3 13 Cyc. Law & Proc., p. 839.

4 Kreider v. Wisconsin River Paper etc. Co., 110 Wis. 645, 86 N. W. 662.

§ 95. Depositions: Washington Statutes.—There are two laws in Washington under either of which a person may proceed to take depositions in this state. The first is "by commission" and the second is "on notice." These are taken up in the following sections.

§ 96. Depositions: By Commission: Section 1240, Remington and Ballinger's Code.—One of the ways in which a notary may be authorized to take depositions is by a commission issued out of some court of the United States, of a sister state, or of the state of Washington.[a]

The commission will always be issued if the parties thereto consent;[1] but if the consent of the other cannot be obtained by one of the parties, it will be necessary for the attorney to make an application to the court on notice to the other party.[2] It is but necessary to add in this connection that upon proper application and a proper showing the court will order a commission to issue to a notary to take the testimony of certain witnesses. It is when a commission has been delivered to a notary that his duties begin. As a general rule, a commission is issued upon an order from the court by the clerk or deputy clerk of the court in which it is granted. It should designate the action or suit in which the testimony is to be taken; the name of the notary, or "————, notary public," so that the name may be filled in when the deposition is taken; the names of the witnesses to be examined;[3] the time and place of execution unless it is to be executed in a foreign state when no particular place need be specified; general instructions as to the mode of

1 13 Cyc. Law & Proc., p. 859; Knight v. Emmons, 4 Mich. 554; Pickard v. Bates, 38 Ill. 40.

2 13 Cyc. Law & Proc., p. 859; Worsham v. Goar, 4 Port. (Ala.) 441; Hendricks v. Craig, 5 N. J. L. 567.

3 If in a witness' name in a commission a second initial letter or name is omitted, or there is a variation which does not change the sound, the mistake will be immaterial: McCutchen v. Laggins, 109 Ala. 457, 19 South. 810; Marr v. Wetzel, 3 Cal. 2; Ellis v. Spaulding, 39 Mich. 366; Smith v. Castles, 1 Gray (Mass.), 108. But if the name in the commission and the name of the witness whose deposition was taken are dissimilar the deposition will be rejected: Smith v. Westerfield, 88 Cal. 374, 26 Pac. 206; Scholes v. Ackerland, 13 Ill. 650.

executing the commission, which should include directions that notice be given to the adverse party of the time and place of taking the depositions, and also directions as to the time and manner the return to the proper court or officer should be made. The commission should be signed or authenticated by the clerk of the court, should bear date as of its issue, and should bear the seal of the court unless that is done away with by statute.[4]

[a] "Any superior court in this state, or any judge thereof, is authorized to grant a commission to take depositions within or without this state. The commission must be issued to a person or persons therein named, by the clerk, under the seal of the court granting the same, and depositions under it may be taken upon written interrogatories or upon oral questions or partly upon oral and partly upon written interrogatories. Before any such commission shall be granted, the person intending to apply therefor shall serve upon the adverse party a notice of his intention to make such application, stating the time when and the place where such application will be made, which notice shall be served in the same manner and for the same time as provided in section 1233, unless the court or judge, for sufficient cause shown by affidavit, prescribe a shorter time. At the time the application is presented, the court or judge shall settle the interrogatories, if any have been served and the parties have not settled the same. The clerk, upon issuing the commission, shall attach the interrogatories thereto, if any have been agreed upon or settled by the court, and immediately forward the same to the commissioner. At least five days' notice must be given to the party or witness to be examined out of the state, in case such examination shall be had upon oral interrogatories, and the person before whom the deposition of the witness shall be taken shall have the same power to compel the attendance of such parties or witnesses as any person authorized to take such depositions within this state": Laws 1897, p. 206, § 1; Bal. Code, § 6023; 1 Rem. & Bal. Code, § 1240.

[4] 13 Cyc. Law & Proc., pp. 882–889; Brooks v. Brooks, 16 S. C. 621; Ragan v. Cargill, 24 Miss. 540; Stone v. Stillwell, 23 Ark. 444; Sydnor v. Palmer, 29 Wis. 226; Strayer v. Wilson, 54 Iowa, 565, 7 N. W. 7; Borders v. Barber, 81 Mo. 636.

FORM LIII.

In the Superior Court of the State of Washington for the County of King.

In Probate.

In the Matter of the Estate of John Stiles, Deceased. } No. ——. Order of Judge to Take Testimony.

To John Doe of 304 Central Bldg., Seattle, Wash., Greeting:

Whereas, it appears to the judge of our said superior court of the county of King, state of Washington, that William Stiles, a resident of Seattle, in the state of Washington, is a material witness at the hearing of a certain petition, now pending in our said superior court for the probate of the alleged annexed last will and testament of John Jones, deceased, and that the attendance of said witness cannot be procured at the said hearing, we, in confidence of your prudence and fidelity, have appointed you and by these presents do appoint you a commissioner to examine said witness, and therefore we authorize and empower you at a time and place to be by you fixed, to take the deposition of the said William Stiles, and to continue from day to day until the whole of said deposition be taken; diligently so examine said witness, on the interrogatories, annexed to this commission, on his oath, first taken before you and cause the said examination, of the said witness to be taken by questions and answers, and to be reduced to writing and signed by the said witness, and by yourself, and then certify and return the same annexed to this commission, in a sealed envelope unto our said superior court aforesaid, directed to the clerk thereof, by mail or other usual channel of conveyance with all convenient speed, inclosed under your seal.

Witness the Hon. Henry Jones, judge of the said superior court and the seal of said court, hereunto affixed this 4th day of December, 1910.

————————,
Clerk.

By ————————.
Deputy Clerk.

§ 97. Depositions: By Commission: Continued.—Upon receiving a commission to take depositions the notary would follow the same course of procedure in subpoenaing the witness, etc., as is set out in the following section on "Depositions: On Notice."

§ 98. Depositions: On Notice: Section 1233, Remington and Ballinger's Code.—By statute in this state, Laws of 1891,[a] either party may have the deposition of a witness taken in this state before any notary without obtaining a commission from some court. All that is necessary is for the party desiring the depositions to serve on the adverse party or his attorney a notice of the time and place of the examination.[aa] The notice must be served long enough before the date set to allow the adverse party sufficient time by the usual route of travel to attend, and three days for preparation, exclusive of the day of service.[b] The examination may be adjourned from day to day. The notice must specify the action or proceeding, the name of the court or tribunal in which the deposition is to be used, the time and place[1] of taking the depositions and by the case of Donaldson v. Winningham, 54 Wash. 19, 102 Pac. 879, [c] the names of the witnesses to be examined.[2] The notice must be served upon the adverse party, his agent, or attorney of record, or be left at his usual place of abode.

If the situation demands that the depositions be taken on a shorter notice than that set out in the statute, this may be accomplished by making application to the judge or justice of the peace. Upon showing by affidavit that there is a sufficient cause, the court will make an order prescribing a shorter time for the notice.[d] A copy of the order short-

1 In a notice for the taking of a deposition, if there be a defect as to the place of the taking, it is waived by the attendance of the party notified: George v. Nichols, 32 Me. 179.

A notice specified that the deposition would be taken at the office of "Dan. Ray," whereas the deposition itself showed that it was taken at the office of "Daniel E. Wray." It was held that "Dan." being an abbreviation of "Daniel," and "Ray" and "Wray" being idem sonans (sounding alike), the omission of the middle letter was immaterial; and, further, that Wray being identified in the notice as an attorney at law of the place where the deposition was taken, and there being no claim that there was any other person of that name or having one sounding like it in that place, the opposing party could not have been misled: Sparks v. Sparks, 51 Kan. 195, 32 Pac. 892.

2 Error in the name of the proposed witness is cured by the appearance of the adverse party and cross-examination: Waldron v. St. Paul, 33 Minn. 87, 22 N. W. 4.

ening the time must be served with the notice. Either party may commence taking testimony by depositions at any time after service of summons upon the defendants.[e]

Before proceeding to take the depositions under these statutes, it is the duty of the notary to be satisfied that the requirements set out have all been fulfilled.

[a] "Either party may have the deposition of a witness taken in this state before any . . . . notary public, by serving on the adverse party or his attorney previous notice of the time and place of examination. The notice shall be served such time before the time when the deposition is to be taken as to allow the adverse party sufficient time by the usual route of travel to attend, and three days for preparation, exclusive of the day of service, and the examination may, if so stated in the notice, be adjourned from day to day. The notice shall specify the action or proceeding, the name of the court or tribunal in which the deposition is to be used, and the time and place of taking the deposition. It shall be served upon the adverse party, his agent, or attorney of record, or be left at his usual place of abode": Laws 1891, p. 34, § 7; 2 H. C., § 1668; Bal. Code, § 6019; 1 Rem. & Bal. Code, § 1233.

[aa] FORM LIV.

State of Washington,
County of Spokane,—ss.

In the Superior Court of Spokane County.

Richard Roe,
Plaintiff,
vs.
John Stiles,
Defendant.

No. ——.
Notice of Taking Deposition.

To John Stiles:

Please take notice: That the deposition of William Stiles, 4012 Corliss Avenue, Seattle, Wash., witness for the plaintiff in the above-entitled action, will be taken before John Doe, notary public, at his office, 304 Central Bldg., cor. 9th ave. and Marion street, in the city of Seattle, county of King, in the state of Washington, on the 4th day of December, 1910, commencing at the hour of 9 o'clock A. M., of that day, and the examination of said witness will be continued from day to day and over Sunday, if necessary, between the hours of 9 A. M. and 5 P. M. until completed; and that said deposition will be read in evidence on behalf of the plaintiff upon the trial of said action in the above-entitled court.

The reason for taking said deposition is that said witness resides at a distance greater than twenty miles from the place of trial and out of the subdistrict in which said trial will be held.

Dated at—, November 28th, 1910.

FRANK JONES,
Attorney for Plaintiff.

Legal service of the foregoing notice, by delivery of a correct copy thereof to the undersigned at the county of Spokane in the state of Washington, on this 28th day of November, 1910, is hereby admitted.

JOHN JONES,
Attorney for Defendant.

[b] Hobart v. Jones, 5 Wash. 385, 31 Pac. 879, December, 1892, Judge Dunbar: "A party cannot claim insufficiency of notice where he appeared and upon his own motion had the hearing continued to enable him to file cross-interrogatories."

[c] Donaldson v. Winningham, 54 Wash. 19, 102 Pac. 879, July, 1909, Judge Gose: "The statute [Rem. & Bal. Code, § 1233; Bal. Code, § 6019] as an entirety clearly contemplates that the name of the witness shall be stated in the notice. . . . . The naming of the witness in the notice, if not within the letter, is within the spirit of the statute."

[d] "The court, or a judge thereof, or in an action or proceeding before a justice of the peace, the justice, may, upon sufficient cause being shown by affidavit, prescribe a shorter time for notice than that specified in the last preceding section. A copy of the order shortening the time must be served with the notice": Laws 1891, p. 35, § 8; 2 H. C., § 1669; Bal. Code, § 6020; 1 Rem. & Bal. Code, § 1234.

"The notice shall be served, and the deposition taken, certified, and returned, according to the law regulating the taking of depositions to be read in the superior court": Laws 1854, p. 234, § 67; Code 1881, § 1879; Bal. Code, § 6750; Rem. & Bal. Code, § 1908.

[e] "Either party may commence taking testimony by depositions at any time after service of summons upon the defendants": Laws 1877, p. 90, § 412; Code 1881, § 410; 2 H. C., § 1667; Bal. Code, § 6018; 1 Rem. & Bal. Code, § 1232.

§ 99. Depositions: Perpetuation of Testimony: Sections 1249–1253, Remington and Ballinger's Code.—To take depositions under section 1233 or section 1240 as set out above it is necessary to show that there is an action, suit, or proceeding commenced and pending in some court in this state. But when no action has been begun, if it is possible to show

sufficient reason for wanting to perpetuate the testimony of a witness in connection with some matter, a person may apply to a court or judge for a commission appointing a notary to take the testimony of certain named witnesses.[1] When appointed such commissioner, a notary has but to carry out instructions in the same manner he would those of any other commission.

§ 100. Depositions: Probate Procedure: Section 1620, Remington and Ballinger's Code.—When a person bound by a contract in writing to convey any real property dies before making the conveyance, the superior court of the county in which the land lies can compel the executor or administrator to convey the property to the person entitled thereto.[2] The petitioner in such case, or anyone resisting the claim of the petitioner, may take the testimony of witnesses in support of his claim by deposition. Notice of the time and place of taking such deposition must be published for three successive weeks prior to taking the same; it must state the name of the notary, the names of the witnesses, and must be served personally on the executor or administrator if he was appointed in this state. The publication must be made in a newspaper designated by the court. Any party interested in the estate may appear and cross-examine the witnesses. The statute on depositions regulates the practice.[a]

[a] "The testimony of witnesses in support of the claim of the petitioner may be taken by deposition whenever the deposition of such witnesses might be taken to be used in the trial of a civil action; but notice of the time and place of taking such deposition shall be published by the petitioner, in the paper required to be designated by section 1611 [this is a paper designated by the judge], for three successive weeks prior to taking the same, which notice shall also state the name of the officer before whom the deposition is to be taken, and the names of the witnesses whose testimony is proposed to be taken at such time and place, and shall also be served personally

1 Code 1881, §§ 423–427; 2 H. C., §§ 1688–1692; Bal. Code, §§ 6034–6038; 1 Rem. & Bal. Code, §§ 1249–1253.

2 Laws 1891, p. 390, § 40; Bal. Code, § 6381; 1 Rem. & Bal. Code, § 1610.

in all cases wherein personal service of the notice is required by the provisions of section 1611. [That specifies that the executor or administrator shall be served personally if he was appointed in this state.] Any party interested in the estate may appear and cross-examine such witnesses, and the manner of examination and form of such deposition shall be in conformity with the statute regulating depositions of witnesses in civil actions. Any party interested in the estate, and resisting the claim of the petitioner, may, after filing his objections, take the testimony of witnesses in his behalf in like manner as in civil actions": Laws 1891, p. 392, § 48; 2 H. C., § 1127; Bal. Code, § 6391; 1 Rem. & Bal. Code, § 1620.

§ 101. Depositions: Probate Procedure: Section 1298, Remington and Ballinger's Code.—"If any witness be prevented by sickness from attending at the time when any will may be produced for probate, or reside out of the state or more than thirty miles from the place where the will is to be proven, such court may issue a commission, annexed to such will, and directed to any judge, justice of the peace, or mayor, or other person, empowering him to take and certify the attestation of such witness": Laws 1854, p. 315, § 18; Code 1881, § 1351; 2 H. C., § 863; Bal. Code, § 6101; Rem. & Bal. Code, § 1298.

§ 102. Depositions: Contested Election Cases: Notary cannot Take.—There is one case set forth in the statutes of Washington when depositions may be taken, but not by a notary public. That is in the case of a contest for a seat in the House of Representatives. In that event the depositions must be taken by two justices of the peace.[a]

[a] "Immediately on the filing of such statement in the clerk's office, the said clerk shall issue a commission directed to two justices of the peace in the contestant's district, to meet at such time and place as shall be specified in such commission, not less than twenty nor more than thirty days from the time of issuing the same, for the purpose of taking depositions of such witnesses as the parties to such contest may wish to examine": Code 1881, § 3127; 2 Rem. & Bal. Code, § 6908.

§ 103. Depositions: Criminal Law.—The law relating to crimes connected with depositions will be found under section 53.

There are several sections in the new criminal law of 1909 which provide for depositions to be taken to be read in criminal trials. The statute, however, designates magistrates as the officers to take the said depositions, which makes it unnecessary to consider them in a work on notaries.

§ 104. **Notice to Nonresident Party.**—When the party against whom the deposition is to be read is not in the state, and has no agent or attorney of record here, he may be given notice either of the application for a commission or of the taking of depositions under section 1233 of the Remington and Ballinger's Code by publication under the Law of 1891.[a] If there is a newspaper in the county where the action or proceeding is pending, the notice must be published in said paper three consecutive weeks. If there is no newspaper in that county, the publication may be made in some state paper of general circulation in that county.

[a] "When the party against whom the deposition is to be read is absent from or a nonresident of the state, and has no agent or attorney of record therein, he may be notified of the taking of the deposition or of the application for a commission, by publication. The publication must be made three consecutive weeks, in some newspaper printed in the county where the action or proceeding is pending, if there be any printed in such county, and if not, in some newspaper printed in this state, of general circulation in that county. The publication must contain all that is required in the written or printed notice, and may be proved in the manner prescribed in the case of the publication of summons": Laws 1891, p. 35, § 11; 2 H. C., § 1673; Bal. Code, § 6024; 1 Rem. & Bal. Code, § 1241.

§ 105. **Interrogatories: Oral Examination.**—When application is made and a commission granted under section 1240 of Remington and Ballinger's Code,[a] depositions may be taken upon written interrogatories or upon oral questions or partly upon oral and partly upon written interrogatories.

When depositions are taken upon notice under section 1233 of Remington and Ballinger's Code,[b] they may be either upon written interrogatories or upon oral questions; the section does not designate how they are to be taken.

It might be well here to explain the difference between "interrogatories" and "oral examination." When the parties are not going to be represented at the taking of the deposition, each formulates a set of questions he desires the notary to ask the witness. These questions are known as "interrogatories." If there is any dispute over the form or substance of any question offered by either party, the judge granting the commission settles the dispute before the set of questions is finally made up and sent to the notary.

If the parties or their attorneys are to attend on the taking of the depositions, and it has not previously been agreed that they are to be taken on "interrogatories," either party or his attorney may request the notary to ask the witness questions. Thereupon the notary must put the questions requested to the witness.

[a] See page 182, note [a].

[b] See page 185, note [a].

§ 106. Open Commission.—A commission to take the depositions of witnesses not named is called an open commission, and may be granted in some cases.[1] It is sufficient to say here that if a notary receives such a commission it is not for him to question it; it is his duty to carry out, as far as possible, the instructions of the commission. Whether an open commission shall be issued lies in the discretion of the judge.

§ 107. Witnesses not Named in Notice.—While it does not come within the jurisdiction of the notary to question whether the witnesses are named in a commission ordered by some court as set forth in the preceding section, it is part of his duty to see that the names of the witnesses are set forth in the notice when depositions are taken before him under section 1233 of Remington and Ballinger's Code, as set forth in section 98, page 184.

1 Anderson's Law Dict.; 9 Am. & Eng. Ency. of Law, 2d ed., p. 319; 13 Cyc. Law & Proc., p. 889; The Infanta, Abb. Adm. 263, Fed. Cas. No. 7030.

It will be seen that section 1233 of the Remington and Ballinger's Code does not specify that the names of the witnesses must be set out, but in Donaldson v. Winningham, 54 Wash. 19, 102 Pac. 879, July, 1909, where the notice stated that the deposition of "sundry witnesses" would be taken at a time and place and before a person named, Judge Gose decided that "the statute as an entirety clearly contemplates that the name of the witness shall be stated in the notice," and that, "the naming of the witness in the notice, if not within the letter, is within the spirit of the statute."

§ 108. **Witnesses: Subpoenas.**—Any witness may be subpoenaed and compelled by a notary public to appear and give his deposition at any place within twenty miles of the abode of such witness.[a] [d] The procedure would be the same as subpoenaing a person to attend and to testify in court.[b] [c] [d] [e] [f] [ff] Not only can the witness be compelled to attend and to testify, but by the case of In the Matter of the Petition of N. W. Bolster (Wash.), 110 Pac. 547, August, 1910,[g] it was held that the witness must produce documents on the taking of a deposition by a notary if they have been properly called for by a subpoena duces tecum. It was contended in that case that while a witness is compelled by section 1235 of Remington and Ballinger's Code,[a] to appear and testify, the section does not say that he must produce any books or papers.

The following are forms for subpoenas to be issued by the notary:

FORM LV.

Subpoena.[d]

Office of *John Doe,* Notary Public for the State of Washington.

State of Washington,
County of *King,*—ss.

Richard Roe,
Plaintiff,
vs.
John Stiles,
Defendant.

No. ——.
Subpoena.

The State of Washington, to *William Stiles, 4012 Corliss Avenue, Seattle, Washington:*

You are hereby commanded to be and appear at the office of *John Doe,* notary public of the state of Washington, in *room No. 304 Central Building, corner of Ninth Avenue and Marion Street, in the city* of Seattle, at *9* o'clock in the *fore*noon on the *tenth* day of *November,* A. D. *1910,* then and there to give your deposition on behalf of *John Stiles, the defendant* in a certain cause pending in the *superior court of the state of Washington for the county of King,* wherein *Richard Roe is* the plaintiff and *John Stiles* the defendant, and to remain in attendance on said notary public until discharged, and herein fail not, under penalty of the law.

Witness my hand and seal this *4th* day of *December,* A. D. 19*10.*

[Seal] *JOHN DOE,*

Notary Public in and for the State of Washington, residing at *Seattle.*

[The words in italics must be changed to suit the occasion.]

FORM LVI.

Subpoena Duces Tecum.[d]

Office of *John Doe,* Notary Public for the State of Washington.

State of Washington,
County of *King,*—ss.

Richard Roe,
Plaintiff,
vs.
John Stiles,
Defendant.

No. ——.
Subpoena Duces Tecum.

The State of Washington, to *William Stiles, 4012 Corliss Avenue, Seattle, Washington:*

You are hereby commanded to be and appear at the office of *John Doe,* notary public of the state of Washington, in *room No. 304 Central Building, corner of Ninth Avenue and Marion Street, in the city* of Seattle, at

9 o'clock in the *fore*noon on the *tenth* day of *November*, A. D. *1910*, then and there to give your deposition on behalf of *John Stiles, the defendant* in a certain cause pending in the *superior court of the state of Washington for the county of King*, wherein *Richard Roe is* the plaintiff and *John Stiles* the defendant, and to remain in attendance on said notary public until discharged, and herein fail not, under penalty of the law. And you are further directed and commanded to bring with you the following papers and documents now in your possession or under your control, viz.: *A certain letter written by Richard Roe and received by you on or about the 10th day of January, 1908, in reference to the sale of some of his property in Spokane.*

Witness my hand and seal this *4th* day of *December*, A. D. 19*10*.

[Seal] *JOHN DOE,*

Notary Public in and for the State of Washington, residing at *Seattle.*

[The words in italics must be changed to suit the occasion.]

The subpoenas may be served by the sheriff or deputy sheriff or by "any suitable person over eighteen years of age by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode." If the service is not made by an officer authorized to serve process, proof of service must be made by affidavit.[e]

When the officer or "suitable person" serves the subpoena he must also pay or tender to the witness, provided the witness demands his fees at the time of the service of the subpoena, if it is a civil action or proceeding, two dollars, plus mileage at twenty cents for each mile of the distance by the usual route between the home of the witness and the place where his deposition is to be taken.[b] [h] The subpoena must not be served on Sunday.[i] It may be served by telegraph.[ff]

[a] "Any witness may be subpoenaed and compelled, by any officer authorized to take depositions, to appear and give his deposition at any place within twenty miles of the abode of such witness, in like manner as he may be subpoenaed and compelled to attend as a witness in any court, and he shall suffer the same penalties for a failure to attend as prescribed in section 1220": Laws 1891, p. 35, § 9; 2 H. C., § 1670; Bal. Code, § 6021; 1 Rem. & Bal. Code, § 1235.

