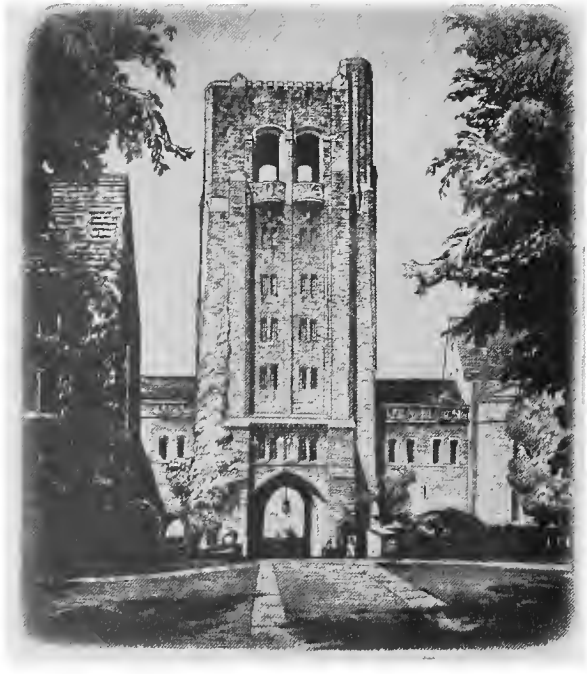

THE AMERICAN NOTARY AND COMMISSIONER OF DEEDS MANUAL

THE GENERAL AND STATUTORY REQUIREMENTS OF THESE OFFICERS PERTAINING TO ACKNOWLEDGMENTS, AFFIDAVITS, OATHS, DEPOSITIONS AND PROTESTS, WITH FORMS

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NOTARIES PUBLIC.

CHAPTER I.

HISTORY OF THE OFFICE.

§ 1. **A notary public** is an officer long known to the civil law, and designated as registrarius, actuarius, or scrivarius. Anciently he was a scribe, who only took notes or minutes, and made short drafts of writings and instruments, both public and private. At this day, in most countries, a notary public is one who publicly attests deeds or writings, to make them authentic in another country; but principally in business relating to merchants.[1]

Officers whose duties correspond closely to those of Notaries Public are traceable to the Roman Republic, although their duties differ very largely now.

The Frankish kings at an early date appointed them.

In Italy during the Middle Ages they were appointed by the Emperor or the Pope.

In France they have always been important personages, having been appointed by the King and also the Popes.

In Germany they are somewhat proscribed.

In England we learn of them at an early date, having at one time been appointed by the Popes, which right was subsequently denied by the kings who assumed their control. Not until the introduction of "Bills of Exchange" did they become fully appointed in England.

The notary is recognized as a necessary official in nearly all civilized countries. He is recognized by the law merchant, and his official acts are received as evidence, not only in his own, but in all countries. His duties are, often, of great variety and importance, consisting for the most part, in protesting inland

[1] Kirksey v. Bates, 7 Porter (Ala.) 529; Kinney's Law Dictionary; Mecham's Public Officers, Sec. 47.

and foreign bills of exchange, promissory notes, authenticating their dishonor by the refusal of the drawee to accept or pay them on presentation or when due. Also the authentication of transfers to