[b] "No person shall be obliged to attend as a witness before any court of record, judge, justice of the peace, commissioner, referee, or other officer, in any civil action or proceeding out of the county in which he resides, unless his residence be within twenty miles of such

court, judge, justice of the peace, commissioner, referee, or other officer; and no person shall be obliged to attend as a witness in any civil action or proceeding in any justice's court, unless his residence be within twenty miles of such court, whether within the county or not. Nor shall any person be compelled to attend as a witness in any civil action or proceeding, unless the fees be paid or tendered to him which are allowed by law for one day's attendance as a witness, and for traveling to and returning from the place where he is required to attend, provided such fees be demanded by him at the time of service of the subpoena": Laws 1891, p. 33, § 2; 2 H. C., § 1650; Bal. Code, § 5995; 1 Rem. & Bal. Code, § 1215.

[c] "The subpoena may require not only the personal attendance of the person to whom it is directed at a particular time and place to testify as a witness, but may also require him to bring with him any books, documents, or things under his control; but no public officer or person having the possession or control of public records or papers which by law are required to be kept in any particular office or place shall be compelled to produce the same in any court": Laws 1854, p. 188, § 296; Code 1881, § 394; 2 H. C., § 1651; Bal. Code, § 5996; 1 Rem. & Bal. Code, § 1216.

[d] "The subpoena shall be issued as follows:

"1. . . . .

"2. To require attendance out of such court before a judge, justice of the peace, commissioner, referee or other officer authorized to administer oaths or to take testimony in any matter under the laws of this state, it shall be issued by such judge, justice of the peace, commissioner, referee or other officer before whom the attendance is required;

"3. To require attendance before a commissioner appointed to take testimony by a court of any other state, territory or county it may be issued by any judge or justice of the peace in places within their respective jurisdiction": Laws 1895, p. 189, § 1; Bal. Code, § 5997; 1 Rem. & Bal. Code, § 1217.

[e] "Such subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit": Laws 1869, p. 165, § 391; Code 1881, § 396; 2 H. C., § 1653; Bal. Code, § 5997; 1 Rem. & Bal. Code, § 1217.

[f] "A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer": Laws 1854, p. 188, § 299; Code 1881, § 397; 2 H. C., § 1654; Bal. Code, § 5999; 1 Rem. & Bal. Code, § 1219.

[ff] "Any writ or order in any civil suit or proceeding, and all the papers requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ or order or paper so transmitted may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner, and with the same force and effect in all respects, as the original thereof might be, if delivered to him, and the officer or person serving or executing the same shall have the same authority, and be subject to the same liabilities, as if the copy were the original. The original, when a writ or order, shall also be filed in the court from which it was issued, and a certified copy thereof shall be preserved in the telegraph office from which it was sent; in sending it, either the original or certified copy may be used by the operator for that purpose": Laws 1866, p. 69, § 17; Code 1881, § 2358; 1 H. C., § 1558; Bal. Code, § 4898; 1 Rem. & Bal. Code, § 254.

[g] In the Matter of the Petition of N. W. Bolster (Wash.), 110 Pac. 547, August, 1910, Fullerton, J. In this case the superior court of the state of California issued a commission, in a cause pending therein, authorizing "N. W. Bolster of Seattle, Wash., to take the depositions of E. J. Mathews and T. A. Davies, president and vice-president, respectively, of a corporation known as the John J. Sesnon Company, and to require them to produce such books and papers of the corporation as should be in their possession or under their control, that the same might be examined touching the matters at issue in the cause mentioned." The notary caused a subpoena to be issued to the witness E. J. Mathews to appear and bring the books. The witness appeared, but refused to bring the books. The notary then applied to the superior court of King county, asking the court to require the witness to attend before him with the documents. The superior court, after a hearing, however, refused, on the ground that the documents sought were "trade secrets." The notary appealed to the supreme court, and Judge Fullerton there decided, not only the question of "trade secrets," but also the contention as to whether the superior court had the authority to compel the production of the books under the Washington statute. The court held that the witness must appear and produce the books.

[h] "Witnesses shall receive for each day's attendance in all courts of this state, besides mileage at ten cents per mile each way, two dollars": Laws 1907, p. 88, § 1; 1 Rem. & Bal. Code, § 497.

[i] "Every person who shall serve any legal process on the Sabbath day, except in case of a breach, or apprehended breach, of the peace, or when sued out for the apprehension of a person charged with crime, or where such service is expressly authorized by statute, shall be guilty of a misdemeanor": Laws 1909, p. 964, § 245; 1 Rem. & Bal. Code, § 2497.

§ 109. Witnesses: Refusal to Attend: Procedure.—When a proper service of subpoena, as stated in the preceding section, has been made and the witness refuses to attend, or if he attends, refuses to testify or to produce certain books or documents called for by the notary, it is then the notary's duty to report to the superior court in and for the county in which the witness resides, or is found, by petition. His petition should set forth that the necessary steps were taken, following the facts as stated in section 1237 of Remington and Ballinger's Code, and that the witness has failed and refused to attend and testify before such officer, in the cause mentioned in the notice and subpoena; and ask the court for an order compelling the witness to attend and testify before such officer.[a] [b]

The court, upon the petition of the notary public and the payment of the regular docket fee of four dollars ($4), will enter an order directing the witness to appear before the notary at a time and place which will be fixed in the order and there to give his testimony in such case. Upon obtaining this order from the court, a copy of it must be served upon the witness in the same manner that summons and complaints are now served. If the witness then fails or refuses to obey the order of the court he will be guilty of contempt of court.[c] [d] If the witness cannot be served personally or by leaving a copy of the court order at the house of his usual abode with some person of suitable age and discretion then resident therein, it will be necessary for the notary to examine the law on the manner of service of a summons as set forth in section 226 of Remington and Ballinger's Code.

A very interesting question may arise at this point of the procedure by reason of the wording of the law governing notaries and the wording of the law just referred to and set out in full in note [a]. The law under which a notary has power to take depositions reads, "Every duly qualified notary public is authorized in any county in this state to take depositions," note [b], section 92. Whether this authorizes him to take depositions to be used in another state has never been decided. As at common law a notary has no power to take depositions, it is necessary for him to be given the right

under the statute.[1] In a number of states the law as to depositions taken in foreign states specifies that the depositions must be taken by an officer given that power by the home state and also that the officer of the foreign state must be authorized by the laws of his state to take depositions in his state to be used in foreign states.[2] This question does not become important to a Washington notary until it becomes necessary for him to compel a witness to appear before him to give his testimony to be sent to another state. It then becomes necessary to construe the statute as it is set out in note [a]. Three possible interpretations of note [a] are set forth in note [b]. This law as set out in note [a] was, without doubt, passed to give the superior courts power "to compel attendance of witnesses." The question which becomes of interest to the notary, remembering that the law under which he gets his authority to take depositions reads: "Every . . . . notary public . . . . is authorized . . . . to take depositions," is, Does the law as set out in note [a] mean "The superior court shall have power to compel the attendance of witnesses, within this state, before notaries public"? Or does it mean "The superior court shall have power to compel the attendance of witnesses, within this state, before notaries public, authorized by the laws of this state to take depositions, etc."? If the latter is the true interpretation, has a notary in Washington that power? In other words, has a Washington notary the power to take depositions in Washington to be used in Vermont or Indiana?

[a] "The superior court shall have power to compel the attendance of witnesses, within this state, before notaries public, justices of the

1 Midland Steel Co. v. Citizens' National Bank, 34 Ind. App. 107, 72 N. E. 290; McCann v. Beach, 2 Cal. 32; Burtt v. Pyle, 89 Ind. 398; McCormick v. Largey, 1 Mont. 158, holding that a notary of another state had no power to take a deposition to be used in Montana; In re Butler, 76 Neb. 267, 107 N. W. 572; Phelps v. City of Panama, 1 Wash. Ter. 615; Biencourt v. Parker, 27 Tex. 558; Carter v. Ewing, 1 Tenn. Ch. 212, holding that only domestic notaries may take depositions for use in Tennessee.

2 Midland Steel Co. v. Citizens' National Bank, 34 Ind. App. 107, 72 N. E. 290; Patterson v. Patterson, 1 D. Chip. (Vt.) 200; Dumont v. McCracken, 6 Blackf. (Ind.) 355.

peace or any other person authorized by the laws of this state to take depositions in causes pending in any court of this state, or in any court of any other state, or in any court of the United States, or in any court of a foreign country": Laws 1901, p. 23, § 1; 1 Rem. & Bal. Code, § 1236.

[b] The superior court shall have power to compel the attendance of witnesses, within this state, before

(1) notaries public,
(2) justices of the peace
(3) or any other person authorized by the laws of this state to take depositions

in causes pending in any court of this state, or in any court of any other state, or in any court of the United States, or in any court of a foreign country.

The superior court shall have the power to compel the attendance of witnesses, within this state, before

(1) notaries public,
(2) justices of the peace
(3) or any other person authorized by the laws of this state to take depositions in causes pending in any court of this state, or in any court of any other state, or in any court of the United States, or in any court of a foreign country.

The superior court shall have the power to compel the attendance of witnesses, within this state, before

(1) notaries public,
(2) justices of the peace
(3) or any other person

authorized by the laws of this state to take depositions in causes pending in any court of this state, or in any court of any other state, or in any court of the United States, or in any court of a foreign country.

[c] "The officer before whom the deposition is to be taken in case of the refusal of any witness to attend or testify shall report to the superior court in and for the county in which the witness resides, or is found, by petition, that due notice has been given of the time and place of taking the depositions and that the witness has been summoned in the same manner that witnesses are now summoned to appear and testify in the superior court of this state; and the fees and mileage of the witness has been paid, or tendered to the witness, for his attendance and testimony, and that the witness has failed and refused to attend or testify before such officer, in the cause mentioned in the notice and the subpoena; and ask an order of the court compelling the witness to attend and testify before such officer": Laws 1901, p. 23, § 2; 1 Rem. & Bal. Code, § 1237.

"The court, upon the petition of the officers and the payment of the regular docket fee of four dollars ($4), shall enter an order

directing the witness to appear before the officer making the report, at a time and place to be fixed by the court in such order, and then and there give his testimony in such case. A copy of which order shall be served upon the witness in the same manner that summons and complaints are now served; and on failure or refusal of the witness to obey such order, such witness shall be dealt with as for contempt": Laws 1901, p. 24, § 3; 1 Rem. & Bal. Code, § 1238.

[d] "In all cases, except when service is made by publication, as hereinafter provided, the summons shall be served by the sheriff of the county wherein the service is made or by his deputy, or by any person over twenty-one years of age, who is competent to be a witness in the action, other than the plaintiff": Laws 1893, p. 408, § 6; Bal. Code, § 4874; 1 Rem. & Bal. Code, § 225.

§ 110. Witnesses: Refusal to Attend: Liability.—Not only does the witness who has been legally subpoenaed lay himself open to contempt proceedings in his refusal to testify, but also, if he is without reasonable excuse, is liable to the aggrieved party for all damages occasioned by such failure. The aggrieved party may recover said damages in a civil suit.[a]

[a] "If any person duly served with a subpoena, and obliged to attend as a witness, shall fail to do so, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action. Such failure to attend as required by the subpoena shall also be considered a contempt, and, upon due proof, the witness may be punished by a fine not exceeding fifty dollars, and stand committed until said fine and costs are paid, or until discharged by due course of law": Laws 1854, p. 188, §§ 300, 301; Code 1881, §§ 398, 399; 2 H. C., § 1655; Bal. Code, § 6000; 1 Rem. & Bal. Code, § 1220.

§ 111. Depositions: How Taken.—When on the day set in the subpoena the witness appears before the notary at the time[1] and place[2] noticed ready to testify, it is then the duty

[1] The deposition should be taken at the time specified in the notice or commission and at no other: Johnson v. Perry, 54 Vt. 459; Jordan v. Hazard, 10 Ala. 221; Veach v. Bailiff, 5 Har. (Del.) 379; Young v. Mackall, 4 Md. 362.

[2] The deposition should be taken at the place specified in the notice or commission and at no other: Beach v. Workman, 20 N. H. 379; Wannock v. Macon, 53 Ga. 162; Wixom v. Stephens, 17 Mich. 518, 97 Am. Dec. 205.

of the notary to swear (or affirm) the witness, that he "will testify to the truth, the whole truth, and nothing but the truth" in the matter or proceeding set forth in the "commission" or "notice."[3][a] If the deposition is to be taken by interrogatories the notary will then put the questions as set forth in the interrogatories, one at a time, to the witness. As the witness answers his testimony must be written by the notary himself or by some disinterested person in the presence and under the direction of the notary. If the witness desires, he may write down the answers to the interrogatories himself. As to the form of the deposition, it may be either answers to each question or may be in the narrative form, or partly in either form, as either party present at the examination shall require.

When the deposition is taken by question and answer, the notary must first write down the question and then the answer, as nearly as he can, in the language of the witness; but when the deposition is read to the witness previous to signing it, he shall be permitted to amend his answer to any question, or any part of his deposition. Any amendment made, however, unless both parties shall otherwise agree, shall not be made by way of interlining or erasing, but shall be added at the end of the deposition under the title "Amendment by the Witness," and such amendment shall intelligibly refer to the part so amended.

It shall be the duty of the notary to ask the witness every question proposed by either party.[4] If the parties attend at

[3] The oath must be publicly administered: Halleran v. Field, 23 Wend. (N. Y.) 38; Ford v. Cheever, 105 Mich. 679, 63 N. W. 975.

The statutory oath must be strictly followed: Ballard v. Perry, 28 Tex. 347; 9 Am. & Eng. Ency. of Law, 2d ed., p. 331; New Jersey Express Co. v. Nichols, 33 N. J. L. 434, 97 Am. Dec. 722; Call v. Perkins, 68 Me. 158; 13 Cyc. Law & Proc., p. 941; in Washington the oath must be administered before the deposition is taken, as the statute must be strictly followed: Bacon v. Bacon, 33 Wis. 147; Putnam v. Larimore, Wright (Ohio), 746; Armstrong v. Burrows, 6 Watts (Pa.), 266.

[4] Rooker v. Rooker, 83 Ind. 226; Horseman v. Todhunter, 12 Iowa, 230; Hellman v. Wright, 1 Wyo. 190; Attwell v. Lynch, 39 Mo. 519. If the witness does not understand English, an interpreter should be employed. The in-

the examination and have any objection to the form of a question, such objection must be stated, whereupon the notary must note all objections to the form of any interrogatory. When any interrogatory is objected to on account of form, unless the form is amended and the objection waived, he shall write after the question, and before the answer, "objected to."

If any witness declines to answer a question on the ground that it will tend to criminate himself, that fact shall be noted after the question, if written down.[b] [c]

[a] Phelps v. S. S. City of Panama, 1 Wash. Ter. 615, July, 1877, Chief Justice Lewis: A deposition taken under the statutes of the United States must be taken in strict conformity to the statute. "The act requires the witness shall be cautioned as well as sworn. It does not appear that this was here done." [The state law does not demand this.]

[b] "The deposition shall be written by the officer taking the same, or by the witness, or by some disinterested person, in the presence and under the direction of such officer. When completed, it shall be carefully read to or by the witness, corrected if desired, and subscribed by him. If taken upon notice, it shall be certified by the officer substantially as follows:—

FORM LVI.

State of Washington,
County, of ———, —ss.

I, A B, justice of the peace in and for said county (or judge, clerk, etc., as the case may be), do hereby certify that the above deposition was taken before me, and reduced to writing by myself (or witness, as the case may be), at ————, in said county, on the ——— day of ————, 18——, at —— o'clock, in pursuance of notice hereto annexed; that the above-named witness, before examination, was sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to (or by) said witness, and then subscribed by him.

Dated at ————, the ——— day of ————, 18——.

A B.,
Justice of the Peace.

terpreter should be sworn before the deposition is taken and the deposition should show these facts. The answers must be taken down as translated by the sworn interpreter: Euberweg v. La Compagnie Generale Transatlantique, 35 Fed. 530; People v. Dowdigan, 67 Mich. 95, 38 N. W. 920.

If the deposition be taken upon a commission, the commissioner shall certify it in substantially the same manner, and annex to it the commission and interrogatories": Laws 1891, p. 36, § 12; 2 H. C., § 1674; Bal. Code, § 6025; 1 Rem. & Bal. Code, § 1242.

[c] "Such depositions may be used by either party upon the trial, or other proceeding, against any party giving or receiving the notice, subject to all legal exceptions to the competency or credibility of the witness, or the manner of taking the deposition. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was taken at the time of the examination. It shall be the duty of the person taking the deposition to propound to the witness every question proposed by either party, and to note all objections to the form of any interrogatory, and when any interrogatory is objected to on account of form, unless the form is amended and the objection waived, he shall write after the question, and before the answer, the words 'objected to'; and when any witness declines to answer a question on the ground that it will tend to criminate himself, that fact shall also be noted after the question, if written down. The deposition may be taken in the form of a narrative, or by question and answer, or partly in either form, as either party present at the examination shall require. When taken by question and answer, the officer shall first write down the question and then the answer, as nearly as may be, in the language of the witness; but when the deposition is read to the witness previous to signing it, he shall be permitted to amend his answer to any question, or any part of his deposition; such amendment, however, unless both parties shall otherwise agree, shall not be made by way of interlining or erasing, but shall be added at the end of the deposition under the title 'amendment by the witness,' and such amendment shall intelligibly refer to the part so amended": Laws 1854, p. 191, § 317; Code 1881, § 418; 2 H. C., § 1676; Bal. Code, § 6027; 1 Rem. & Bal. Code, § 1244.

§ 112. Depositions: How Taken: How Returned.—After all the questions set forth in the interrogatories have been asked and the answers written down; or, if the parties are present and the questions are oral, after both parties have asked all the questions they desire and the answers have been written down, then it is the duty of the notary to have the witness read his testimony or have it read to him. If he desires to make any corrections, they should then be made, after which the witness should subscribe his name. It is a very good practice to have the witness sign his name to each page of his testimony.

If the deposition was taken "upon notice" or "by commission" the notary should attach to it a certificate that he has carried out the commission or taken the testimony according to law.

Here is a good form for the whole deposition to follow:

FORM LVI.

State of Washington,

Superior Court of Spokane County.

Richard Roe, Plaintiff,
vs.
John Stiles, Defendant.
} Depositions.

State of Washington,
County of *King*,—ss.

Be it remembered that pursuant to the *notice of taking deposition* hereunto attached, and on the *10th* day of *December, 1910*, at *304 Central Building, corner of 9th Avenue and Marion Street, in the city of Seattle, County of King*, state of Washington, before me, *John Doe*, a notary public duly appointed, commissioned and sworn, personally appeared *William Stiles*, a witness produced on behalf of the *plaintiff* in the above-entitled action, now pending in said court, who, being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows: (Here insert the testimony of the witnesses.)

The plaintiff was represented by Mr. ————————.

The defendant was represented by Mr. ————————.

State of Washington,
County of *King*,—ss.

I, *John Doe*, notary public for the state of Washington, do hereby certify that the above deposition was taken before me, and reduced to writing by *myself* at *Seattle*, in said county, on the *10th* day of *December, 1910*, at *9* o'clock, in pursuance of the *notice* hereto annexed; and that the above-named witness, before examination, was *sworn* to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness, and then subscribed by him.

Dated at *Seattle*, the *10th* day of *December, 1910*.

[Seal] *JOHN DOE*,

Notary Public in and for the State of Washington residing in *Seattle*.

[The words in italics must be changed to suit the occasion.]

Instead of "Notice of Taking Depositions," if by stipulation, insert "Stipulation"; if by commission, insert "Commission."

If the deposition was taken down stenographically and typewritten by the stenographer of the notary, in place of the words, "and reduced to writing by myself," insert the following: "and having been first taken down in shorthand by a stenographer was typewritten by the said stenographer, a disinterested person, in my presence and under my direction"; or if the witness wrote out his testimony, insert the words, "by the witness."

If the deposition was taken by virtue of a commission with interrogatories attached, the commission and interrogatories should be returned with the deposition and certificate.[1][a]

After the above directions have been carefully carried out the deposition together with the "notice" or "commission" and interrogatories should all be inclosed in a sealed envelope by the notary and directed to the clerk of the court, arbitrators, referee, justice of the peace or secretary of the commission before whom the action is pending, or to such persons as the parties, in writing, may agree upon.

Across the envelope or package after all the papers have been sealed up together should be written the following:

1 A statement of facts in writing, without date or venue, purporting to have been signed by a witness, but giving neither age nor residence of such witness, which statement is not shown to have been made under oath, nor the oath waived, nor to have been taken on notice or in the presence of parties, nor to have been taken before any official authorized to administer oaths, and which is not accompanied by a certificate of a competent official, from which compliance with any of the requisites for the taking of depositions in judicial proceedings can be inferred, is not a deposition, although so labeled and filed in a suit pending in court: Lutcher v. United States, 72 Fed. 968, 19 C. C. A. 259.

FORM LVII.

State of Washington.

Superior Court of Spokane County.

Richard Roe, Plaintiff,
vs.
John Stiles, Defendant.

Deposition of William Stiles, a witness on behalf of plaintiff, Richard Roe, taken before John Doe, a notary public, the 10th day of December, 1919.

Fees: $ ————.
$ ————.
$ ————.

Paid by Richard Roe, or Unpaid.

It should then either be delivered personally to the clerk of the court or other person, or transmitted through the mail by registered letter, or be sent by some private person.[b] If the commission contains directions as to how the deposition is to be returned, the notary must carry out those directions to the minutest detail.

[a] Hobart v. Jones, 5 Wash. 385, 31 Pac. 879, December, 1892, Dunbar, J.: "We think the objections to the certificate and signature, or want of signature, of the commissioner, are equally untenable. The caption is: 'Deposition of F. D. Dibble, taken before F. N. Hendrix, at . . . . on the 27th day of April, 1892, pursuant to the annexed' commission to take testimony. And while the certificate is signed: 'F. N. Hendrix, commissioner and notary public,' it might just as forcibly be held that the words 'notary public' were descriptive of the person, as the word 'commissioner,' but taking the signature in connection with the first part of the certificate, which states that F. N. Hendrix, commissioner, does hereby certify, etc., there is no question but that the natural and logical conclusion is that F. N. Hendrix was the commissioner. The certificate, therefore, we think, is a substantial compliance with the requirements of the statute."

[b] "The deposition, whether taken upon notice or upon a commission, shall be inclosed in a sealed envelope, by the officer taking the same, and directed to the clerk of the court, arbitrators, referee, or justice of the peace before whom the action is pending, or to such persons as the parties, in writing, may agree upon, and either delivered to the clerk of the court or other person, or transmitted through

the mail or by some private person": Laws 1891, p. 36, § 13; 2 H. C., 1675; Bal. Code, § 6026; 1 Rem. & Bal. Code, § 1243.

§ 113. Depositions: Attaching Exhibits.—If exhibits have been referred to in any of the testimony given, the exhibits, if admitted in evidence or refused admission, should be properly identified with the name of the case, the officer's name and the time and place of taking the deposition, and should be returned with the deposition. If possible, they should be attached to the other papers; if not, they should be inclosed under seal.[1]

The following is an example of how letters, etc., referred to should be identified:

FORM LVIII.

State of Washington.

Superior Court Spokane Co.

Richard Roe, Plaintiff,
vs.
John Stiles, Defendant.

Exhibit "A."

JOHN DOE,
December 10, 1910.

1 9 Am. & Eng. Ency. of Law, 2d ed., p. 337. The fact that the documents are very voluminous is no excuse for not exhibiting them: Coleman v. Colgate, 69 Tex. 88, 6 S. W. 553.

CHAPTER X.

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§ 115. Notary's Powers and Duties in the Protesting of Negotiable Instruments.
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MISCELLANEOUS ACTS.

§ 173. Legal Holidays.
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§ 176. Checks, etc., Made or Drawn by Telegraph—Effect of.
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§ 178. Seal and Revenue Stamp, How Described.
§ 179. Term "Telegraphic Copy" or "Duplicate" Construed.

§ 114. History of Bills and Notes.—The history of bills of exchange and promissory notes, which are now generally classed under the heading "Negotiable Instruments," begins somewhere in the twelfth or thirteenth century.[1] We know that in 1394 the city of Barcelona, by ordinance, regulated the acceptance of bills of exchange; and that they are mentioned in a passage of the Jurist Baldus of the date of 1328.[2] The first bank of exchange and deposit in Europe was established at Barcelona in 1401, and it was made to accommodate foreigners as well as citizens.[3] In England reference was made in the statute of 5 Richard II, chapter 2 (1382), to the drawing of "foreign bills."[4] It was not until 1698,[5] however, that "inland bills" were put upon the same footing as "foreign bills," except that no protest is requisite. A few years later, 1705,[6] a statute was passed making promissory notes payable to a person, and to his order, or bearer, negotiable like "inland bills," according to the custom of merchants. This latter statute was passed because of the decisions of Lord Holt, that promissory notes were not within the operation of the law-merchant, and so were not negotiable.[7] There is a dispute as to that question, some authorities holding that they were negotiable before the statute.[8] The statute of 1705 was superseded in 1882 by the English "Bills of Exchange Act,"[9] which was the model for our modern "Negotiable Instruments Law." Colorado, Connecticut, Florida and New York were the first to pass

1 Cockburn, C. J., in Goodwin v. Roberts, L. R. 10 Exch. 337.

2 Kent's Com., p. *73, and note.

3 See note 2.

4 See note 2.

5 9 & 10 William III, c. 17.

6 3 & 4 Anne, c. 9.

7 Clerke v. Martin, 1 Salk. 129; Buller v. Crips, 6 Mod. 29; Burton v. Souter, 1 Ld. Raym. 774; Carlos v. Fancourt, 5 Term Rep. 482; Norton v. Rose, 2 Wash. (Va.) 233; Davis v. Miller, 14 Gratt. (Va.) 1.

8 Note to 1 Cranch (U. S.), 367; Goodwin v. Robarts, L. R. 10 Exch. 337; Dunn v. Adams, 1 Ala. 527, 35 Am. Dec. 42; Irvin v. Maury, 1 Mo. 194. The question is of no practical importance at present; but it would become important if we had no statute similar to the statute passed in England in 1705 known as 3 & 4 Anne, chapter 9.

9 45 & 46 Victoria, c. 61.

the law; they adopted it in 1897. Washington followed in 1899, together with a number of other states. More than half of the states have now adopted the law practically in the same form.

§ 115. Notary's Powers and Duties in the Protesting of Negotiable Instruments.—Having seen the origin of the bill of exchange and promissory note, we now come to the duties incumbent upon a notary when the bill of exchange is not accepted or the promissory note or bill of exchange is not paid at the stated time. A notary has no more responsible powers than those in connection with negotiable instruments; neglect or ignorance on his part leads to grave complications. Of course, damage must follow; and it will fall either on the notary himself or on his bondsmen. Therefore, the more a notary knows concerning the law of protests the better fitted he will be to do his work as the law of negotiable instruments demands.

A notary becomes a public officer with certain duties to perform when a holder of a bill of exchange or promissory note delivers to him the said instrument for him to protest it. He immediately becomes the agent of the owner of the paper, and of all others who have any interest in it.

§ 116. Definitions.—It will be well to consider a few technical words before beginning the discussion proper of the duties and powers of a notary in respect to the presentment of bills and notes and the protesting of them upon refusal of acceptance or payment.

A bill of exchange is a written order from one person to another, directing the person to whom it is addressed to pay to a third person a certain sum of money therein named.[1]

The following is a "bill of exchange":

1 Bouv. Law Dict. (Rawle's Rev.), tit. "Bills of Exchange"; Byles on Bills, 1.

FORM LIX.

$1000 $\frac{00}{100}$ New York City, N. Y., Nov. 10, 1910.

At thirty days sight Pay to the

Order of William Stiles

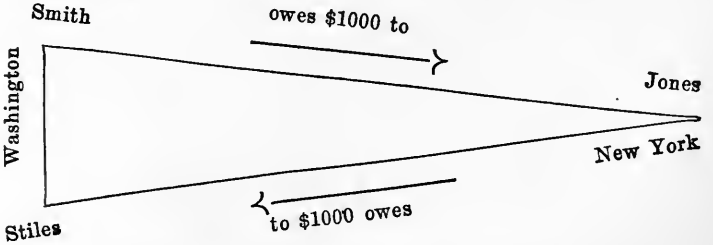
One Thousand $\frac{00}{100}$ Dollars

Value received and charge the same to the account of

To Frank Smith, JOHN JONES.

No. —— Seattle, Wash.

"Bills of exchange," we have seen,[2] came into use very early; they came through what is known as the "law-merchant." The "law-merchant" originated in the unwritten customs of merchants, and was at first confined to transactions of merchants residing at different places.[3] If we assume that John Jones lives in New York and William Stiles and Frank Smith in Washington, and that Jones owes Stiles one thousand dollars and Smith owes Jones one thousand dollars, we will have the simplest case of the use of a "bill of exchange."



Now if Jones orders Smith to pay Stiles, the two debts will be wiped out and it will not be necessary for the one thou-

2 Previous note; also § 114; 7 Cyc. Law & Proc., p. 520.

3 "Bills of exchange at first extended only to merchant strangers trafficking with English merchants; and afterward to inland bills between merchants trafficking the one with the other in

sand dollars to be sent across the country twice. The merchants in Italy, soon after the Dark Ages,[4] saw the advantage of such a transaction and ever since that time it has been in use over all the world.

The drawer is the person who makes a bill of exchange (Jones).[5]

The payee is the person in whose favor a bill of exchange is made payable (Stiles).[6]

The drawee is the person to whom a bill of exchange is addressed, and who is requested to pay the amount of money therein mentioned (Smith).[7]

The acceptor is one who accepts a bill of exchange.[8] (In this case the bill would be presented to Smith for acceptance.)

Acceptance is the engagement to pay the bill in money when due.[9] (If, when presented to Smith, he would express his willingness to pay the bill of exchange when due, he should write:

FORM LX.

"Accepted December 10, 1910. Frank Smith."

across the face of the bill.)

Indorsement is the writing one's name on the back of a bill of exchange or promissory note.[10] It is generally made primarily for the purpose of transferring the rights of the holder of the instrument to some other.[11] (Following out the Jones-Smith-Stiles example, if Smith has accepted and Stiles desires to raise some money on the bill of exchange before the time for payment arrives, he could indorse the

England; and afterward to all traders, and then to all persons, whether traders or not; and there was then no need to allege any custom of merchants": Bromwich v. Loyd, 2 Lutw. 1582.

4 4 Am. & Eng. Ency. of Law, 2d ed., p. 79.

5 Bouv. Law Dict. (Rawle's Rev.), tit. "Drawer."

6 Bouv. Law Dict. (Rawle's Rev.), tit. "Payee."

7 Bouv. Law Dict. (Rawle's Rev.), tit. "Drawee."

8 3 Kent's Com., p. *75.

9 Byles on Bills, 288.

10 20 Vt. 499.

11 Bouv. Law Dict. (Rawle's Rev.), tit. "Indorsement."

bill by writing his name across the back of the bill. Then by handing it to Henry Johnson he would be transferring all rights which he [Stiles] has in the bill.)

Indorser is the person who makes an indorsement by writing on the back of the bill.[12]

A foreign bill of exchange is one of which the drawer and drawee are residents of countries foreign to each other. In this respect the states of the United States are held foreign as to each other.[13] (The Jones-Smith-Stiles bill is a foreign bill of exchange.)

An inland bill of exchange is one of which the drawer and drawee are residents of the same state or country.[14]

A draft is an order for the payment of money, drawn by one person on another.[15] A sight draft is one payable on presentation, or at sight. A time draft is one payable a certain number of days after sight and must be accepted by the party on whom they are drawn. (The Jones-Smith-Stiles bill of exchange is an example of a "time draft.")

A check is bill of exchange in which a bank is always the drawee, and it is always payable on demand. It is a written order to a bank by a person who has money on deposit, asking the bank to pay to the person named in the check or his order or to bearer the sum of money mentioned.

The following is check:

12 Bouv. Law Dict. (Rawle's Rev.), tit. "Indorser."

13 Bouv. Law Dict. (Rawle's Rev.), tit. "Bill of Exchange."

14 See note 13.

15 Bouv. Law Dict. (Rawle's Rev.), tit. "Draft."

FORM LXI.

No. 431.

Seattle, Wash., Dec. 10, 1910.

Pay to the order of William Stiles————$1000

One Thousand————Dollars.

To The Georgetown National Bank,

Seattle, Washington.

JOHN JONES.

The drawer of a check is the maker (Jones).

The drawee of a check is the bank on which it is drawn (Georgetown National Bank).

The payee of a check is the one to be paid the money by the bank (Stiles).

The indorser of a check is a person who signs his name on the back of the check the same as the indorser of a bill of exchange.

A promissory note is a written promise to pay a certain sum of money at a future time unconditionally.[16]

The following is a promissory note:

16 Bouv. Law Dict. (Rawle's Rev.), tit. "Promissory Note."

FORM LXII.

$1000. Seattle, Wash., Dec. 10, 1910.

Three months after date I promise to pay to the order of William Stiles_____

One Thousand $\frac{00}{100}$_____Dollars

at Seattle National Bank.

Value received.

No. —— Due ————.

JOHN JONES.

The maker of a promissory note is the one who makes it (Jones).

The payee of a promissory note is the one to whom the money is payable (Stiles).

Indorsement of a promissory note is the same as indorsement of a bill of exchange.

Negotiable is a term applied to that right which is capable of being transferred, by assignment, indorsement, or by delivery.[17] Bills of exchange, checks and promissory notes are negotiable if they read "to A or his order," or "to A or bearer." In transferring such instruments the owner transfers not only the paper instrument, but also transfers to the new owner the right to sue on it in his own name. In the former, "to A or his order," the instrument must be indorsed; in the latter, "to A or bearer," no indorsement is necessary; in both cases there must be delivery:[18] See Neg. Inst. Law, 2 Rem. & Bal. Code, § 3392.

"Originally, all instruments, including checks, notes and bills of exchange were non-negotiable, in the sense that the maker could, when asked for payment, deduct from the amount due on the instrument any just claim that he had against the original owner. Such just claim would then be

17 148 Pa. 583.

18 Bouv. Law Dict. (Rawle's Rev.), tit. "Negotiable."

termed a counterclaim, or setoff. In the revival of commerce in Italy, in the eleventh century, merchants and traders, feeling the necessity of a moneyed instrument that could be used in barter and trade, to a limited extent, in the same way that bank bills are now used—and appreciating that no such instrument could be circulated or sold readily, no matter how financially strong the maker was, if he, the maker, could always insist on adjusting accounts with the original owner—adopted a custom, known as the 'custom of merchants,' which soon after became, or had the force of, a law known as the 'law-merchant,' under which notes, checks, drafts, and bills of exchange, drawn in certain prescribed forms, and in the hands of a bona fide purchaser, could be enforced to their full extent against the maker, regardless of any defenses or counterclaims that the maker might have against the original holder; such instruments are 'negotiable instruments.' Negotiable instruments are thus given many of the peculiarities of money—i. e., gold and silver coin and bank bills. Neither coined money nor bank bills are termed negotiable instruments or commercial paper, but they are in the highest sense negotiable." [19]

A non-negotiable instrument is one payable only to a payee, which does not contain the words "to order" or "to bearer."

A protest is a formal paper signed and sealed by a notary wherein he certifies that on the day of its date he presented the original bill attached thereunto, or a copy, to the acceptor, or the original note to the maker thereof, and demanded payment, or acceptance, which was refused, for reasons given in the protest, and that thereupon he protests against the drawer and indorsers thereof for exchange, reexchange, damages, costs, and interest.[20]

PRESENTMENT FOR ACCEPTANCE.

§ 117. When Presentment is Necessary.—Presentment must be made when the bill is payable after sight, or in any

[19] McMaster's Irregular and Regular Commercial Paper.

[20] Bouv. Law Dict. (Rawle's Rev.), tit. "Protest."

other case where presentment for acceptance is necessary in order to fix the maturity of the instrument. It is also necessary when the bill expressly stipulates that it shall be presented for acceptance. And, when the bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented: Neg. Inst. Law, Rem. & Bal. Code, § 3533.

A bill payable "at sight" must be presented to fix the date when due.[4] It is not necessary where the bill is payable on demand or at a certain designated time.[5]

§ 118. Who may Present.—The rightful holder or some person authorized by him to receive payment on his behalf may make the presentment: Neg. Inst. Law, Rem. & Bal. Code, § 3535. If the holder is a mere agent for the real owner, that fact does not dispense with a proper presentment.[1] Presentment is very often in the United States, as in foreign countries, made by a notary. He is then an agent for the holder, and if he neglects to make due presentment for acceptance, he is liable to his principal in damages.[2] An agent's authority to make presentment for acceptance ends like any other agency with the death of his principal and a presentment after that time will not be good.[3]

§ 119. Presentment to Whom.—The presentment of the bill for acceptance must be made to the drawee or to some person authorized to accept or refuse acceptance on his behalf. If the bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for

4 Hart v. Smith, 15 Ala. 807, 50 Am. Dec. 161; Nimocks v. Woody, 97 N. C. 1, 2 Am. St. Rep. 268, 2 S. E. 249; Cox v. New York National Bank, 100 U. S. 704, 25 L. ed. 739.

5 7 Cyc. Law & Proc., p. 753; Davies v. Byrne, 10 Ga. 329; Townsley v. Sumrall, 2 Pet. (U. S.) 170, 7 L. ed. 386; Plato v. Reynolds, 27 N. Y. 586; Bennington Bank v. Raymond, 12 Vt. 401.

1 Walker v. State Bank, 9 N. Y. 582.

2 Meadville First Nat. Bank v. New York Fourth Nat. Bank, 77 N. Y. 320, 33 Am. Rep. 618; 7 Cyc. Law & Proc., p. 753.

3 Gale v. Tappan, 12 N. H. 145, 37 Am. Dec. 194.

all, in which case presentment may be made to him only. If the drawee is dead, presentment may be made to his personal representative. If the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee: Neg. Inst. Law, Rem. & Bal. Code, § 3535. Presentment to one of a partnership, if the bill is addressed to the firm, is sufficient.[8]

§ 120. Time Presentment Should be Made.—The general rule is that the holder of a bill payable at or after sight, or one which otherwise must be presented for acceptance, must either present it for acceptance or negotiate it within a "reasonable time." If he fail to do so, the drawer and all indorsers are discharged. Presentment must be made at a "reasonable hour," on a business day and before the bill is overdue: Neg. Inst. Law, Rem. & Bal. Code, § 3535. To determine what a "reasonable time" is all the circumstances of the case must be considered. Some facts which might affect the question are the following: Delay in the mail or other means of communication;[1] the outbreak of war;[2] the loss of the bill;[3] the character of the bill;[4] or the circulation of the bill,[5] which is perhaps the one most important. Laches might be charged if the bill remained in the hands of the payee; while, if it were in circulation, there would be no grounds for such charge.[6] A "reasonable hour" would not be after the family has retired for the night.[7] The presentment must be on a business day; if the day of maturity falls upon Sunday or a holiday, the instrument is payable on the next succeeding business day. When Saturday is not otherwise a holiday, presentment for acceptance may be

8 Gates v. Beecher, 60 N. Y. 518, 19 Am. Rep. 207; Mt. Pleasant Bank v. McLeran, 26 Iowa, 306.

1 Walsh v. Blatchley, 6 Wis. 422, 70 Am. Dec. 469.

2 United States v. Barker, 1 Paine (U. S.), 156, Fed. Cas. No. 14,517; Durden v. Smith, 44 Miss. 548.

3 Aborn v. Bosworth, 1 R. I. 401.

4 Shute v. Robbins, 3 Car. & P. 80.

5 7 Cyc. Law & Proc., p. 755.

6 Wallace v. Agry, 5 Mason (U. S.), 118, Fed. Cas. No. 17,097; see note 5.

7 Dana v. Sawyer, 22 Me. 244, 39 Am. Dec. 574.

made before 12 o'clock noon on that day: Neg. Inst. Law, Rem. & Bal. Code, § 3536. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawers and indorsers: Neg. Inst. Law, Rem. & Bal. Code, § 3537.

"In determining what is a 'reasonable time' or an 'unreasonable time,' regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the facts of the particular case": Neg. Inst. Law, Rem. & Bal. Code, § 3583.

"A check is a bill of exchange drawn on a bank, payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand, apply to a check": Neg. Inst. Law, Rem. & Bal. Code, § 3575.

Where an instrument is payable a certain number of months after date, calendar months are meant.[a] A note dated March 10, 1910, payable in three months, is due June 10, 1910. A note dated January 31st, payable one month after date, is due the last day of February. A note dated February 28th, payable in eleven months, is due January 28th. Where days are expressed, Sundays and holidays are included, and in the computation the day of the date is excluded and the whole of the last day is included. A note dated May 28th, payable in sixty days, is due July 27th. An instrument dated May 20th, payable in ninety days, is due August 18th. Thus:

FORM LXIII.

Days in May after May 20th	11
Days in June	30
Days in July	31
Days in August to make whole number 90	18
	90

Where two dates are given, one the day of the week and one the day of the month, and they are inconsistent, the day of the month will govern.

[a] "The word 'month' or 'months,' whenever the same occurs in the statutes of this state now in force, or in the statutes hereinafter enacted, or in any contract made in this state, shall be taken and construed to mean 'calendar month'": Laws 1891, p. 40, § 1; 2 H. C., § 1712; Bal. Code, § 4789; Rem. & Bal. Code, § 149.

§ 121. **Manner of Presentment.**—As a safe rule to follow it might be said that the bill should be shown to the drawee when it is presented for acceptance.[1] This is not necessary if on making the demand the person has the bill ready to produce if it is called for;[2] or if the drawee can give an intelligent answer without seeing the bill.[3] The presentment must be made once and absolutely; it cannot be made and then withdrawn, offering to call again the next day.[4] Only one part of a set of two or more is presented.[5]

§ 122. **Acceptance: Definition.**—Acceptance is an agreement by the drawee of a bill to pay it when it comes due. He must agree to pay it at the time it comes due and in money and also at the place named in the bill. "The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money": Neg. Inst. Law, Rem. & Bal. Code, § 3522. "The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and, if such request is refused, may treat the bill as dishonored": Neg. Inst. Law, Rem. & Bal. Code, § 3523.

"Where the acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor

1 Fall River Union Bank v. Willard, 5 Met. (Mass.) 216.

2 Burlington First Nat. Bank v. Hatch, 78 Mo. 13.

3 Fisher v. Beckwith, 19 Vt. 31, 46 Am. Dec. 174.

4 Case v. Burt, 15 Mich. 82.

5 Downes v. Church, 13 Pet. (U. S.) 205, 10 L. ed. 128; Walsh v. Blatchley, 6 Wis. 422, 70 Am. Dec. 469.

of a person to whom it is shown, and who, on the faith thereof, receives the bill for value": Neg. Inst. Law, Rem. & Bal. Code, § 3524. "The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation": Neg. Inst. Law, Rem. & Bal. Code, § 3526. "Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same": Neg. Inst. Law, Rem. & Bal. Code, § 3527.

§ 123. Acceptance: Different Kinds.—"An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn": Neg. Inst. Law, Rem. & Bal. Code, § 3529. "An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere": Neg. Inst. Law, Rem. & Bal. Code, § 3530. "An acceptance is qualified, which is: (1) conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated; (2) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn; (3) local, that is to say, an acceptance to pay only at a particular place; (4) qualified as to time; (5) the acceptance of some one or more of the drawees, but not of all": Neg. Inst. Law, Rem. & Bal. Code, § 3531.

§ 124. Acceptance: Qualified: Need not Accept.—"The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must,

within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto": Neg. Inst. Law, Rem. & Bal. Code, § 3532.

§ 125. How Acceptance is Shown.—If, when the bill is presented to the drawee, he desires to accept, he should write across the face of the bill:

FORM LXIV.

"Accepted. John Doe. Nov. 29, 1910."

Any words of the drawee which show an intention to pay will operate as an acceptance.[1] Some authorities hold that any word or words written on the bill which do not clearly negative the intention to pay will be considered an acceptance.[2]

Where a bill is drawn in parts the acceptance should be written on one part only; it would make no difference which part: Neg. Inst. Law, Rem. & Bal. Code, § 3571. "Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance": Neg. Inst. Law, Rem. & Bal. Code, § 3577.

§ 126. Dishonored by Nonacceptance.—"Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance, in either of the following cases—(1) where the drawee is dead, or has absconded, or is a

1 Ward v. Allen, 2 Met. (Mass.) 53, 35 Am. Dec. 387; Barnet v. Smith, 30 N. H. 256, 64 Am. Dec. 290; In re Armstrong, 41 Fed. 382; Block v. Wilkerson, 42 Ark. 253; Miller v. Butler, 1 Cranch (C. C.), 470, Fed. Cas. No. 9565; Espy v. Cincinnati Bank, 18 Wall. (U. S.) 604, 21 L. ed. 947.

2 Spear v. Pratt, 2 Hill (N. Y.), 582, 38 Am. Dec. 600; Norton v. Knapp, 64 Iowa, 112, 19 N. W. 867; Jeune v. Ward, 2 Stark. 326. Examples of sufficient acceptances: "Honored," Peterson v. Hubbard, 28 Mich. 197; "Seen," Spear v. Pratt, 2 Hill (N. Y.), 582, 38 Am. Dec. 600; "Presented," Barnet v. Smith, 30 N. H. 256, 64 Am. Dec. 290; "Excepted" written, "Accepted" intended, Meyer v. Beardsley, 30 N. J. L. 236. Examples of sufficient refusals: "I protest the above," Pridgen v. Cox, 13 Tex. 257; "Kiss my foot," Norton v. Knapp, 64 Iowa, 112, 19 N. W. 867.

fictitious person, or a person not having capacity to contract by bill; (2) where, after the exercise of reasonable diligence, presentment cannot be made; (3) where, although presentment has been irregular, acceptance has been refused on some other ground": Neg. Inst. Law, Rem. & Bal. Code, § 3538. "A bill is dishonored by nonacceptance—(1) when it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or (2) when presentment for acceptance is excused and the bill is not accepted": Neg. Inst. Law, Rem. & Bal. Code, § 3539. "Where a bill is duly presented for acceptance, and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorser": Neg. Inst. Law, Rem. & Bal. Code, § 3540.

§ 127. **Effect of Dishonor.**—"Where a bill is duly presented for acceptance, and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorser": Neg. Inst. Law, Rem. & Bal. Code, § 3540. "When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary": Neg. Inst. Law, Rem. & Bal. Code, § 3541.

§ 128. **Protest for Nonacceptance.**—"Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance. . . . . If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary": Neg. Inst. Law, Rem. & Bal. Code, § 3542. "Where any negotiable instrument has been dishonored, it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange": Neg. Inst. Law, Rem. & Bal. Code, § 3508.

PRESENTMENT FOR PAYMENT.

§ 129. When Presentment is Necessary.—As a general rule presentment for payment and demand are necessary in order to charge the indorsers of any negotiable instrument. "Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers": Neg. Inst. Law, Rem. & Bal. Code, § 3461. "Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument": Neg. Inst. Law, Rem. & Bal. Code, § 3470. "Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented": Neg. Inst. Law, Rem. & Bal. Code, § 3471. "Presentment for payment is dispensed with—(1) where after the exercise of reasonable diligence presentment as required by this act cannot be made; (2) where the drawee is a fictitious person; (3) by waiver of presentment, express or implied": Neg. Inst. Law, Rem. & Bal. Code, § 3473.

§ 130. Who may Present.—"Presentment for payment, to be sufficient, must be made by the holder, or some person authorized to receive payment on his behalf": Neg. Inst. Law, Rem. & Bal. Code, § 3463. In the case of a foreign bill a number of states have held that the demand for payment must be made by a notary in order that he may make the protest. Some courts have held that a clerk or deputy of a notary may present a bill or note, and later, if not paid, the notary may protest; but the weight of authority is against that mode of presentment.[1] A majority of the courts

1 Ocean Nat. Bank v. Williams, 51 N. Y. 84; Locke v. Huling, 102 Mass. 141; Gawtry v. Doane, 24 Tex. 311; Sacrider v. Brown,

hold that the notary must make the presentment personally in order to protest it later unless there is an established usage or statute to the contrary.[4]

§ 131. Presentment to Whom.—"Presentment for payment, to be sufficient, must be made to the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made": Neg. Inst. Law, Rem. & Bal. Code, § 3463. "Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found": Neg. Inst. Law, Rem. & Bal. Code, § 3467. "Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm": Neg. Inst. Law, Rem. & Bal. Code, § 3468. "Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all": Neg. Inst. Law, Rem. & Bal. Code, § 3469. Where paper is payable at a bank, presentment may be made to the president, where the bank is closed;[1] to its last manager, where it has ceased to exist;[2] to the cashier, if the presentment is made at the bank.[3]

§ 132. Time Presentment Should be Made.—"Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on

3 McLean (U. S.), 481, Fed. Cas. No. 12,205; Donegan v. Wood, 49 Ala. 242, 20 Am. Rep. 275.

4 Commercial Bank v. Varnum, 49 N. Y. 269; Nelson v. Forterall, 7 Leigh (Va.), 179; Atwell v. Grant, 11 Md. 101; Lee v. Buford, 4 Met. (Ky.) 7; Sheegog v. James, 26 Tex. 501.

1 Niblack v. Park Nat. Bank, 169 Ill. 517, 61 Am. St. Rep. 203, 48 N. E. 438, 39 L. R. A. 159.

2 Waring v. Betts, 90 Va. 46, 44 Am. St. Rep. 884, 17 S. E. 739.

3 Gale v. Kemper, 10 La. 205; Crenshaw v. McKiernan, Minor (Ala.), 295; Bechtell v. Miner's Bank, 2 Phila. (Pa.) 121; Magoun v. Walker, 49 Me. 419; Swan v. Hodges, 3 Head (Tenn.), 251.

demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof": Neg. Inst. Law, Rem. & Bal. Code, § 3462. "Presentment for payment, to be sufficient, must be made at a reasonable hour on a business day": Neg. Inst. Law, Rem. & Bal. Code, § 3463. "Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient": Neg. Inst. Law, Rem. & Bal. Code, § 3466. "Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence": Neg. Inst. Law, Rem. & Bal. Code, § 3472. "Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before 12 o'clock noon on Saturday, when that entire day is not a holiday": Neg. Inst. Law, Rem. & Bal. Code, § 3475½. "Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment": Neg. Inst. Law, Rem. & Bal. Code, § 3476.

It is very important that the statute as to demand be followed in every detail, as otherwise the drawers or indorsers of bills of exchange or indorsers of promissory notes may be relieved of liability.[1] What a "reasonable" time is

[1] Bell v. Chicago First Nat. Bank, 115 U. S. 373, 6 Sup. Ct. Rep. 105, 29 L. ed. 409; Wentworth v. Clap, 11 Mass. 87; Jones

must depend on all the circumstances of any particular case.[2] "In determining what is a 'reasonable time' or an 'unreasonable time,'' regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the facts of the particular case": Neg. Inst. Law, Rem. & Bal. Code, § 3583. "Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day": Neg. Inst. Law, Rem. & Bal. Code, § 3584.

§ 133. Place of Presentment.—"Presentment for payment, to be sufficient, must be made at a proper place as herein defined": Neg. Inst. Law, Rem. & Bal. Code, § 3463. "Presentment for payment is made at a proper place—(1) where a place of payment is specified in the instrument and it is there presented; (2) where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented; (3) where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment; (4) in any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence": Neg. Inst. Law, Rem. & Bal. Code, § 3464. "Presentment for payment is dispensed with where after the exercise of reasonable diligence presentment as required by this act cannot be made": Neg. Inst. Law, Rem. & Bal. Code, § 3473. If the maker's or acceptor's residence is designated as the place of presentment, the bill or note must be presented there although he may be temporarily absent; his absence is no excuse for not presenting it there.[1] It is presumed he has made some arrangements

v. Fales, 4 Mass. 245; Griffin v. Goff, 12 Johns. (N. Y.) 423; Walsh v. Dart, 12 Wis. 635.

2 Keyes v. Fernstermaker, 24 Cal. 329; Lockwood v. Crawford, 18 Conn. 361; Goodwin v. Davenport, 47 Me. 112, 74 Am. Dec. 478; Jordan v. Wheeler, 20 Tex. 698; Montelius v. Charles, 76 Ill. 303.

1 Whittier v. Graffam, 3 Me. 82; Pierce v. Cate, 12 Cush. (Mass.) 190, 59 Am. Dec. 176; Glaser v. Rounds, 16 R. I. 235, 14

to make payment at that place.[5] If the maker or acceptor has changed his residence or place of business before the instrument becomes due, but does not leave the state, diligence must be exercised, if no personal demand can be made, to find his new residence or place of business and presentment must be made there.[6]

§ 134. Manner of Presentment.—"The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it": Neg. Inst. Law, Rem. & Bal. Code, § 3465.[1] When the bill is not produced, but payment is refused on some other ground, the bill is deemed to have been duly presented.[2] If the instrument has been lost or destroyed, the demand for payment may be made without the instrument.[3] A copy should be shown under such circumstances.[4]

§ 135. Payment.—When the demand for payment is met with the full amount of money, the one making the demand must accept the same and deliver the bill or note. "The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it": Neg. Inst. Law, Rem. & Bal. Code, § 3465. Canceling a bill or note or stamping it paid

Atl. 863; Levy v. Drew, 14 Ark. 334.

5 Granite Bank v. Ayers, 16 Pick. (Mass.) 392, 28 Am. Dec. 253.

6 Bigelow v. Kellar, 6 La. Ann. 59, 54 Am. Dec. 555; Brooks v. Blaney, 62 Me. 456; Farnsworth v. Mullen, 164 Mass. 112, 41 N. E. 131; Anderson v. Drake, 14 Johns. (N. Y.) 114, 7 Am. Dec. 442.

1 A notary need not have the note in his possession when he demands payment, if the note is payable at the bank, and is in the cashier's hands as an officer of the bank by which the note has been held; but if the place of payment is some other place, and the bank is not the holder, then the notary should have the note at the time of demand: Union Bank v. Morgan, 2 La. Ann. 418

2 Benj. Chalmers' Bills and Notes, p. 165; Porter v. Thom, 167 N. Y. 584, 60 N. E. 1119; Legg v. Vinal, 165 Mass. 555, 43 N. E. 518.

3 Hinsdale v. Miles, 5 Conn. 331; Arnold v. Dresser, 8 Allen (Mass.), 435.

4 Hinsdale v. Miles, 5 Conn. 331.

does not necessarily show a payment.[1] If a bill or note designates a particular currency in which it is to be paid, payment should be made in that currency.[2] "When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon": Neg. Inst. Law, Rem. & Bal. Code, § 3572. "Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged": Neg. Inst. Law, Rem. & Bal. Code, § 3573.

§ 136. Protest for Nonpayment.—"Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary": Neg. Inst. Law, Rem. & Bal. Code, § 3542. "Where any negotiable instrument has been dishonored, it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange": Neg. Inst. Law, Rem. & Bal. Code, § 3508. "A bill which has been protested for nonacceptance may be subsequently protested for nonpayment": Neg. Inst. Law, Rem. & Bal. Code, § 3547.

PROTEST FOR NONACCEPTANCE OR NONPAYMENT.

§ 137. Protest: Definition.—Protest is a formal statement in writing, by a public notary, under seal, that a cer-

[1] Steinhart v. Bank, 94 Cal. 362, 28 Am. St. Rep. 132, 29 Pac. 717; Union Bank v. Slidell, 15 La. 314; Dewey v. Bowers, 26 N. C. 538; Bank v. White, 1 Denio (N. Y.), 608.

[2] Mangum v. Ball, 43 Miss. 288, 5 Am. Rep. 488; Edwards v. Morris, 1 Ohio, 524.

tain bill of exchange or promissory note (describing it) was on a certain day presented for payment, or acceptance, and that such payment or acceptance was refused.[1] Strictly speaking, it does not include either the presentment of a bill or the notice of dishonor; but, in its popular sense, it is used to include all the steps or acts accompanying the dishonor of a bill or note necessary to charge a drawer or an indorser.[2]

§ 138. **Protest: What Law Governs.**—A protest should be made at the time, in the mode, and by the persons prescribed by the law of the place where the bill is payable.[3] The protest of a bill made in one state, and wanting a seal prescribed by the law in that state, will not be received in evidence in another state.[4]

§ 139. **Necessity of Protest.**—"Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary": Neg. Inst. Law, Rem. & Bal. Code, § 3542. "A check is a bill of exchange

1 Swayze v. Britton, 17 Kan. 625, quoting Burrill's Law Dict.; Story on Bills, § 276; Coddington v. Davis, 1 N. Y. 186.

2 Spies v. Newberry, 2 Doug. (Mich.) 425; White v. Keith, 97 Ala. 668, 12 South. 611; Sprague v. Fletcher, 8 Or. 367, 34 Am. Rep. 587; Brown v. Hull, 33 Gratt. (Va.) 23; Ayrault v. Pacific Bank, 47 N. Y. 570, 7 Am. Rep. 489; Wood River Bank v. Omaha Bank, 36 Neb. 744, 55 N. W. 239; 7 Cyc. Law & Proc., p. 1051; Wolford v. Andrews, 29 Minn. 250, 43 Am. Rep. 201, 13 N. W. 167.

3 Story on Conflict of Laws, 8th ed., § 360; Tickner v. Roberts, 11 La. 14, 30 Am. Dec. 706; Rochester Bank v. Gray, 2 Hill (N. Y.), 227; Carter v. Union Bank, 7 Humph. (Tenn.) 548, 46 Am. Dec. 89; Wooley v. Lyon, 117 Ill. 244, 6 N. E. 885; Chatham Bank v. Allison, 15 Iowa, 357; McClane v. Fitch, 4 B. Mon. (Ky.) 599.

4 Tickner v. Roberts, 11 La. 14, 30 Am. Dec. 706; Rochester Bank v. Gray, 2 Hill (N. Y.), 227.

drawn on a bank, payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check": Neg. Inst. Law, Rem. & Bal. Code, § 3575. "Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof": Neg. Inst. Law, Rem. & Bal. Code, § 3550. "Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange": Neg. Inst. Law, Rem. & Bal. Code, § 3508.

§ 140. Purpose of Protest.—A bill of exchange is protested for want of acceptance or payment as a matter of proof.[1] A sends B a bill of exchange in which C is named as drawee. C accepts. B then indorses it to D, D to E, E to F; but when the time for payment arrives, C refuses to pay. F then has a legal right to look to those secondarily liable, B, D and E. But, if he desires to sue D for the amount of the note, he will be obliged to prove on the trial that he first attempted to collect the money of the person primarily liable (C). In order to put this proof of presentment (to C) and dishonor (by C) in such a form that the owner of the bill of exchange may prove his right to proceed against D without too great an expense or inconvenience, the custom of having a "protest" drawn up was instituted. This formal "protest" has always been accepted as sufficient evidence of the demand and dishonor. Under the present Negotiable Instruments Law it is absolutely necessary. No protest is necessary to hold the acceptor liable for the principal sum.[2] "The person 'primarily' liable on an instrument is a person who by the terms of the instrument is absolutely required to pay the same. All other parties are 'secondarily' liable": Neg. Inst. Law, Rem. & Bal. Code, § 3582.

1 7 Cyc. Law & Proc., p. 1053.
2 Rice v. Hogan, 8 Dana (Ky.), 133; Lang v. Brailsford, 1 Bay (S. C.), 222.

§ 141. Notary may Protest.—The Negotiable Instruments Law says that a protest may be made by a notary public; [a] and the law on notaries says that he may transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and laws merchant. [b] It has been held in a number of cases that a notary may protest a bill or note notwithstanding the fact he has an interest in the paper.[1] In a New York case it was held that the cashier of a bank, who is also principal maker of a note owned by the bank, may legally protest the same as a notary public.[2] And in an Alabama case it was held the fact that the notary is the son of the holder of the bill protested is no objection to his making the protest.[3]

The protest should be made by the notary in person[4] and by the same notary who presented and noted the bill.[5] The protest cannot properly be made by a clerk or deputy of a notary; the law gives verity to his official acts when properly verified and not to those performed by his clerk.[6] "The protest . . . . must be under the hand and seal of the notary making it": Neg. Inst. Law, Rem. & Bal. Code, § 3543.

[a] "Protest may be made by,—1. A notary public . . . . ": Laws 1899, p. 367, § 154; 2 Rem. & Bal. Code, § 3544.

[b] "Every duly qualified notary public is authorized in any county in this state, to transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and laws

1 Moreland v. Citizens' Bank, 97 Ky. 211, 30 S. W. 637; Read v. Commonwealth Bank, 1 T. B. Mon. (Ky.) 91, 15 Am. Dec. 86; Nelson v. Killingley Bank, 69 Fed. 798, 16 C. C. A. 425. Contra: Herkimer County Bank v. Cox, 21 Wend. (N. Y.) 119, 34 Am. Dec. 220; Monongahela Bank v. Porter, 2 Watts (Pa.), 141.

2 Dykman v. Northbridge, 1 N. Y. App. Div. 26, 36 N. Y. Supp. 962.

3 Eason v. Isbell, 42 Ala. 456.

4 7 Cyc. Law & Proc., p. 1055; Donegan v. Wood, 49 Ala. 242, 20 Am. Rep. 275; Cribbs v. Adams, 13 Gray (Mass.), 597; Ocean Nat. Bank v. Williams, 102 Mass. 141; Sacrider v. Brown, 3 McLean (U. S.), 481, Fed. Cas. No. 12,205.

5 Commercial Bank v. Barksdale, 36 Mo. 563; Commercial Bank v. Varnum, 49 N. Y. 269.

6 Note 5.

merchant . . . . ": Laws 1890, p. 474, § 4; 1 H. C., § 332; Bal. Code, § 248; 2 Rem. & Bal. Code, § 8298.

§ 142. Place of Protest.—"A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence, of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary": Neg. Inst. Law, Rem. & Bal. Code, § 3546.

§ 143. Time Protest must be Made.—"When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting": Neg. Inst. Law, Rem. & Bal. Code, § 3545. The protesting should be done during business hours of the very day it is dishonored.[1] Inevitable accident would be the only excuse for not noting a bill for protest on the day it is dishonored.[2] "Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence": Neg. Inst. Law, Rem. & Bal. Code, § 3549. "Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day": Neg. Inst. Law, Rem. & Bal. Code, § 3584.

1 Crenshaw v. McKiernan, Minor (Ala.), 295; Read v. Commonwealth Bank, 1 T. B. Mon. (Ky.) 91, 15 Am. Dec. 86; Cookendorfer v. Preston, 4 How. (U. S.) 317, 11 L. ed. 992; Dennistoun v. Stewart, 17 How. (U. S.) 606, 15 L. ed. 228.

2 Hudson v. State Bank, 3 Port. (Ala.) 340; Mallory v. Kirwan, 2 Dall. (Pa.) 192, 1 L. ed. 344.

§ 144. Steps in Protest.—Protesting consists of two steps. The first is the "noting" of the bill; and the second is the extending of this note into a full and complete statement properly called "a protest." "When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting": Neg. Inst. Law, Rem. & Bal. Code, § 3545.

§ 145. The "Noting."—The "noting" of a bill is merely a preliminary step to the protest;[1] it consists of a memorandum made by the notary, usually containing his initials, the date of the day, month and year when such presentment was made, the reason, if any is assigned, for nonacceptance or nonpayment and the amount of the noting charges.[2] The "noting" is not indispensable. It is part of the protest if the protest proper is not written out on the same day; the protest proper then refers back to the time the "noting" was done. "When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting": Neg. Inst. Law, Rem. & Bal. Code, § 3545. A notary should always "note" the protest at the time of demand if refusal is made. The "noting" is usually made on a ticket attached to the bill.[3] For example:

FORM LXV.

J. D. Dec. 10, 1910.

No funds. Charges $——.

§ 146. The Protest.—The protest proper is the formal instrument drawn up by the notary. "The protest must be

[1] Leftley v. Mills, 4 Term Rep. 170; 2 Daniel Neg. Inst., 4th ed., p. 10; Chaters v. Bell, 4 Esp. N. P. 48; Bailey v. Dozier, 6 How. (U. S.) 23, 12 L. ed. 328; Dennistoun v. Stewart, 17 How. (U. S.) 606, 15 L. ed. 228.

[2] Gale v. Walsh, 5 Term Rep. 239; Rogers v. Stephens, 2 Term Rep. 713. Reasons "noted" would be, for example: "No effects"; "No account"; "Refuse to pay"; "No advice."

[3] Benj. Chalmers' Bills and Notes, p. 177; Chitty on Bills, 13th Am. ed., p. 373; Smith v. Roach, 7 B. Mon. (Ky.) 17.

annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify: (1) The time and place of presentment; (2) The fact that presentment was made and the manner thereof; (3) The cause or reason for protesting the bill; (4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found": Neg. Inst. Law, Rem. & Bal. Code, § 3543.

Although the law-merchant never demanded that the certificate of protest state that notice of dishonor had been given to those secondarily liable, yet, because statutes generally have made a recital to that effect prima facie evidence that notice has been given, it has become the custom to set that fact forth in the certificate.[1][a] If the notices of dishonor were sent by mail, the addresses of those to whom the notices were mailed and the time they were mailed should be set forth in the certificate.[2]

The following is a complete list of what a "protest" should set out:

1. Copy of the instrument on which protest is made.
2. Venue.
3. Words "I hereby certify" or some words to that effect.
4. Time of presentment.[3]
5. Name and office (notary public) of the one making the demand.
6. Statement that notary had the original instrument with him at time of demand.
7. Name of person requesting the demand and protest.
8. Name of person on whom demand was made.
9. Place where demand was made.
10. Statement that demand was made and the manner in which it was made.
11. The cause or reason for protesting the bill.

1 Kellogg v. Pacific Box Factory, 57 Cal. 327; O'Niel v. Dickson, 11 Ind. 253; Page v. Gilbert, 60 Me. 485; Burk v. Shreve, 39 N. J. L. 214.

2 Curry v. Mobile Bank, 8 Port. (Ala.) 360; Knox v. Buhler, 6 La. Ann. 104; Wamsley v. Rivers, 34 Iowa, 463.

3 It is not necessary that the exact hour of presentment be stated: Cayuga County Bank v. Hunt, 2 Hill (N. Y.), 635.

12. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

13. Usual words of protest. (See Form under § 147.)

14. Certificate of notary that he has mailed in the postoffice with postage paid notices of dishonor to all those secondarily liable.

15. Statement that mailing was done within the time allowed after dishonor.

16. Names and addresses of all those to whom notices were mailed, adding that said addresses were their reputed places of residence and the postoffice nearest thereto.

17. Time when and names and addresses of persons on whom notary made personal service.

18. Date and statement that notary affixed his notarial seal.

19. Charges.

20. Signature of notary, followed by words "notary public" and his place of residence.[b]

21. Seal of notary.[b]

[a] "Every notary public is required to keep a true record of all notices of protest given or sent by him, with the time and manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with the copy of the instrument in relation to which the notice is served, and of the notice itself; said record, or a copy thereof, duly certified under the hand and seal of the notary public, or county clerk having the custody of the original record, shall be competent evidence to prove the facts therein stated, but the same may be contradicted by other competent evidence": Laws 1890, p. 474, § 6; 1 H. C., § 334; Bal. Code, § 250; Rem. & Bal. Code, § 8300.

[b] "It shall not be necessary for a notary public, in certifying an oath to be used in any of the courts in this state, to append an impression of his official seal, but in all other cases when the notary shall sign any instrument officially, he shall, in addition to his name and the words 'notary public,' add his place of residence and affix his official seal": Laws 1890, p. 474, § 5; 1 H. C., § 333; Bal. Code, § 249; Rem. & Bal. Code, § 8299.

§ 147. **Form of Protest.**—The following is a complete form of a protest:

FORM LXVI.

Protest.

Copy of Note.

$400. Seattle, Wash., Oct. 10, 1910.

Sixty days after date, without grace, I promise to pay to the order of William Stiles four hundred dollars in gold coin of the United States of America, of present standard weight and fineness, with interest thereon, in like gold coin, at the rate of eight per cent per annum from date hereof until paid, for value received. Interest to be paid monthly, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof, I promise and agree to pay, in addition to the costs and disbursements provided by statute, twenty-five dollars in like gold coin, for attorneys' fees in said suit or action.

Due December 10, 1910, at office of Frank Stiles, 100 2d Ave., Seattle, Wash.

No. 410. FRANK STILES.

(Indorsed by John Smith, Henry Jones and John Jones.)

State of Washington,
County of King,—ss.[a]

I hereby certify, that on this 10th day of December, one thousand nine hundred and ten, I, John Doe, a notary public in and for the state of Washington, duly appointed, commissioned and sworn, and residing in Seattle in said county and state, at the request of William Stiles, went with the original instrument, a copy of which is attached hereto, and presented the same to Frank Stiles, 100 2d ave., Seattle, Washington, the maker thereof, and demanded payment thereon, which was refused, saying: "I cannot pay it." Whereupon I, the said notary, at the request of the aforesaid William Stiles, did protest, and by these presents do solemnly protest, as well against the makers of said instrument, the indorsers thereof, as against all others whom it doth or may concern, for exchange, re-exchange and all costs, charges, damages and interest already incurred by reason of the nonpayment of said instrument. And I, the said notary, do hereby certify that by the first mail after the time of such protest, due notice thereof was put in the postoffice at Seattle, Washington, with postage paid thereon as follows: Notice for John Smith, directed to 420 1st Ave., Ballard, Wash. Notice for Henry Jones, directed to 200 Main St., Spokane, Wash.—the above-named places being the reputed places of residence, respectively, of the persons to whom such notice was directed and the postoffice nearest thereto. I do hereby further certify, that upon the said 10th day of December, 1910, I personally served due notice of said protest as follows: Notice to John Jones, served at 304 Central Bldg., Seattle, Wash.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal on this 10th day of December, 1910.

Noting	$ .50
Demand	.50
Protest	1.00
Registering	.50
Mileage	.20
Postage	.04
3 Notices	.60
Total	$3.34

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington residing at Seattle.

In this case the notary learned the addresses of the indorsers from Frank Stiles. A notary must make every effort to learn of the whereabouts of the indorsers if no addresses have been added as to where notices should be sent.

[a] If the bill is a foreign bill the venue should be:

FORM LXVII.

United States of America,
State of Washington,
County of ———, —ss.

§ 148. Waiver of Protest.—"Protest is dispensed with by any circumstances which would dispense with notice of dishonor . . . .": Neg. Inst. Law, Rem. & Bal. Code, § 3549. "Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied": Neg. Inst. Law, Rem. & Bal. Code, § 3499. "Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds only him": Neg. Inst. Law, Rem. & Bal. Code, § 3500. "A waiver of protest, whether in case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor": Neg. Inst. Law, Rem. & Bal. Code, § 3501. The waiver is often in the form of a slip of paper pinned to the instrument containing the words:

FORM LXVIII.

"Presentment, Demand and Notice Waived," or "No Protest."

PROTEST FOR BETTER SECURITY.

§ 149. **When Allowed.**—"Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers": Neg. Inst. Law, Rem. & Bal. Code, § 3548. Protesting for better security was known under the "law-merchant"; the first reported case is in Lord Raymond's Reports.[1] In that case the drawee absconded before the day of payment, and it was said that the man to whom the bill was payable could protest it, to have better security for the payment, and to give notice to the drawer of the absconding of the drawee. It was also held that upon the arrival of the day of payment it should be protested again for nonpayment. The only advantage of such protest is to prepare the way for a second acceptance for honor and to give the prior obligors opportunity to protect themselves against loss on re-exchange and return of the bill.[2] Nor would such parties be liable to an action on the part of the holder before the maturity of the bill.[3]

Though the holder does not protest the bill on the absconding[4] of the drawee or his bankruptcy or insolvency, neither the drawer nor indorsers will be discharged.[5]

1 Anonymous, 1 Ld. Raym. 743.

2 Ex parte Wackerbath, 5 Ves. Jr. 574.

3 Chitty on Bills, 385.

4 The Washington statute (Rem. & Bal. Code, § 3548) does not enumerate the "absconding" of the drawee as one of the cases in which a protest for better security is allowed; but it is probable that it would be a valid reason because it is a good and valid cause under the "law-merchant," and the Negotiable Instruments Law, section 3586 of the Remington and Ballinger's Code, is as follows: "In any case not provided for in this act the rules of the law-merchant shall govern."

5 Chitty on Bills, p. 385.

ACCEPTANCE FOR HONOR.

§ 150. When Allowable.—"Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party": Neg. Inst. Law, Rem. & Bal. Code, § 3551.

§ 151. Form: Presumption.—"An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor": Neg. Inst. Law, Rem. & Bal. Code, § 3552. "Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer": Neg. Inst. Law, Rem. & Bal. Code, § 3553. "The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted": Neg. Inst. Law, Rem. & Bal. Code, § 3554. Examples of acceptance are the following:

FORM LXIX.

"Accepted under protest, for honor of Henry Jones, and will be paid for his account if regularly protested, and refused when due.

"WILLIAM STILES."

Usually, however, the acceptance is more simple; for example, "Accepted supra protest. William Stiles," when it would be for the honor of the drawer. "Accepted S. P. for honor of Henry Smith. William Stiles," is often used.

§ 152. When Acceptor for Honor Liable.—"The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his

acceptance: Provided, it shall not have been paid by the drawee; and provided also that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given him": Neg. Inst. Law, Rem. & Bal. Code, § 3555. "Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need": Neg. Inst. Law, Rem. & Bal. Code, § 3557.

§ 153. **Maturity of Bill Payable After Sight.**—"Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor": Neg. Inst. Law, Rem. & Bal. Code, § 3556.

§ 154. **Time of Presentment to Acceptor for Honor.**—"Presentment for payment to the acceptor for honor must be made as follows: (1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity. (2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 3494": Neg. Inst. Law, Rem. & Bal. Code, § 3458. "The provisions of section 3472 apply where there is delay in making presentment to the acceptor for honor or referee in case of need": Neg. Inst. Law, Rem. & Bal. Code, § 3559.

§ 155. **Protest Necessary When Acceptor for Honor Dishonors.**—"When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him": Neg. Inst. Law, Rem. & Bal. Code, § 3560.

PAYMENT FOR HONOR.

§ 156. **Who may Make.**—"Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn": Neg. Inst. Law, Rem. & Bal. Code, § 3561.

§ 157. Notary's Attestation: Declaration by Payer.—"The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it": Neg. Inst. Law, Rem. & Bal. Code, § 3562. "The notarial act of honor must be founded on a declaration made by the payer for honor, or by his agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays": Neg. Inst. Law, Rem. & Bal. Code, § 3563. The following would be a notarial act of honor:

FORM LXX.

I hereby certify that William Stiles declares that he pays the attached bill of exchange supra protest for honor of John Jones.

Witness my hand and seal this 10th day of December, 1910.

[Notary's Seal] JOHN DOE,
Notary Public in and for the State of Washington, Residing at Seattle.

§ 158. Preference of Parties Offering Payment.—"Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference": Neg. Inst. Law, Rem. & Bal. Code, § 3564.

NOTICE OF DISHONOR.

§ 159. Necessity for Notice.—"Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged": Neg. Inst. Law, Rem. & Bal. Code, § 3479. "Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) When the drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity

to contract; (3) When the drawer is the person to whom the instrument is presented for payment; (4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment": Neg. Inst. Law, Rem. & Bal. Code, § 3504. "Notice of dishonor is not required to be given to an indorser in either of the following cases: (1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument; (2) where the indorser is the person to whom the instrument is presented for payment; (3) where the instrument was made or accepted for his accommodation": Neg. Inst. Law, Rem. & Bal. Code, § 3505.

Notice of dishonor means notification of dishonor; the mere fact that the party to be charged has knowledge of the dishonor will not take the place of a notice.[1] The presence of one of the indorsers of a note when the holder presented it to the maker at maturity for payment has been held not to amount to constructive notice.[2] "Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged": Neg. Inst. Law, Rem. & Bal. Code, § 3502.

§ 160. Notary may Give Notice.—"The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given": Neg. Inst. Law, Rem. & Bal. Code, § 3480. "Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not": Neg. Inst. Law, Rem. & Bal. Code, § 3481. "Where the instrument has been dishonored in the hands of an agent, he may either himself

[1] Jagger v. Nat. G. A. Bank, 53 Minn. 386, 55 N. W. 545; Old Dominion Bank v. McVeigh, 29 Gratt. (Va.) 559; 4 Am. & Eng. Ency. of Law, 2d ed., p. 397.

[2] Grant v. Spencer, 1 Mont. 136.

give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder": Neg. Inst. Law, Rem. & Bal. Code, § 3484. "Every notary public is required to keep a true record of all notices of protest (notices of dishonor) given or sent by him, with the time and manner in which the same were given or sent, and the name of all the parties to whom the same were given or sent, with the copy of the instrument in relation to which the notice is served, and of the notice itself . . . .": Laws 1890, p. 474, § 6; Rem. & Bal. Code, § 8300. "Every duly qualified notary public is authorized in any county in this state to transact and perform all matters and things relating to protests, protesting bills of exchange and promissory notes, and such other duties as pertain to that office by the custom and law-merchant": Laws 1890, p. 474, § 4; Rem. & Bal. Code, § 8298. It would seem from the two statutes just quoted that the notary in Washington gives the notices of dishonor as a public officer; it is his official duty, neglect of which he may be held liable for on his official bond.[1] A mere stranger to the paper cannot give notice of dishonor;[2] such a notice would be of no avail to any party.[3]

§ 161. Notice to Whom.—"Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged":

1 Tevis v. Randall, 6 Cal. 632, 65 Am. Dec. 547; Barr v. Marsh, 9 Yerg. (Tenn.) 253; Wheeler v. State, 9 Heisk. (Tenn.) 393. Notice may be given by a notary employed by a bank to which the bill has been indorsed "for collection only": Warren v. Gilman, 17 Me. 360.

2 Chanoine v. Fowler, 3 Wend. (N. Y.) 173; Brower v. Wooten, 4 N. C. 507, 7 Am. Dec. 692; Payne v. Patrick, 21 Tex. 680; Lawrence v. Miller, 16 N. Y. 235.

3 Brailsford v. Williams, 15 Md. 150, 74 Am. Dec. 559; Brower v. Wooten, 4 N. C. 507, 7 Am. Dec. 692; Jagger v. Nat. G. A. Bank, 53 Minn. 386, 55 N. W. 545.

Neg. Inst. Law, Rem. & Bal. Code, § 3479. "Notice of dishonor may be given either to the party himself or to his agent in that behalf": Neg. Inst. Law, Rem. & Bal. Code, § 3487. "When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased": Neg. Inst. Law, Rem. & Bal. Code, § 3488. "Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution": Neg. Inst. Law, Rem. & Bal. Code, § 3489. "Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others": Neg. Inst. Law, Rem. & Bal. Code, § 3490. "Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee": Neg. Inst. Law, Rem. & Bal. Code, § 3491. "Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) Where the drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) when the drawer is the person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment": Neg. Inst. Law, Rem. & Bal. Code, § 3504. "Notice of dishonor is not required to be given to an indorser in either of the following cases: (1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument; (2) where the indorser is the person to whom the instrument is presented for payment; (3) where the instrument was made or accepted for his accommodation": Neg. Inst. Law, Rem. & Bal. Code, § 3505.

§ 162. Time Notice must be Sent.—"Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the time fixed by this act": Neg. Inst. Law, Rem. & Bal. Code, § 3492. "Where the person giving and the person to receive the notice reside in the same place, notice must be given within the following times: (1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following; (2) if given at his residence, it must be given before the usual hours of rest on the day following; (3) if sent by mail, it must be deposited in the postoffice in time to reach him in the usual course on the day following": Neg. Inst. Law, Rem. & Bal. Code, § 3493. "Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times: (1) If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter; (2) if given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision": Neg. Inst. Law, Rem. & Bal. Code, § 3494. "Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence":[1] Neg. Inst. Law, Rem. & Bal. Code, § 3503. If the

[1] Examples of conditions which would be considered as excusing delay: Prevalence of war: Norris v. Despard, 38 Md. 487; House v. Adams, 48 Pa. 261, 86 Am. Dec. 588; Bynum v. Apperson, 9 Heisk. (Tenn.) 632; Billgerry v. Branch, 19 Gratt. (Va.) 393, 100 Am. Dec. 679; prevalence of a malignant disease: Tunno v. Lague, 2 Johns. Cas. (N. Y.) 1, 1 Am. Dec. 141; Hanauer v. Anderson, 16 Lea (Tenn.), 340. Where delay in sending the notice was caused by the absence of holder in consequence of the sickness of his wife, it was held not to be excusable: Turner v. Leech, 4 Barn. & Ald. 451; Muilman v. D'Eguino, 2 H. Black. 565; Stainback v. State Bank, 11 Gratt. (Va.) 260; Lenox v. Lev-

parties reside in countries separated by seas it is sufficient to send the notice by the next succeeding post. "Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day": Neg. Inst. Law, Rem. & Bal. Code, § 3584.

§ 163. Place of Giving Notice.—"Where the party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows: (1) Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or (2) if he live in one place, and have his place of business in another, notice may be sent to either place; or (3) if he is sojourning in another place, notice may be sent to the place where he is so sojourning. But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section": Neg. Inst. Law, Rem. & Bal. Code, § 3498. "Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged": Neg. Inst. Law, Rem. & Bal. Code, § 3502. What "reasonable diligence" is will depend on the circumstances of the case; no general rule can be laid down. It must be such diligence as men of business usually exercise when their interest depends upon obtaining correct information.[1] Inquiries should be made of persons likely to know of the indorser's whereabouts,[2] of the available parties to the instrument,[3] of the indorser's agent,[4] and some courts

erett, 10 Mass. 1, 6 Am. Dec. 97; Fleming v. McClure, 1 Brev. (S. C.) 428, 2 Am. Dec. 671.

[1] Palmer v. Whitney, 21 Ind. 58; In re Billings, 82 Minn. 387, 85 N. W. 162; Utica Bank v. Bender, 21 Wend. (N. Y.) 643, 34 Am. Dec. 281.

[2] Decatur Branch Bank v. Pierce, 3 Ala. 321; Winans v. Davis, 18 N. J. L. 276; Lambert v. Ghiselin, 9 How. (U. S.) 552, 13 L. ed. 254; Brighton Bank v. Philbrick, 40 N. H. 506.

[3] Hill v. Varrell, 3 Me. 233; Wilson v. Senier, 14 Wis. 380; Vance v. Depass, 2 La. Ann. 16.

[4] Herbert v. Servin, 41 N. J. L. 225; Goodloe v. Godley, 13 Smedes & M. (Miss.) 233, 51 Am. Dec. 150.

hold of every accessible party to the paper.[5] Too much trouble cannot be taken as a precaution.

§ 164. Manner of Giving Notice.—"The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails": Neg. Inst. Law, Rem. & Bal. Code, § 3486. "A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby": Neg. Inst. Law, Rem. & Bal. Code, § 3485. "Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails": Neg. Inst. Law, Rem. & Bal. Code, § 3495. "Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter-box under the control of the postoffice department": Neg. Inst. Law, Rem. & Bal. Code, § 3496. "Where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section (§ 3498)": Neg. Inst. Law, Rem. & Bal. Code, § 3498.[1] If the party to whom notice must be given does not live where the postal department reaches him in the usual course of mail delivery,

5 Wolf v. Burgess, 59 Mo. 583; Gilchrist v. Donnell, 53 Mo. 591.

1 Where the mail service between two points is suspended or broken up, the notice of protest deposited in the postoffice at one point, the place of presentment, and addressed to an indorser who resides at the other point, is insufficient: Donegan v. Wood, 49 Ala. 242, 20 Am. Rep. 275.

A notice properly addressed, on which the postage is paid, handed to a letter carrier while on his rounds is a sufficient mailing thereof: Wynen v. Schappert, 6 Daly (N. Y.), 558; Pearce v. Langfit, 101 Pa. 507, 47 Am. Rep. 737. The deposit, however, of a notice of dishonor of negotiable paper in a private letter-box of a private office is not a deposit in the postoffice, and notice so mailed would not be sufficient: Townsend v. Auld, 10 Misc. Rep. (N. Y.) 343, 31 N. Y. Supp. 29.

notice must be sent by special messenger; if any other method is followed, it must be shown that the notice was received as promptly as it would have been by messenger.[2]

§ 165. Form of Notice.—"The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment . . . .": Neg. Inst. Law, Rem. & Bal. Code, § 3486. "A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication . . . .": Neg. Inst. Law, Rem. & Bal. Code, § 3485. The one giving the notice should be sure that the following requisites are set out in the notice:

1. Place and date of sender.
2. Name and address of the person notice is mailed to.
3. Words "Take notice" or expression to the same effect.
4. Name of instrument protested.
5. Amount shown on instrument.
6. Place and date of instrument.
7. Name of maker or drawer.
8. Name of drawee.
9. Name of payee.
10. Time of payment as shown by instrument.
11. Relation of person to whom notice is sent to the instrument, viz., "indorsed by you."
12. Statement that instrument was protested and reason therefor.
13. Statement that holder hereby notifies receiver of notice that he looks to him for payment, damages, interest and costs.

[2] Fish v. Jackman, 19 Me. 467, 36 Am. Dec. 769; Columbia Bank v. Lawrence, 1 Pet. (U. S.) 578, 7 L. ed. 270; Citizens' Bank v. Pugh, 19 La. Ann. 43. Where the usage of a bank in relation to giving notice to an indorser is so loose and variable, and so different from what the law requires, as to leave it uncertain whether any notice was given to the indorser at any time or place or put into the postoffice for him, such indorser is not bound by such usage by doing business with the bank: Thorn v. Rice, 15 Me. 263.

14. Signature of notary followed by words "Notary Public in and for the State of Washington, Residing at Seattle."

15. Notary's seal is not necessary.

The following is one form setting out the above:

FORM LXXI.

Notice of Protest.

Seattle, Washington,
December 10, 1910.

To John Jones,
Renton, Washington.

Please take notice that a promissory note

Dated, Seattle, Wash., Nov. 10, 1910.

For, $1,000.

Made by William Stiles (maker).

Upon ———— (In case of bill of exchange, drawee's name should be written here.)

In favor of Frank Smith (payee).

Payable one month after date.

And indorsed by you, was this day protested for nonpayment.

You are hereby notified that the holders look to you for payment, damages, interest and costs.

Yours, etc.
JOHN DOE,
Notary Public in and for the State of Washington residing at Seattle.

§ 166. **Waiver of Notice.**—"Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied": Neg. Inst. Law, Rem. & Bal. Code, § 3499. "Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser it binds only him": Neg. Inst. Law, Rem. & Bal. Code, § 3500. "A waiver of protest, whether in case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor": Neg. Inst. Law, Rem. & Bal. Code, § 3501. The waiver is often in the form of a slip of paper pinned to the note, bill or check containing the words:

FORM LXXII.

"No Protest," or "Presentment, Demand and Notice Waived."

REFEREE IN CASE OF NEED.

§ 167. Who Names.—"The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is the option of the holder to resort to the referee in case of need or not as he may see fit": Neg. Inst. Law, Rem. & Bal. Code, § 3521.

RECORDS.

§ 168. Notary's Records.—When a notary is first appointed he should supply himself with a book for his records and take great care to make his records full and clear. He and his bondsmen are liable for any loss occasioned by reason of his incorrect records. The statute is as follows: "Every notary public is required to keep a true record of all notices of protest given or sent by him, with the time and manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with the copy of the instrument in relation to which the notice is served, and of the notice itself; said record, or a copy thereof, duly certified under the hand and seal of the notary public, or county clerk having the custody of the original record, shall be competent evidence to prove the facts therein stated, but the same may be contradicted by other competent evidence": Laws 1890, p. 474, § 6; 1 H. C., § 334; Bal. Code, § 250; Rem. & Bal. Code, § 8300.

The following is a list of the records to be kept of a protest, etc.; it will be seen that the demands of the statute are complied with: (1) Copy of the instrument; (2) copy of notice of dishonor sent; (3) a full account of the time and manner any personal notice of dishonor was given; (4) a list of the names and addresses of all parties to whom notice of dishonor was given or sent; (5) an account of the

time and manner the notices of dishonor were given or sent.

FORM LXXIII.

The form in this case would be merely making note of (1), (2), (3), (4), (5). It is not thought necessary to take the space.

§ 169. Notary's Records as Evidence.—The notary's records become public documents as being those kept by a public officer, and the "record or a copy thereof, duly certified under the hand and seal of the notary public, or county clerk having the custody of the original record, shall be competent evidence to prove the facts therein stated, but the same may be contradicted by other competent evidence":[1] Laws 1890, p. 474, § 6; 1 H. C., § 334; Bal. Code, § 250; Rem. & Bal. Code, § 8300. See § 168. [a] In authenticating, the notary's seal may be impressed directly on the paper. [b]

[a] "Copies of all records and documents on record or on file in the offices of the various departments of the United States and of this state, when duly certified by the respective officers having by law the custody thereof, under their respective seals, where such officers have official seals, shall be admitted in evidence in the courts of this state": Laws 1891, p. 37, § 16; 2 H. C., § 1681; Bal. Code, § 6043; Rem. & Bal. Code, § 1257.

[b] "A seal of court or public office, when required to any writ, process, or proceeding to authenticate a copy of any record or document, may be affixed by making an impression directly on the paper, which shall be as valid as if made upon a wafer or on wax": Laws 1854, p. 196, § 338; Code 1881, § 434; 2 H. C., § 1683; Bal. Code, § 6044; Rem. & Bal. Code, § 1258.

§ 170. Liability of Notary for Failure to Act in Matters of Protest.—For all acts in connection with bills and notes which the law says are the duty of the notary he is liable

[1] Thus the books or registers of a deceased notary are admissible to prove his acts as to the presentment, demand, and notice of nonpayment of negotiable paper: Halliday v. Martinet, 20 Johns. 168, 11 Am. Dec. 262; Porter v. Judson, 1 Gray, 175; Nicholls v. Webb, 8 Wheat. 326, 5 L. ed. 628; Chase's Stephen's Digest of the Law of Evidence, 2d ed., p. 91.

on his bond to the holder thereof for a failure to perform in a proper manner.[1] It is one of the notary's duties to protest negotiable paper and for a failure to do so properly he and his sureties are liable on his bond.[2] If it is by custom or usage the official duty of a notary to give notice of protest or dishonor of negotiable instruments, he is liable for a failure to give such notice in a legal manner.[3] Where there is a statute, as there is in Washington,[a] making it the notary's duty to keep a record of the protests and notices made and given by him, both he and his sureties are liable for a failure to keep such record where loss occurs.[4]

For all acts in connection with bills and notes not legally his duty, but which he performs or attempts to perform for the holder, and which through negligence or fraud he fails to carry out in a proper manner, a notary is liable to the holder as his agent.[5] The measure of damages against a notary for certifying falsely as to giving notices of dishonor of a bill or note, where loss is caused to the holder thereof, is the actual loss sustained.[6]

[a] See § 168.

§ 171. Criminal Liability.—The criminal liability which a notary puts himself under by a wrongful use of his office is considered on page 96.

NEGOTIABLE INSTRUMENTS LAW.

§ 172. Of Washington.—The notary in this state is governed as to his acts of demand for acceptance or payment

1 29 Cyc. Law & Proc., p. 1105.

2 Com. Bank v. Varum, 49 N. Y. 269; Williams v. Parks, 63 Neb. 747, 89 N. W. 395, 56 L. R. A. 759.

3 Neal v. Taylor, 9 Bush (Ky.), 380; Tevis v. Randall, 6 Cal. 632, 65 Am. Dec. 547; Bank of Mobile v. Marston, 7 Ala. 108; Bowling v. Arthur, 34 Miss. 41; Williams v. Parks, 63 Neb. 747, 89 N. W. 395, 56 L. R. A. 759.

4 Hyde v. Planters' Bank, 17 La. 560; 36 Am. Dec. 621.

5 Parke v. Lowrie, 6 Watts & S. (Pa.) 507; Marston v. Mobile Bank, 10 Ala. 284; Hyde v. Planters' Bank, 17 La. 560, 36 Am. Dec. 621; Stott v. Harrison, 73 Ind. 17; Mobile Bank v. Marston, 10 Ala. 284.

6 Mobile Bank v. Marston, 10 Ala. 284.

and as to protests by the Law of 1899, page 340, known as the "Negotiable Instruments Law," together with a few statutes which were not repealed by that law. The laws are referred to as they appear in the new Remington and Ballinger Code for the sake of easy reference. In Ballinger's Code they are sections 3650–4664; in Hill's Code, sections 2383–2397.

§ 3392. *Negotiability, What Constitutes.*—An instrument to be negotiable must conform to the following requirements: (1) It must be in writing and signed by the maker or drawer; (2) must contain an unconditional promise or order to pay a sum certain in money; (3) must be payable on demand, or at a fixed or determinable future time; (4) must be payable to order or to bearer; and, (5) where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

§ 3393. *"Sum Certain" Defined.*—The sum payable is a sum certain within the meaning of this act, although it is to be paid—(1) with interest; or (2) by stated installments; or (3) by stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or (4) with exchange, whether at a fixed rate or at the current rate; or (5) with costs of collection or an attorney's fees, in case payment shall not be made at maturity.

§ 3394. *"Unconditional" Defined.*—An unqualified order or promise to pay is unconditional, within the meaning of this act, though coupled with (1) an indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or (2) a statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.

§ 3395. *"Determinable Future Time" Defined.*—An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable—(1)

at a fixed period after date or sight; or (2) on or before a fixed or determinable future time specified therein; or (3) on or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

§ 3396. *Negotiability—Effect of Provisions on.*—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which—(1) authorizes the sale of collateral securities in case the instrument be not paid at maturity; or (2) authorizes a confession of judgment if the instrument be not paid at maturity; or (3) waives the benefit of any law intended for the advantage or protection of the obligor; or (4) gives the holder an election to require something to be done in lieu of payment of money. But nothing in this section shall validate any provision or stipulation otherwise illegal.

§ 3397. *Validity and Negotiability—When not Affected.* The validity and negotiable character of an instrument are not affected by the fact that—(1) it is not dated; or (2) does not specify the value given, or that any value has been given therefor; or (3) does not specify the place where it is drawn or the place where it is payable; or (4) bears a seal; or (5) designates a particular kind of current money in which payment is to be made. But nothing in this section shall alter or repeal any statute requiring in certain cases, the nature of the consideration to be stated in the instrument.

§ 3398. *When "Payable on Demand."*—An instrument is payable on demand—(1) where it is expressed to be payable on demand, or at sight, or on presentation; or (2) in which no time for payment is expressed. Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand.

§ 3399. *When "Payable to Order."*—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of—(1) a payee who is not maker, drawer, or drawee; or (2) the drawer or maker; or (3) the drawee; or (4) two or more payees jointly; or (5) one or some of several payees; or (6) the holder of an office for the time being. Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

§ 3400. *When "Payable to Bearer."*—The instrument is payable to bearer—(1) when it is expressed to be so payable; or (2) when it is payable to a person named therein or bearer; or (3) when it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable; or (4) when the name of the payee does not purport to be the name of any person; or (5) when the only or last indorsement is an indorsement in blank.

§ 3401. *Intent to Conform to Requirements Sufficient.*—The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

§ 3402. *Date Prima Facie True.*—Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement, as the case may be.

§ 3403. *Effect of Ante or Post Date.*—The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

§ 3404. *Blank Date—Holder may Fill.*—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion

of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

§ 3405. *Defects and Blanks—Holder's Right to Fill.*—Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature, in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

§ 3406. *Negotiation Without Delivery or Authority Invalid.*—Where an incomplete instrument has not been delivered, it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

§ 3407. *Delivery, What Constitutes.*—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the

hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

§ 3408. *Construction of Ambiguities.*—Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply: (1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, references may be had to the figures to fix the amount. (2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof. (3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued. (4) Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail. (5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election. (6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser. (7) Where an instrument containing the words, "I promise to pay," is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

§ 3409. *Liability — Signature Necessary — Assumed or Trade Name.*—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

§ 3410. *Signature by Agent.*—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the

authority of the agent may be established as in other cases of agency.

§ 3411. *Liability of Agent.*—Where the instrument contains, or a person adds to his signature, words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

§ 3412. *Signature by "Procuration"—Notice.*—A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

§ 3413. *Assignment by Corporation or Infant Passes Title.*—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

§ 3414. *Forgery, Effect of.*—Where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

§ 3415. *Consideration Presumed.*—Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

§ 3416. *Value, What Constitutes.*—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

§ 3417. *"Holder for Value" When.*—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

§ 3418. *Same—Lien.*—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

§ 3419. *Lack of Consideration as a Defense.*—Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

§ 3420. *Accommodation Party, Who is.*—An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

§ 3421. *How Negotiated.*—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

§ 3422. *How Indorsed.*—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

§ 3423. *Indorsement must be Entire.*—The indorsement must be an indorsement of the entire instrument. An indorsement, which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

§ 3424. *Same—May be Special, etc.*—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

§ 3425. *Special and Blank Indorsements, What are.*—A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

§ 3426. *Blank Indorsement may be Changed to Special.*—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

§ 3427. *Restrictive Indorsements.*—An indorsement is restrictive, which either—(1) prohibits the further negotiation of the instrument; or (2) constitutes the indorsee the agent of the indorser; or (3) vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

§ 3428. *Rights of Restrictive Indorsee.*—A restrictive indorsement confers upon the indorsee the right—(1) to receive payment of the instrument; (2) to bring any action thereon that the indorser could bring; (3) to transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so. But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

§ 3429. *Qualified Indorsement.*—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

§ 3430. *Conditional Indorsement, Effect of.*—Where an indorsement is conditional, a party required to pay the in-

strument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

§ 3431. *Special Indorsement Payable to Bearer, Effect of.* Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

§ 3432. *Payable to Two or More—Indorsement.*—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

§ 3433. *Indorsement to "Cashier," Effect of.*—Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

§ 3434. *Misspelled Name, How Indorsed.*—Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

§ 3435. *Indorsement in Representative Capacity.*—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

§ 3436. *Presumption of Negotiation Before Indorsement.* Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

§ 3437. *Indorsement Presumed Made When Dated.*—Except where the contrary appears, every indorsement is pre-

sumed prima facie to have been made at the place where the instrument is dated.

§ 3438. *Negotiability Continues.*—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

§ 3439. *Striking Indorsement.*—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

§ 3440. *Transfer Without Indorsement.*—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

§ 3441. *Transfer Back to Prior Party.*—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

§ 3442. *Holder may Sue in Own Name.*—The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

§ 3443. *"Holder in Due Course," When.*—A holder in due course is a holder who has taken the instrument under the following conditions:—(1) That it is complete and regular upon its face; (2) that he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact; (3) that he took it in good faith and for value; (4) that at the time it was

negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

§ 3444. *Same, When not.*—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

§ 3445. *Notice of Defect Before Full Payment.*—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

§ 3446. *Title Defective, When.*—The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

§ 3447. *Notice of Defect, What is.*—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

§ 3448. *"Holder in Due Course"—Right to Full Payment.*—A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

§ 3449. *Defenses Against One not a Holder in Due Course.*—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instru-

ment, has all the rights of such former holder in respect of all parties prior to the latter.

§ 3450. *"Due Course" Presumed—Burden of Proof.*—Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

§ 3451. *Maker's Undertaking—Estoppel.*—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

§ 3452. *Drawer's Undertaking—Estoppel.*—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

§ 3453. *Acceptor's Undertaking—Estoppel.*—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits (1) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and (2) the existence of the payee and his then capacity to indorse.

§ 3454. *Signer, an Indorser, Unless Intention Clearly Indicated.*—A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

§ 3455. *Blank Signature by One not a Party—Liability.*—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules: (1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties. (2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer. (3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

§ 3456. *Warranties by Negotiator.*—Every person negotiating an instrument by delivery or by a qualified indorsement, warrants (1) that the instrument is genuine and in all respects what it purports to be; (2) that he has a good title to it; (3) that all prior parties had capacity to contract; (4) that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

§ 3457. *Warranties by Indorser.*—Every indorser who indorses without qualification, warrants to all subsequent holders in due course—(1) the matters and things mentioned in subdivisions one, two, and three of the next preceding section; and (2) that the instrument is at the time of his indorsement valid and subsisting. And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

§ 3458. *Liability of Indorser—When Negotiable by Delivery.*—Where a person places his indorsement on an instru-

ment negotiable by delivery he incurs all the liabilities of an indorser.

§ 3459. *Order of Liability—Agreements Admissible—Joint Payees, etc.*—As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

§ 3460. *Liability of Broker Negotiating Without Indorsement.*—Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 3456, unless he discloses the name of his principal, and the fact that he is acting only as agent.

§ 3461. *Presentment—When Necessary.*—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

§ 3462. *Time of Presentment.*—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

§ 3463. *Presentment, Sufficiency of.*—Presentment for payment, to be sufficient, must be made—(1) by the holder, or by some person authorized to receive payment on his behalf; (2) at a reasonable hour on a business day; (3) at a proper place as herein defined; (4) to the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made.

§ 3464. *Same, Place of.*—Presentment for payment is made at the proper place—(1) Where a place of payment is specified in the instrument and it is there presented; (2) where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented; (3) where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment; (4) in any other case, if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

§ 3465. *Exhibition of Instrument Necessary.*—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

§ 3466. *Presentment at Bank, Time of.*—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

§ 3467. *Same—To Personal Representative.*—Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.

§ 3468. *Same—To One of Partners.*—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

§ 3469. *Presentment to All Parties, When Necessary.*—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

§ 3470. *Presentment Unnecessary to Charge Drawer When.*—Presentment for payment is not required in order

to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

§ 3471. *Presentment Unnecessary to Charge Indorser, When.*—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

§ 3472. *Excusable Delay.*—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

§ 3473. *Presentment Unnecessary.*—Presentment for payment is dispensed with—(1) Where after the exercise of reasonable diligence presentment as required by this act cannot be made; (2) where the drawee is a fictitious person; (3) by waiver of presentment, express or implied.

§ 3474. *When Dishonored.*—The instrument is dishonored by nonpayment when—(1) it is duly presented for payment and payment is refused or cannot be obtained, or (2) presentment is excused and the instrument is overdue and unpaid.

§ 3475. *Dishonor Attaches Liability to Secondary Parties.*—Subject to the provisions of this act, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

§ 3475½. *No Grace—Sundays and Holidays.*—Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may at the option of the holder, be presented for payment before twelve

o'clock noon on Saturday when that entire day is not a holiday.

§ 3476. *Computation of Time.*—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

§ 3477. *"Payable at Bank" an Order on Bank.*—Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

§ 3478. *Payment in Due Course.*—Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

§ 3479. *Notice of Dishonor Necessary to Charge.*—Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

§ 3480. *Who may Give Notice.*—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

§ 3481. *Notice by Agent.*—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

§ 3482. *Notice by Holder, Who Benefits by.*—Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

§ 3483. *Notice by Party Entitled, Who Benefits.*—Where notice is given by or on behalf of a party entitled to give no-

tice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

§ 3484. *Agent may Notify Parties or Principal.*—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

§ 3485. *Sufficiency of Notice.*—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

§ 3486. *Notice may be Written or Oral.*—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

§ 3487. *Notice, to Whom Given.*—Notice of dishonor may be given either to the party himself or to his agent in that behalf.

§ 3488. *Notice, When Party Deceased.*—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

§ 3489. *Notice to One of Partners.*—Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

§ 3490. *Joint Parties, Notice to Each.*—Notice to joint parties who are not partners must be given to each of them,

unless one of them has authority to receive such notice for the others.

§ 3491. *Insolvency—Notice to Whom.*—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

§ 3492. *Notice Immediately upon Dishonor.*—Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act.

§ 3493. *Parties Living in the Same Place, Notice When.*—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times—(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following; (2) if given at his residence, it must be given before the usual hours of rest on the day following; (3) if sent by mail, it must be deposited in the postoffice in time to reach him in usual course on the day following.

§ 3494. *Living in Different Places, Notice When.*—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times—(1) If sent by mail it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter. (2) If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision.

§ 3495. *Notice by Mail.*—Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

§ 3496. *Deposited in Postoffice, When.*—Notice is deemed to have been deposited in the postoffice when deposited in any

branch postoffice or in any letter-box under the control of the postoffice department.

§ 3497. *Notice to Antecedent Parties.*—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

§ 3498. *Notice, Where Addressed.*—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows—(1) Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or (2) if he live in one place, and have his place of business in another, notice may be sent to either place; or (3) if he is sojourning in another place, notice may be sent to the place where he is sojourning. But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

§ 3499. *Waiver of Notice.*—Notice of dishonor may be waived either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

§ 3500. *What Parties Bound by Waiver of Notice.*—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

§ 3501. *Waiver of Protest Waives Notice of Presentment and Dishonor.*—A waiver of protest, whether in case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver, not only of a formal protest, but also of presentment and notice of dishonor.

§ 3502. *Notice of Dishonor Dispensed With When.*—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

§ 3503. *Excusable Delay.*—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

§ 3504. *When Drawer not Entitled to Notice of Dishonor.* Notice of dishonor is not required to be given to the drawer in either of the following cases—(1) When the drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) when the drawer is the person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment.

§ 3505. *When Indorser not Entitled to Notice.*—Notice of dishonor is not required to be given to an indorser in either of the following cases—(1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument; (2) where the indorser is the person to whom the instrument is presented for payment; (3) where the instrument was made or accepted for his accommodation.

§ 3506. *Notice of Nonacceptance, Effect of.*—Where due notice of dishonor by nonacceptance has been given notice of subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

§ 3507. *Omission of Notice.*—An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

§ 3508. *Protest Required Only on Foreign Bills.*—Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

§ 3509. *Discharge of Instrument, How Effected.*—A negotiable instrument is discharged—(1) By payment in due course by or on behalf of the principal debtor; (2) by payment in due course by the party accommodated, where the instrument is made or accepted for accommodation; (3) by the intentional cancellation thereof by the holder; (4) by any other act which will discharge a simple contract for the payment of money; (5) when the principal debtor becomes the holder of the instrument at or after maturity in his own right.

§ 3510. *Discharge of Parties Secondarily Liable.*—A person secondarily liable on the instrument is discharged—(1) By any act which discharges the instrument; (2) by the intentional cancellation of his signature by the holder; (3) by the discharge of a prior party; (4) by a valid tender of payment made by a prior party; (5) by a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved; (6) by any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

§ 3511. *Renegotiation by Secondary Party.*—Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except—(1) where it is payable to the order of a third person, and has been paid by the drawer; and (2) where it was made or accepted for accommodation, and has been paid by the party accommodated.

§ 3512. *Holder's Renunciation of Rights.*—The holder may expressly renounce his rights against any party to the instrument, before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument But a renunciation does not affect the rights of a holder in due course without notice.

A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

§ 3513. *Unintentional Cancellation—Burden of Proof.*—A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

§ 3514. *Material Alterations, Effect of.*—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

§ 3515. *Material Alterations Defined.*—Any alteration which changes—(1) the date; (2) the sum payable, either for principal or interest; (3) the time or place of payment; (4) the number or the relations of the parties; (5) the medium or currency in which payment is to be made; or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration..

§ 3516. *Bill of Exchange Defined.*—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

§ 3517. *Bill not an Assignment—Drawee Liable on Acceptance.*—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

§ 3518. *Joint Drawees.*—A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

§ 3519. *Inland and Foreign Bills Defined.*—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

§ 3520. *Bill may be Promissory Note.*—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

§ 3521. *Referee in Case of Need.*—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

§ 3522. *Acceptance Defined.*—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

§ 3523. *Holder may Require Acceptance in Writing.*—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such a request is refused, may treat the bill as dishonored.

§ 3524. *Acceptance on Separate Paper.*—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

§ 3525. *Promise to Accept, Effect of.*—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

§ 3526. *Grace.*—The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation.

§ 3527. *When Acceptance Presumed.*—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.

§ 3528. *Time of Acceptance.*—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

§ 3529. *Acceptance Either General or Qualified.*—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

§ 3530. *General Acceptance Defined.*—An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

§ 3531. *Qualified Acceptance Defined.*—An acceptance is qualified, which is: (1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated; (2) partial, that is to say, an acceptance to pay part only of the amount for which the bill

is drawn; (3) local, that is to say, an acceptance to pay only at a particular place; (4) qualified as to time; (5) the acceptance of some one or more of the drawees, but not of all.

§ 3532. *Qualified Acceptance, Rights of Parties Under.*—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

§ 3533. *Presentment for Acceptance, When Necessary.*—Presentment for acceptance must be made: (1) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or (2) where the bill expressly stipulates that it shall be presented for acceptance; or (3) where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

§ 3534. *Discharge of Drawer by Failure to Present.*—Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged.

§ 3535. *Presentment to Whom and When.*—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and (1) where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to

accept or refuse acceptance for all, in which case presentment may be made to him only. (2) Where the drawee is dead, presentment may be made to his personal representative. (3) Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

§ 3536. *Presentment on What Days.*—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 3463 and 3475½. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day.

§ 3537. *Failure to Present, Excusable When.*—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

§ 3538. *Presentment Excused, When.*—Presentment for acceptance is excused, and a bill may be treated as dishonored by nonacceptance, in either of the following cases—(1) Where the drawee is dead or has absconded or is a fictitious person, or a person not having capacity to contract by bill; (2) where, after the exercise of reasonable diligence, presentment cannot be made; (3) where, although presentment has been irregular, acceptance has been refused on some other ground.

§ 3539. *Dishonor by Nonacceptance.*—A bill is dishonored by nonacceptance—(1) When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or (2) when presentment for acceptance is excused and the bill is not accepted.

§ 3540. *Dishonored When not Promptly Accepted.*—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it

must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorser.

§ 3541. *Effect of Dishonor by Nonacceptance.*—When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

§ 3542. *Protest Neccssary on Foreign Bills.*—Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

§ 3543. *What Protest must Specify.*—The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify—(1) the time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting the bill; (4) the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

§ 3544. *Who may Make Protest.*—Protest may be made by—(1) a notary public; or (2) by any respectable (responsible) resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

§ 3545. *When Protest must be Made.*—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

§ 3546. *Place of Protest.*—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence, of some person other than the drawee, has been dishonored by nonacceptance,

it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

§ 3547. *Protest for Both Nonacceptance and Nonpayment.* A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

§ 3548. *Insolvency, Effect of.*—Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

§ 3549. *Protest Excused, When.*—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

§ 3550. *Lost Bill.*—Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

§ 3551. *Acceptance for Honor.*—Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

§ 3552. *How Made.*—An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

§ 3553. *Presumed for Honor of Drawer.*—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

§ 3554. *Liability of Acceptor for Honor.*—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

§ 3555. *Acceptor for Honor's Undertaking.*—The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance: Provided, it shall not have been paid by the drawee; and provided also that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

§ 3556. *Maturity of Bill Accepted for Honor.*—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

§ 3557. *When Protest Necessary.*—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

§ 3558. *Presentment for Payment to Acceptor for Honor.* Presentment for payment to the acceptor for honor must be made as follows: (1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity. (2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 3494.

§ 3559. *Delay in Presentment Excused.*—The provisions of section 3472 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

§ 3560. *Protest Necessary.*—When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

§ 3561. *Payment for Honor.*—Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

§ 3562. *Attestation by Notary.*—The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it.

§ 3563. *Declaration Necessary.*—The notarial act of honor must be founded on a declaration made by the payor for honor, or by his agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays.

§ 3564. *Preference Between Two Offering Payment.*—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

§ 3565. *Payer for Honor Subrogated.*—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payor for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

§ 3566. *Refusal to Receive Payment Supra Protest.*—Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

§ 3567. *Payer for Honor Entitled to Bill and Protest.*—The payor for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

§ 3568. *When Set Constitutes One Bill.*—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

§ 3569. *Negotiation of Parts to Different Holders.*—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

§ 3570. *Indorsement to Different Parties—Liability.*—Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

§ 3571. *Acceptance of Different Parts.*—The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

§ 3572. *Payment, When a Part not Delivered.*—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

§ 3573. *Discharge of Part Discharges Whole.*—Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

§ 3574. *Promissory Note Defined.*—A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to

bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

§ 3575. *Check Defined.*—A check is a bill of exchange drawn on a bank, payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

§ 3576. *Presentment of Check.*—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

§ 3577. *Certification an Acceptance.*—Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

§ 3578. *Certificate Discharges Drawer.*—Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon.

§ 3579. *Check, not an Assignment.*—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.

§ 3580. *Style of Act.*—This act shall be known as the Negotiable Instruments Act.

§ 3581. *Definition of Terms.*—In this act unless the context otherwise requires,—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counterclaim and setoff.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

§ 3582. *Who Primarily and Who Secondarily Liable.*—The person "primarily" liable on an instrument is a person who, by the terms of the instrument, is absolutely required to pay the same. All other parties are "secondarily" liable.

§ 3583. *Reasonable Time, How Determined.*—In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the facts of the particular case.

§ 3584. *Sundays and Holidays.*—Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

§ 3585. *Act not Retroactive.*—The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage thereof.

§ 3586. *Law-merchant.*—In any case not provided for in this act the rules of the law-merchant shall govern.

MISCELLANEOUS ACTS.

§ 173. Legal Holidays.—"The following days are legal holidays, namely: Sunday; the first day of January, commonly called New Year's day; the fourth day of July; the

twenty-second day of February; the twenty-fifth day of December, commonly called Christmas day; and any day designated by public proclamation of the chief executive of the state as a legal holiday, or as a day of thanksgiving; the day known and observed as Memorial or Decoration Day; and the day on which a general election is held throughout the state": Laws 1891, p. 80, § 1; 2 H. C., § 42; Bal. Code, § 4709; Rem. & Bal. Code, § 61.

"The first Monday of September of each year is hereby declared to be a legal holiday in the state of Washington, to be known as Labor Day": Laws 1891, p. 39, § 1; 2 H. C., § 43; Bal. Code, § 4710; Rem. & Bal. Code, § 62.

"The twelfth day of February of each year, the same being the anniversary of the birth of Abraham Lincoln, be and it is hereby declared to be a legal holiday in the state of Washington": Laws 1895, p. 6, § 1; Bal. Code, § 4711; Rem. & Bal. Code, § 63.

§ 174. Interest.—"Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of six per centum per annum where no different rate is agreed to in writing between the parties. The discounting of commercial paper, where the borrower makes himself liable as maker, guarantor or indorser, shall be considered as a loan for the purposes of this chapter": Laws 1899, p. 128, § 1; Bal. Code, § 3668; Rem. & Bal. Code, § 6250. "Any rate of interest not exceeding twelve (12) per centum per annum agreed to in writing by the parties to the contract, shall be legal, and no person shall directly or indirectly take or receive in money, goods or thing in action, or in any other way, any greater interest, sum or value for the loan or forbearance of any money, goods or thing in action than twelve (12) per centum per annum": Laws 1899, p. 128, § 2; Bal. Code, § 3669; Rem. & Bal. Code, § 6251.

§ 175. Bills of Lading: Warehouse Receipts: Carriers' Bills of Lading.—In 1886,[1] 1891,[2] and 1909[3] laws were passed

1 Laws 1886, p. 121.
2 Laws 1891, p. 272.
3 Laws 1909, p. 377.

by the legislature making bills of lading, warehouse receipts and carriers' bills of lading negotiable. As the question might very naturally arise, it is well to consider whether they could be protested. It is only necessary to say that while the Law of 1891, page 274, section 5,[4] says that "all checks or receipts given by any person operating any warehouse, commission house, forwarding house, mill, wharf, or other place of storage, for any grain, flour, pork, beef, wool or other produce or commodity, stored or deposited, and all bills of lading, and transportation receipts of every kind, are hereby declared negotiable, and may be transferred by indorsement of the party to whose order such check or receipt was given or issued, and such indorsement shall be deemed a valid transfer of the commodity represented by such receipt, and may be made either in blank or to the order of another"; and while the Law of 1886, page 121, section 2,[5] says that "all the title to the freight which the first holder of a bill of lading or warehouse receipt had, when he received it, passes to every subsequent indorsee thereof in good faith, and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange," still a bill of lading is not negotiable in exactly the same sense as a bill of exchange or a promissory note, and could not be protested by a notary in the manner a bill of exchange or promissory note may be.

In the case of Shaw v. Merchants' National Bank of St. Louis, 101 U. S. 557, 25 L. ed. 892, March, 1880, Mr. Justice Strong of the supreme court of the United States handed down the following opinion: "Bills of lading are regarded as so much cotton, grain, iron or other articles of merchandise. The merchandise is very often sold or pledged by the transfer of the bills which cover it. They are, in commerce, a very different thing from bills of exchange and promissory notes, answering a different purpose and performing different functions. It cannot be, therefore, that the statute which made them negotiable by indorsement and delivery, or nego-

[4] 1 H. C., § 2407; Bal. Code, § 3598; Rem. & Bal. Code, § 3377.

[5] 1 H. C., § 2408; Bal. Code, § 3599; Rem. & Bal. Code, § 3378.

tiable in the same manner as bills of exchange and promissory notes are negotiable, intended to change totally their character, put them in all respects on the footing of instruments which are the representatives of money, and charge the negotiation of them with all the consequences which usually attend or follow the negotiation of bills and notes. Some of these consequences would be very strange, if not impossible; such as the liability of indorsers, the duty of demand ad diem, notice of nondelivery by carrier, etc., or the loss of the owner's property by the fraudulent assignment of a thief. If these were intended, surely the statute would have said something more than merely make them negotiable by indorsement." This case was quoted and followed in the case of Yarwood v. Happy, 18 Wash. 248, 51 Pac. 461, by Mr. Chief Justice Scott, in 1897, and in the case of Roy and Roy v. Northern Pacific R. Co., 42 Wash. 576, 85 Pac. 53, 6 L. R. A., N. S., 302, 7 Ann. Cas. 728, by Mr. Justice Crow, in 1906.[6]

§ 176. "Checks, etc., Made or Drawn by Telegraph—Effect of.—Checks, due-bills, promissory notes, bills of exchange, and all orders or agreements for the payment or delivery of money, or other thing of value, may be made or drawn by telegraph, and when so made or drawn, shall have the same force and effect to charge the maker, drawer, indorser, or acceptor thereof, and shall create the same rights and equities in favor of the payee, drawer [drawee], indorse [indorsee], acceptor, holder, or bearer thereof, and shall be entitled to the same days of grace, as if made or drawn and delivered in writing; but it shall not be lawful for any person other than the person or drawer thereof to cause any such instrument to be sent by telegraph, so as to charge any person thereby, except as hereinafter in the next section otherwise provided. Whenever the genuineness or

[6] 6 Cyc. Law & Proc., p. 424; Stollenwerck v. Thacher, 115 Mass. 224; Turner v. Israel, 64 Ark. 244, 41 S. W. 806; Cox v. Central Vermont R. Co., 170 Mass. 129, 49 N. E. 97; Falkenberg v. Clark, 11 R. I. 278.

execution of any such instrument received by telegraph shall be denied on oath, by or on behalf of the person sought to be charged thereby, it shall be incumbent upon the party claiming under or alleging the same to prove the existence and execution of the original writing from which the telegraphic copy or duplicate was transmitted. The original message shall in all cases be preserved in the telegraph office from which the same is sent'': Laws 1866, p. 74, § 14; Code 1881, § 2355; 1 H. C., § 1555; Bal. Code, § 4365; Rem. & Bal. Code, § 9310.

§ 177. Instruments Sent by Telegraph.—''Except as hereinbefore otherwise provided, any instrument in writing, duly certified, under his hand and official seal, by a notary public, ... to be genuine, within the personal knowledge of such officer, may together with such certificate, be sent by telegraph, and the telegraphic copy thereof shall, prima facie, only have the same force, effect, and validity, in all respects whatsoever, as the original, and the burden of proof shall rest with the party denying the genuineness or due execution of the original'': Laws 1866, p. 75, § 15; Code 1881, § 2356; 1 H. C., § 1556; Bal. Code, § 4366; Rem. & Bal. Code, § 9311.

§ 178. ''Seal and Revenue Stamp, How Described.—Whenever any document to be sent by telegraph bears a seal, either private or official, it shall not be necessary for the operator, in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the letters 'L. S.' or by the word 'Seal'; and whenever any document bears a revenue stamp, it shall be sufficient to express the same in the telegraphic copy by the word 'Stamp,' without any other or further description thereof'': Laws 1866, p. 76, § 18; Code 1881, § 2359; 1 H. C., § 1559; Bal. Code, § 4367; Rem. & Bal. Code, § 9312.

§ 179. ''Term 'Copy' or 'Duplicate' Construed.—The term 'telegraphic copy' or 'telegraphic duplicate,' whenever

used in this title, shall be construed to mean any copy of a message made or prepared for delivery at the office to which said message may have been sent by telegraph'': Laws 1866, p. 77, § 21; Code 1881, § 2362; 1 H. C., § 1560; Bal. Code, § 4368; Rem. & Bal. Code, § 9313.

CHAPTER XI.

BANKS AND NOTARIES.

§ 180. In General.
§ 181. Bank Liable.
§ 182. Banks Liable Only for Care in Selection of Notary.

§ 180. In General.—An important question often arises when a bill of exchange or promissory note is sent to a bank for collection, the bank turns it over for presentment and protest to a notary public, and he fails to discharge his duty. When the owner of the instrument finds that he is denied any action against indorsers by reason of the negligence of the notary, it becomes necessary to decide whether he must look to the bank or to the notary for his damages. The courts have divided on the question and as no case has gone to the supreme court in this state we cannot do better than to state the two doctrines.

§ 181. Bank Liable.—In the states of New Jersey, New York, South Carolina, Kansas and Indiana the courts have held that the notary is the agent of the bank and that, therefore, the default of the notary can be charged up to the bank. The Indiana case was one of an express company, but the principle applied is the same. In some older Louisiana cases the decisions seem to place them in this group; but later cases have decided the bank is not liable.[1]

§ 182. Bank Liable Only for Care in Selection of Notary. The courts of the United States, of Georgia, Maryland, Massachusetts, Mississippi, Ohio, Pennsylvania, Wisconsin,

1 Davey v. Jones, 42 N. J. L. 28, 36 Am. Rep. 505; Allen v. Merchants' Bank, 22 Wend. (N. Y.) 215, 34 Am. Dec. 289; Ayrault v. Pacific Bank, 47 N. Y. 570, 7 Am. Rep. 489; Mead v. Engs, 5 Cow. (N. Y.) 303; Thompson v. State Bank, 3 Hill (S. C.), 77, 30 Am. Dec. 354; Bank of Lindsborg v. Ober, 31 Kan. 599, 3 Pac. 324; Hitchcock v. Bank of Suspension Bridge (1901), 57 App. Div. 458, 68 N. Y. Supp. 234; Montillet v. United States Bank, 1 Mart., N. S. (La.), 365.

Iowa, Nebraska, and of Louisiana in later cases[1] have held that a notary public is a public officer, sworn by the state to discharge his duties properly, and, therefore, when he undertakes to perform any official duties he acts as a person having a duty to the public and that duty must be the supreme law of his conduct. This doctrine was explained in a Georgia case[2] as follows: "The notary is not a mere agent or servant of the bank, but is a public officer, sworn to discharge his duties properly. He is under a higher control than that of a private principal. He owes duties to the public which must be the supreme law of his conduct. Consequently, when he acts in his official capacity, the bank no longer has control over him, and cannot direct how his duties shall be done. If he is guilty of misfeasance in the performance of an official act, the bank is not liable. . . . . That the notary is also an employee and agent of the bank does not alter the case. There is still a sharp dividing line between his duties as agent and his duties as a public officer. When his public service comes into play his private service is, for the time, suspended." If the bank has exercised due care in selecting a reputable notary, or has placed the note or other instrument in the hands of its regularly employed notary to perform the usual notary's duties, the bank will not be liable for a default of the notary. Although New York does not follow this doctrine, the court

1 Britton v. Niccolls, 104 U. S. 757, 26 L. ed. 918; May v. Jones, 88 Ga. 308, 30 Am. St. Rep. 154, 14 S. E. 552, 15 L. R. A. 637; Citizens' Bank v. Howell, 8 Md. 530, 63 Am. Dec. 714; Warren Bank v. Suffolk Bank, 10 Cush. (Mass.) 582; Tiernan v. Commercial Bank, 7 How. (Miss.) 648, 48 Am. Dec. 83; Agricultural Bank v. Com. Bank, 7 Smedes & M. (Miss.) 592; Bowling v. Arthur, 34 Miss. 41; Gallipolis First Nat. Bank v. Butler, 41 Ohio St. 519, 52 Am. Rep. 94; Bellemire v. United States Bank, 4 Whart. (Pa.), 105, 33 Am. Dec. 46; Stacy v. Dane County Bank, 12 Wis. 629; Manning First Nat. Bank v. German Bank, 107 Iowa, 545, 70 Am. St. Rep. 216, 78 N. W. 195, 44 L. R. A. 133; Baldwin v. State Bank, 1 La. Ann. 13, 45 Am. Dec. 72; Hyde v. Planters' Bank, 17 La. 560, 36 Am. Dec. 621; Frazier v. New Orleans Gas Light Co., 2 Rob. (La.) 296; First Nat. Bank v. German Bank of Carroll Co., 107 Iowa, 543, 70 Am. St. Rep. 216, 78 N. W. 195, 44 L. R. A. 133; Williams v. Parks, 63 Neb. 747, 89 N. W. 395, 56 L. R. A. 759.

2 May v. Jones, 88 Ga. 308, 30 Am. St. Rep. 154, 14 S. E. 552, 15 L. R. A. 637.

in Smedes v. Utica Bank, 20 Johns. 372, questioned whether, if the bank selected a competent notary, it would be liable for his neglect, since notaries are officers appointed by the state, and confidence is placed in them by the government. But it has been held in some cases that if the bank employs a notary by the year, and takes from him a bond for the faithful discharge of his duties, he is to be regarded as an agent of the bank, and the bank will be liable for his negligence or default.[3]

[3] Bird v. Bank, 93 U. S. 96, 23 L. ed. 818; Ayrault v. Bank, 47 N. Y. 570, 7 Am. Rep. 489; Mechem on Agency, § 514; Gerhardt v. Boatman's Sav. Inst., 38 Mo. 601, 90 Am. Dec. 407; Wood River Bank v. Omaha First Nat. Bank, 36 Neb. 744, 55 N. W. 239; Thompson v. State Bank, 3 Hill (S. C.), 77, 30 Am. Dec. 354; Bank of Lindsberg v. Ober, 31 Kan. 599, 3 Pac. 324; Allen v. Merchants' Bank, 22 Wend. 215, 34 Am. Dec. 289.

CHAPTER XII.

NOTARIES AND INSURANCE.

§ 183. Standard Fire Policy.
§ 184. Proof of Loss to be Sworn to.
§ 185. Certificate by Nearest Notary.
§ 186. When Disqualified to Make Certificate.
§ 187. Notary's Certificate.

§ 183. Standard Fire Policy.—In the standard fire insurance policy now so commonly used throughout the states are the following words, being lines 67 to 80 inclusive:

"If fire occur the insured shall give immediate notice of any loss thereby in writing to this company,[a] protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all encumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the in-

sured has honestly sustained loss to the amount that such magistrate or notary public shall certify."

[a] FORM LXXIV.

Notice to a Fire Insurance Company of Claim for Loss or Damage by Fire.

To the *Georgetown* Insurance Company of *New York City:*

I hereby give you notice that on the *8th* day of *December,* the house No. *236 Fairview Avenue,* in the town of *Renton, Washington,* which is insured by you under Policy No. *567,431,* was totally destroyed by fire, and I claim payment of the sum of *one thousand* dollars, being the amount required to make good the loss covered by said policy.

RICHARD ROE.

Renton, Washington, December 9, 1910.

[The words in italics must be changed to suit the case.]

§ 184. Proof of Loss to be Sworn to.—From the previous section we find that the sworn proof which must be sent to the company within sixty (60) days from the date of the fire must set out the following: (1) The knowledge and belief of the insured as to the time and origin of the fire; (2) the interest of the insured and of all others in the property; (3) the cash value of each item thereof and the amount of loss thereon; (4) all encumbrances thereon; (5) all other insurance, whether valid or not, covering any of said property; (6) a copy of all the descriptions and schedules in all policies; (7) any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; (8) by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire.

Such proof is sufficient unless the company demands plans or specifications, when the insured must send either the original or a copy of the plans and specifications of any building, fixtures, or machinery destroyed or damaged, with a sworn statement attached that they are the originals or exact copies.

FORM LXXV.

Proof of Loss.

State of Washington,
County of *King*,—ss.

Be it known, that on this *10th* day of *December, 1910,* before me, *John Doe,* a notary public, duly appointed, commissioned and sworn, and residing in the county and state aforesaid, personally appeared *Richard Roe,* who, being duly sworn, says that the following statement and the papers therein referred to and signed with his own hand contain a particular, just and true account of his loss in the words and figures following, to wit:

I. That on the *5th* day of *January, 1910,* the *Georgetown* Insurance Company, by their policy of insurance, numbered *567,431,* did insure the party herein and therein named against loss or damage by fire to the amount of *one thousand* dollars on a certain *two-story frame building, known as number 236 Fairview Avenue, Renton, Washington,* for the term of *three* years from the *5th* day of *January, 1909,* to the *5th* day of *January, 1912,* at noon.

II. That in addition to the amount covered by said policy of said company, there was other insurance made thereon to the amount of *one thousand dollars,* as specified in the following schedule, besides which there was no other insurance thereon:

Policy in the Western Insurance Company dated January 6, 1909, for three years, in amount one thousand dollars, and covering the same property, viz.: one two-story frame building known as number 236 Fairview Avenue, Renton, Washington.

III. That the property insured belonged to *Richard Roe and was encumbered with no mortgages or otherwise; nor has there been any change in the title, use, occupation, location, possession or exposures thereof since the said policy was issued.*

IV. That the building insured or containing the property destroyed or damaged was occupied at the time of fire in its several parts by the parties hereinafter named, and for the following purposes, to wit: *John Stiles occupied the entire building as his home.*

V. That the actual cash value of the property so insured amounted to the sum of *three thousand* dollars at the time immediately preceding the fire, as set forth in the following schedule:

A two-story frame dwelling, with porch across the entire front. Size 40x50; four rooms on first floor; five rooms and bath on second floor; finished in hard woods, ash and cherry, on first floor; mantel in living-room; chandeliers in living-room and dining-room; built-in book-cases in living-room.

That on the *8th* day *December, 1910,* a fire occurred by which the property insured was injured or destroyed to the amount of *two thou-*

sand dollars, as set forth in the following schedule, which the deponent declares to be a just, true and faithful account of his loss as far as he has been able to ascertain the same:

(Here should be scheduled in full all property damaged or destroyed, showing the cash value of each item thereof and the amount of loss thereon.)

And the insured claims of the *Georgetown* Insurance Company the sum of *one thousand* dollars.

(If the policy contains any subdivisions, a statement should be placed here of the amount claimed under each subdivision.)

VI. That the fire originated *from the lace curtains in the living-room being blown by the wind into the gas flame about 9:30 o'clock on the night of the 8th day of December, 1910. That the family were away from home at the time, and the gas was lighted and window opened by one of the maids.* And the said deponent further declares that the said fire did not originate by any act, design or procurement on his part, or in consequence of any fraud or evil practice done or suffered by him, and that nothing has been done by or with his privity or consent to violate the conditions of insurance or render void the policy aforesaid.

RICHARD ROE.

Sworn and subscribed to before me this *10th* day of *December, 1910.*
[Notary's Seal] *JOHN DOE,*
Notary Public in and for the State of Washington, Residing in *Seattle.*

[The words in italics must be changed to suit the case.]

§ 185. Certificate by Nearest Notary.—The proof of loss sworn to before a notary as considered in the previous section need not be written by a notary; it may be filled out by the insured or by anyone else so long as it is sworn to by the insured before a notary or some other officer authorized to administer oaths. But the last part of the policy as set out in section 183 puts a new power in the hands of notaries. The policy says, lines 77–80:

"And shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify."

This portion of the standard policy has been passed on by courts in a number of cases throughout the United States. They have held that "the certificate of a magistrate or notary" is not part of the proofs of loss[1] and need not be furnished unless it is specifically asked for by the company.[2][a] But they have also held that the company has a perfect right to demand such a certificate where the policy contains the above clause.[3] It then becomes necessary for the insured to decide who the "nearest" notary or magistrate is, keeping in mind that he must be one "living nearest" and not one whose "office is nearest," and also that he must not be "interested in the claim as a creditor or otherwise, nor related to the insured."

The courts have divided on the question whether it is absolutely necessary for the magistrate or notary "living nearest" to make the certificate. Some courts have held that it is a condition precedent which must be strictly complied with,[4] and if the insured cannot get such certificate from the "nearest" notary or magistrate, notwithstanding repeated efforts, he cannot recover.[5] Other courts have held that such a construction is too strict, and that a clause

1 Merchants' Ins. Co. v. Gibbs, 56 N. J. L. 679, 44 Am. St. Rep. 413, 29 Atl. 485; Jones v. Howard Ins. Co., 117 N. Y. 103, 22 N. E. 578.

2 Burnett v. Amer. Ins. Co., 68 Mo. App. 343; McNally v. Phenix Ins. Co., 137 N. Y. 389, 33 N. E. 475; Jones v. Howard Ins. Co., 117 N. Y. 103, 22 N. E. 578.

3 Fire Ins. Co. v. Felrath, 77 Ala. 194, 54 Am. Rep. 58; Johnson v. Phenix Ins. Co., 112 Mass. 49, 17 Am. Rep. 65; People's Bank v. Aetna Ins. Co., 74 Fed. 507, 20 C. C. A. 630; Great West. Ins. Co. v. Staaden, 26 Ill. 360, 19 Cyc. Law & Proc., p. 852; 13 Am. & Eng. Ency. of Law, 2d ed., p. 352.

4 Fire Ins. Co. v. Felrath, 77 Ala. 194, 54 Am. Rep. 58; Johnson v. Phenix Ins. Co., 112 Mass. 49, 17 Am. Rep. 65; Dolliver v. St. Joseph F. & M. Ins. Co., 131 Mass. 39; Roumage v. Mechanics' Fire Ins. Co., 13 N. J. L. 110; Leadbetter v. Etna Ins. Co., 13 Me. 265, 29 Am. Dec. 505; 13 Am. & Eng. Ency. of Law, 2d ed., p. 352; Protection Ins. Co. v. Pherson, 5 Ind. 417.

5 Walker v. Phenix Ins. Co., 62 Mo. App. 209; Columbian Ins. Co. v. Lawrence, 2 Pet. (U. S.) 25, 7 L. ed. 335, 10 Pet. (U. S.) 507, 9 L. ed. 513; Leadbetter v. Etna Ins. Co., 13 Me. 265, 29 Am. Dec. 505; Lane v. St. Paul F. & M. Ins. Co., 50 Minn. 227, 52 N. W. 649, 17 L. R. A. 197.

of that kind must be interpreted reasonably.[6] They hold that if the "nearest" notary or magistrate refuses to give such a certificate, one by the next nearest will be accepted.[7] And Kentucky courts have held that the whole clause is invalid.[8]

The Washington courts have not been called upon to construe this clause of the standard policy as yet; it would be well, therefore, for the insured to follow the clause as closely as he is able to. In earlier policies the words "notary public" did not appear, and it was held in Cayon v. Dwelling House Insurance Company, a Wisconsin case,[9] that a notary was not a "magistrate." In deciding who the "nearest" notary or magistrate is, precise measurements as to a few feet will not be indulged in, where it can be shown that the insured attempted to carry out the spirit of the policy.[10]

From the above it will be seen that the insurance companies have conferred on the notary a power which he did not enjoy at common law and which has never been delegated to him by any statutes. He becomes in a way an officer of the insurance companies. The question as to when he is disqualified is taken up in the next section.

[a] In Egan v. Merchants' Fire Assn., 40 Wash. 513, 82 Pac. 898, November, 1905, Mr. Justice Hadley said: "Appellant contends that

6 Smith v. Home Ins. Co., 47 Hun (N. Y.), 39; Aetna Ins. Co. v. Miers, 5 Sneed (Tenn.), 139; Lang v. Eagle Fire Ins. Co., 12 N. Y. App. Div. 39, 42 N. Y. Supp. 539; Kelly v. Sun Fire Office, 141 Pa. 10, 23 Am. St. Rep. 254, 21 Atl. 447; 19 Cyc. Law & Proc., p. 853; Kelly v. Sun Fire Office, 141 Pa. 10, 23 Am. St. Rep. 254, 21 Atl. 447.

7 Lang v. Eagle F. Co., 12 N. Y. App. Div. 39, 42 N. Y. Supp. 539; Walker v. Phenix Ins. Co., 62 Mo. App. 209.

8 German American Ins. Co. v. Norris, 100 Ky. 29, 66 Am. St. Rep. 324, 37 S. W. 267.

9 Cayon v. Dwelling House Ins. Co., 68 Wis. 510, 32 N. W. 540.

10 Williams v. Niagara Fire Ins. Co., 50 Iowa, 561; Agricultural Ins. Co. v. Bemiller, 70 Md. 400, 17 Atl. 380; German-American Ins. Co. v. Etherton, 25 Neb. 505, 41 N. W. 406; Osewalt v. Hartford Fire Ins. Co., 175 Pa. 427, 34 Atl. 735; Peoria Marine & Fire Ins. Co. v. Whitehill, 25 Ill. 466; American Cent. Ins. Co. v. Rothchild, 82 Ill. 166; Daniels v. Equitable Fire Ins. Co., 50 Conn. 551.

the certificate was a necessary part of the proofs of loss. Under the terms of the policy we do not think it was. The policy provides absolutely that the assured shall furnish certain specified information concerning the loss. The certificate of the magistrate or notary is to be furnished only 'if required.' The assured gave full information concerning the loss strictly as provided by the policy. He could not know that the magistrate's certificate would be 'required,' as that was a matter that depended entirely upon the will of the insurer. The insured was under no obligation to furnish it unless it was demanded. . . . . But the mere fact that it was furnished did not make it a part of the proof of loss."

§ 186. When Disqualified to Make Certificate.—In the last section we learned that the notary must not be "interested in the claim as a creditor or otherwise, nor related to the insured." In one case it was held the fact that the magistrate was a general creditor only of the insured would not disqualify him.[1] But in a Wisconsin case it was held that a magistrate was disqualified whose house was not insured and was destroyed by fire communicated from the property of the insured, and before whom complaint had been entered, charging the insured with setting the fire.[2] And it has been held that a notary who has married the first cousin of the insured is "related to" him, within the meaning of the policy.[3]

§ 187. Notary's Certificate.—The certificate should follow the words of the policy and clearly set forth the facts the insurance company desires to know. The following is a form which, of course, may be varied to suit the occasion:

FORM LXXVI.

State of Washington,
County of *King*,—ss.[4]

This is to certify that I, *John Doe*, am a notary public of the state of Washington, having been duly appointed, commissioned and sworn; that I live at *100 Fairview Avenue, Renton*, Washington, and did on the

1 Dolliver v. St. Joseph F. & M. Ins. Co., 131 Mass. 39.

2 Wright v. Hartford Ins. Co., 36 Wis. 522.

3 People's Bank of Greenville v. Aetna Ins. Co., 74 Fed. 507, 20 C. C. A. 630.

4 Where the policy required that the proof should be sworn to before the notary public near-

8th day of *December, 1910,* live at that address; that I am *not personally* acquainted with *Richard Roe,* who owned the two-story frame house, situated at *236 Fairview Avenue,* which was burned on the night of the *8th* day of *December, 1910,* and am in no way related to him; that I am interested in no manner, as a creditor or otherwise, in the claim he has against the *Georgetown Insurance Company;* that I believe I live nearer to the aforesaid house that was burned than any magistrate or other notary;

And I further certify that I have examined the circumstances of the aforesaid fire and believe that the insured, *Richard Roe,* has honestly sustained loss in the said fire, and that the said loss will amount to *two thousand* dollars.

In witness whereof I have hereunto set my hand and affixed my official seal this *12th* day of *December,* nineteen hundred and *ten.*

[Notary's Seal] *JOHN DOE.*

[The words in italics must be changed to suit the case.]

est the place of fire, a certificate with no venue is fatally defective: McManus v. West Assurance Co., 43 App. Div. 550, 48 N. Y. Supp. 820, 60 N. Y. Supp. 1143, affirmed 60 N. E. 1115, 167 N. Y. 602.

CHAPTER XIII.

COMMISSIONERS OF DEEDS.

§ 188. Origin and Purpose.
§ 189. Laws Creating the Office of Commissioner of Deeds.
§ 190. Appointment: Term of Office: Powers.
§ 191. Depositions may be Taken by Commissioners of Deeds.
§ 192. The Oath.
§ 193. Fee: Seal.

§ 188. Origin and Purpose.—By the laws of 1854[1] the power was given the governor to appoint in the different states and territories persons to act as commissioners of deeds for the territory of Washington. His powers were "to administer oaths and to take depositions and affidavits to be used in this territory; and also to take the acknowledgment of any deed or other instrument to be used or recorded in this territory."

§ 189. Laws Creating the Office of Commissioner of Deeds.—The first law was passed in 1854 on the 13th of March, and is found on page 448 of the laws of that year. This was followed by the Law of 1863, page 500; the Law of 1871, page 91; the Law of 1873, page 477; the Code of 1881, section 2626; and the Law of 1890, page 90, which is the latest statute and which varies but little from the first law of 1854. See § 190, note [a].

§ 190. Appointment: Term of Office: Powers.—Commissioners of deeds are appointed by the governor under the seal of the state of Washington. He may appoint as many as he sees fit for the different states and territories, to hold office for a term of four years. They have power to administer oaths, and to take depositions and affidavits to be used in this state and also to take the acknowledgment of any deed or other instrument to be used or recorded in the state. As is seen, the commissioner of deeds has the same

1 Laws 1854, p. 448.

powers as the notary, with the exception that he cannot protest negotiable paper.[a] As to statutes and cases governing the exercise of his functions as a commissioner of deeds, see the same subject in this book as applied to notaries.

[a] "The governor may appoint in each of the United States, and the territories thereof, one or more commissioners, under the seal of this state, to continue in office for the term of four years, who shall have power to administer oaths, and to take depositions and affidavits, to be used in this state, and also to take the acknowledgment of any deed or other instrument to be used or recorded in the state": Laws 1890, p. 91, § 1; 1 H. C., § 339; Bal. Code, § 260; Rem. & Bal. Code, § 8305.

§ 191. **Depositions may be Taken by Commissioners of Deeds.**—"Depositions may be taken out of the state by a judge, justice, or chancellor or clerk of any court of record, a justice of the peace, notary public, mayor, or chief magistrate of any city or town, or any person authorized by a special commission from any court [of record] of this state": Laws 1877, p. 90, § 414; Code 1881, § 412; 2 H. C., § 1671; Bal. Code, § 6022; Rem. & Bal. Code, § 1239.

§ 192. **The Oath.**—Before exercising any of the functions of his office as commissioner of deeds an applicant must take and subscribe an oath that he will faithfully discharge all duties connected with the office. This oath must be filed in the office of the secretary of state at Olympia. The officer before whom such oath is taken must be either a clerk of a court of record, or some other officer having an official seal who is authorized to administer oaths in the state or territory for which such commissioner is appointed.[a]

[a] See § 193, note [a].

§ 193. **Fee: Seal.**—Before exercising any of the functions of his office an applicant must pay into the state treasury the sum of five dollars; and he must also provide himself with an official seal upon which must be engraved

the following: (1) Name of commissioner; (2) Words, "Commissioner of Deeds for the State of Washington"; (3) Name of state or territory for which he is commissioned (name of state or territory in which he lives); (4) Date of expiration of his commission.[a]

[a] "Before any commissioner appointed as aforesaid shall proceed to perform any of the duties of his office, he shall take and subscribe an oath before any clerk of a court of record, or other officer having an official seal authorized to administer oaths in the state or territory for which such commissioner is appointed, that he will faithfully discharge all duties of his office, a certificate of which shall be filed in the office of the secretary of state, and shall provide and keep an official seal, upon which must be engraved his name and the words 'Commissioner of Deeds for the State of Washington,' and the name of the state or territory for which he is commissioned, with the date at which his commission expires, and shall pay into the state treasury the sum of five dollars for the special state library fund": Laws 1890, p. 90, § 2; 1 H. C., § 340; Bal. Code, § 261; Rem. & Bal. Code, § 8306.

CHAPTER XIV.

WILLS.

§ 194. Purpose of Chapter.
§ 195. Who may Make.
§ 196. Who may Take by Will.
§ 197. What may be Disposed of by Will.
§ 198. Devises, Legacies and Gifts to Witnesses Void, When.
§ 199. How Will is Made.
§ 200. Form of Will.

§ 194. Purpose of Chapter.—This chapter is added because a notary is many times called upon hurriedly to write a person's will when no attorney can be reached, and it is thought this chapter may be of assistance to him. If possible, the person desiring to make a will should consult a lawyer and talk over the disposition of his property. It is an act that should be done with great consideration. It is impossible to go into the subject in this book.

§ 195. Who may Make.—"Every person who shall have attained the age of majority, of sound mind, may by last will devise all his or her estate, real and personal": Bal. Code, § 4594; 1 H. C., § 1458; Rem. & Bal. Code, § 1319. "Males shall be deemed of full and legal age when they shall be twenty-one years old, and females shall be deemed of full and legal age when they shall be eighteen years old, or at any age under eighteen, when, with the consent of the parent or guardian, or other person under whose care or government they may be, they shall have been lawfully married": 2 H. C., § 1134; Bal. Code, § 6401; Rem. & Bal. Code, § 1631.

§ 196. Who may Take by Will.—Any person may take property by will.

§ 197. What may be Disposed of by Will.—"Every person who shall have attained the age of majority, of sound mind, may by last will devise all his or her estate, real and

personal'': Bal. Code, § 4594; 1 H. C., § 1458; Rem. & Bal. Code, § 1319. ''Upon the death of either husband or wife, one-half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts'': 1 H. C., § 1481; Bal. Code, § 4621; Rem. & Bal. Code, § 1342.

§ 198. Devises, Legacies and Gifts to Witnesses Void, When.—''All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, shall be void unless there are two other competent witnesses to the same; but a mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to the will. If such witness, to whom any beneficial devise, legacy, or gift may have been made or given, would have been entitled to any share in the testator's estate in case the will is not established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him'': 1 H. C., § 1471; Bal. Code, § 4607; Rem. & Bal. Code, § 1332.

§ 199. How Will is Made.—''Every will shall be in writing, signed by the testator or testatrix, or by some other person under his or her direction in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator'': 1 H. C., § 1459; Bal. Code, § 4595; Rem. & Bal. Code, § 1320. ''Every person who shall sign the testator's or testatrix's name to any will by his or her direction shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request'': 1 H. C., § 1460; Bal. Code, § 4596; Rem. & Bal. Code, § 1321.

§ 200. Form of Will.

FORM LXXVII.

Last Will and Testament of *Jane Roe.*

I, *Jane Roe,* of *Seattle,* in the county of *King,* and state of Washington, being of sound and disposing mind and memory, do make, publish and declare this to be my last will and testament, hereby revoking any and all former wills by me at any time heretofore made.

1. I bequeath *to my son John the home we live in.*

2. I bequeath *to my daughter Mary all my bank stock.*

3. I bequeath to *my cousin Jane Doe the set of dishes trimmed in gold.*

4. All the rest, residue and remainder of my estate, real, personal, and mixed, I give, devise and bequeath to *my two children, share and share alike.*

I make, constitute and appoint *my son John* to be my executor of this my last will and testament.

In witness whereof, I have hereunto subscribed my name and affixed my seal the *tenth* day of *December,* in the year of our Lord one thousand nine hundred *ten.*

JANE ROE. [Seal]

The above written instrument, consisting of *two* pages was subscribed by the said *Jane Roe* in our presence, and acknowledged by *her* to each of us; and *she* at the same time declared the above instrument so subscribed to be *her* last will and testament; and we at *her* request, in *her* presence, and in the presence of each other, have signed our names as witnesses hereto, and written opposite our names our respective places of residence, on the day and year last above written.

JOHN JONES,
Residing at *400 1st Ave., Seattle,* Wash.
HENRY THOMAS,
Residing at *40 W. 17th St., Seattle,* Wash.
JOHN SMITH,
Residing at *Renton,* Wash.

[The words in italics must be changed to suit the case.]

CHAPTER XV.

DEFINITIONS.

§ 201. **Definitions.**—For the benefit of those users of this book who will not be able to consult a dictionary of law without great inconvenience, there has been added here a list of definitions which may be of use to some readers. Many will not care to consult it, but it may be of assistance to some and is added with that in view.

"Attestation" is the act of witnessing an instrument in writing, at the request of the party making the same, and subscribing it as witness.

"Ex Officio" are Latin words meaning "by virtue of his office."

"Admiralty Law" is the body of law applied to all maritime contracts, torts, injuries or offenses; the law of the sea.

"Court of Chancery" is a court formerly existing in England and still existing in several of the United States, which possesses an extensive equity jurisdiction.

"Interrogatories" is the name given to the questions framed by the party who produces the witness when a deposition is to be taken, but neither the parties nor their attorneys are to be present.

"Cross-interrogatories" are the questions framed by the adverse party, to examine witnesses produced on the other side.

"Domicile" is that place where a man has his true, fixed, and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning.

"Ad Diem" are Latin words meaning "at the day."

"Franking Privilege" is the privilege of sending certain matter through the public mails without payment therefor.

"Collateral." That which is by the side, and not the direct, line. That which is additional to or beyond a thing. A collateral issue is one taken upon some matter aside from the general issue in the case.

"Common Law" is that system of law or form of the science of jurisprudence which has prevailed in England and in the United States of America, in contradistinction to other great systems, such as the Roman or civil law. Kent's definition is: "Those principles, usages, and rules of action applicable to the government and security of persons and property, which do not rest for their authority upon any express and positive declaration of the will of the legislature."

"Civil Law" is the term generally used to designate the Roman jurisprudence.

"Aliunde" is a Latin word meaning "from another place."

"Functus Officio" are Latin words which are applied to something which once has had life and power, but which has become of no virtue whatsoever. When an agent has completed the business with which he was intrusted, his agency is functus officio.

"Ex Parte" are Latin words which mean "by one party." An affidavit or deposition is said to be taken ex parte when only one of the parties attends to the taking of the same.

"Ex Vi Termini" is a Latin expression meaning "by force of the term."

"Bill of Lading" is a written acknowledgment of the receipt of certain goods and an agreement for a consideration to transport and to deliver the same at a specified place to a person therein named or his order. It is at once a receipt and a contract.

"Affiant" is one who takes an oath to an affidavit; a deponent.

"Authentication" consists of acts done with a view of causing an instrument to be known or identified; when an

instrument is to go to a foreign country, the notary's certificate of acknowledgment is authenticated by the certificate and seal of the county clerk or secretary of state, and this is in turn authenticated by the certificate of the consul.

"et al." stands for the two Latin words "et alius," meaning "and another."

"et als." is the plural form of "et al.," and means "and others."

"i. e." stands for the Latin words "id est," which mean "that is."

"Hypothecation" "is a right which a creditor has over a thing belonging to another, and which consists in a power to cause it to be sold, in order to be paid his claim out of the proceeds. There are two species of hypothecation, one called 'pledge' and the other properly denominated 'hypothecation.' 'Pledge' is that species of hypothecation which is contracted by the delivery by the debtor to the creditor of the thing hypothecated. 'Hypothecation,' properly so called, is that which is contracted without delivery of the thing hypothecated": Bouv. Law Dict.

"Biennially." Every two years. "In a statute this term signifies, not duration of time, but a period for the happening of an event": People v. Tremain, 9 Hun (N. Y.), 573.

"Doctores Utriusque Iuris." Learned and conversant in the law.

"Fixtures." Personal chattels affixed to real estate, which may be severed and removed by the party who has affixed them, or by his personal representatives, against the will of the owner of the freehold: Bouv. Law Dict.

"Acceptor Supra Protest"; "Acceptor for Honor." These two expressions stand for the same person. "Supra" means "after." Such an acceptor is one who, to save the credit of the person who has allowed the instrument

to go to protest, accepts "after" the protest, for the "honor" of the person on whom it is drawn. He may also accept for the honor of one of the indorsers.

"Re-exchange." The expense incurred by a bill being dishonored in a foreign country where it is made payable and returned to that country in which it was made or indorsed and there taken up: Daniel on Negotiable Instruments, p. 1445.

"Exchange." Exchange is a negotiation by which one person transfers to another funds which he has in a certain place, either at a price agreed upon or which is fixed by commercial usage: Bouv. Law Dict. (Rawle's Rev.). By the rate of exchange between two places is meant that amount of premium which it will require to replace a certain sum of money in one place with that of the other; or which the right to a certain sum in one country will produce in another country. Or, putting it briefly, it is the difference in value of the same amount of money in different countries: 11 Am. & Eng. Ency. of Law, 2d ed., p. 559.

"Canon Law." "A body of ecclesiastical law, which originated in the church of Rome, relating to matters of which that church has or claims jurisdiction": Bouv. Law Dict. (Rawle's Rev.).

"Au Besoin." (French.) Same as the "Referee in Case of Need." "A phrase used in the direction of a bill of exchange, pointing out the person to whom application may be made for payment in case of failure or refusal of the drawee to pay": Bouv. Law Dict. (Rawle's Rev.).

"Days of Grace." It was the custom and law up to a comparatively recent time to allow three days to the acceptor of a bill or the maker of a note in which to make payment, in addition to the time contracted for by the bill or note itself. They were so called because in early times they were allowed by the grace or favor of the one to whom the money was due. Days of grace were abolished by the "Negotiable Instruments Law": Bouv. Law Dict. (Rawle's Rev.).

"Chambre des Notaires." The board in France which examines applicants for the position of notary.

"Licencie en Droit." One licensed in the law; one who has been granted the privilege to perform certain public acts.

"Elite." A French word meaning the choicest part. Here the flower of the law profession.

"Etude." A French word meaning "study," but here used in the sense of "office."

"Apostolic See." The office of the Pope at Rome.

"Papal Notary." One appointed by the Pope at Rome.

"Apostolic Notaries." Notaries appointed by the Pope at Rome.

"Roman See." The office of the Pope at Rome.

"Supra Protest." After protest.

"Acceptance Supra Protest." An acceptance after it has been protested.

"Stipulation." An agreement between counsel respecting business before the court: Anderson's Law Dict.

"Title." The title of a cause consists usually of the name of the court, the venue, and the parties.

"Prima Facie." (Latin.) "At first view or appearance of the business; as the holder of a bill of exchange, indorsed in blank, is prima facie its owner. Proof of the mailing of a letter is prima facie evidence of its receipt by the person to whom it is addressed": Bouv. Law Dict. (Rawle's Rev.).

"Respondent." "The party who makes an answer to a bill or other proceedings in chancery": Bouv. Law Dict. (Rawle's Rev.).

"Laches." (From French "lacher.") "Unreasonable delay; neglect to do a thing or to seek to enforce a right at a proper time": Bouv. Law Dict. (Rawle's Rev.).

"Warehouse Receipts." "Receipts given by a warehouseman for chattels placed in his possession for storage

purposes. They are not in a technical sense negotiable instruments, but have been made so by statute": Bouv. Law Dict. (Rawle's Rev.).

"Narrative Form." "An orderly continuous account of successive particulars of an event or of a series of events": Standard Dict. Told the same as a person would tell a story.

"Manifest." "A written instrument containing a true account of the cargo of a ship or a commercial vessel. It must contain a list of all packages or separate items of freight with their distinguishing marks, numbers, etc. By the United States statute it must also designate the ports of lading and of destination, a description of the vessel and the designation of its owners, and must contain the names of the consignees and passengers with a list of their baggage and an account of the sea stores remaining": U. S. Rev. Stats., § 2807; Bouv. Law Dict. (Rawle's Rev.).

"Felony"; "Gross Misdemeanor"; "Misdemeanor." "A crime is an act or omission forbidden by law and punishable upon conviction by death, imprisonment, fine or other penal discipline. Every crime which may be punished by death or by imprisonment in the state penitentiary is a felony. Every crime punishable by a fine of not more than two hundred and fifty dollars, or by imprisonment in a county jail for not more than ninety days, is a misdemeanor. Every other crime is a gross misdemeanor": Laws 1909, p. 890, § 1; Rem. & Bal. Code, § 2253.

"Misfeasance." The doing of a lawful act in an unlawful manner: 2 Kent's Com., p. 443.

"Malfeasance." The doing of an act which is positively unlawful or wrongful: 2 Kent's Com., p. 443.

"Nonfeasance." The nonperformance of some act which ought to be performed: Bouv. Law Dict.

"Non-negotiable." An instrument not payable "to order" or "to bearer."

"Standard Fire Insurance Policy." A form of fire insurance policy which has been adopted by a large number of the states of the United States; the insurance companies issue them even in states where they are not demanded by statute.

"Maturity." The time when a bill or note becomes due.

"Subpoena." (Latin, "sub" meaning "under" and "poena" meaning "penalty.") A process to cause a witness to appear and give testimony under a penalty therein mentioned.

"Subpoena Duces Tecum." (Latin, "duces" meaning "bring" and "tecum" meaning "with you.") A writ or process ordering the witness to appear and also to bring with him and produce to the court certain books, papers, etc., in his hands tending to elucidate the matter in issue: 2 Black. Com., p. 382.

"Ministerial." "That which is done under the authority of a superior; opposed to judicial; as, the sheriff is a ministerial officer bound to obey the judicial commands of the court": Bouv. Law Dict. (Rawle's Rev.).

"Judicial." "Judicial power is the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision": Miller, Const. U. S., p. 314.

"Verification." "An averment by the party making a pleading that he is prepared to establish the truth of the facts which he has pleaded": Bouv. Law Dict. An affidavit of one of the parties that the facts in the pleading are true.

"Jones v. Smith, 121 Mass. 15," means that the statement preceding or to which that refers is based on a decision of the court in Massachusetts handed down by a judge in a case, in which one person, Jones, brought suit against another person, Smith, and that the opinion may be found in volume 121 at page 15 of the official reports of Massachusetts. Sometimes the form, "Jones v. Smith, 10 Wend. (N. Y.) 100," is found. That refers to

a report of the state of New York. "Wend." is an abbreviation of the name of a man who published reports of New York cases.

"Statute Law" is the law created from time to time by acts of legislatures. Where statute law conflicts with the common law, the latter is, during the life of the statute, a nullity.

"Bona Fide Holder" is one who has taken a negotiable instrument before it was due, and with no notice of any irregularity in the instrument, or of any valid defenses that the maker had to it—and the owner must have parted with something of value in acquiring it. The consideration need not have been money—it may have been property, the granting of credit, or some disadvantage which the holder assumed in acquiring it. Such a holder is also called a "holder in due course."

"Commission" is an instrument issued by a court of justice, or other competent tribunal, to authorize a person to take depositions, or do any other act by authority of such court or tribunal.

"In Rem." Latin words meaning "against the thing." It is a technical term used to designate proceedings or actions instituted against the thing, in contradistinction to personal actions, which are said to be in personam, against the person.

"Statute of Limitations." "Statutes limiting the time within which a party having a cause of action should appeal to the courts for redress": Bouv. Law Dict. (Rawle's Rev.).

"De Bene Esse." "A Latin phrase meaning conditionally or provisionally. The examination of a witness de bene esse takes place where there is danger of losing the testimony of an important witness from death, by reason of age or dangerous illness, or where he is the only witness to an important fact. In such a case, if the witness is alive at the time of the trial, his examination is not to be used": Bouv. Law Dict. (Rawle's Rev.).

"Letters Rogatory." "An instrument sent in the name and by the authority of a judge or court to another, requesting the latter to cause to be examined, upon interrogatories filed in a cause depending before the former, a witness who is within the jurisdiction of the judge or court to whom such letters are addressed": Bouv. Law Dict. (Rawle's Rev.).

"Perpetuam Memoriam Rei." A Latin expression meaning to preserve an account of the matter. Practically the same as "de bene esse."

"Protocol." "A record or registry. Specifically: (1) Civ. Law. The record made and kept by a notary of a contract or other act executed before him. (2) Hence, in that part of the United States which formerly belonged to Mexico, the original entry made by a notary, alderman, or commissioner of a grant, transfer, or extension of title to lands": Standard Dict.

"Legal Tender." In accepting payment on a bill of exchange or promissory note a notary would be obliged to accept the following, being under the laws of the United States legal tender: Gold coins of the United States, silver coins of the United States of the amount of one dollar or of smaller denomination to the amount of ten dollars, minor coins to the amount of twenty-five cents, United States notes, demand treasury notes.[1] Trade dollars are not legal tender.[2]

The index will refer the reader to definitions given in the various chapters.

1 U. S. Rev. Stats., §§ 3584–3590; U. S. Rev. Stats. Supp. (1874–91), p. 264; 21 Stats. at Large, 7.

2 19 Stats. at Large, 215, revising Rev. Stats., § 3586.

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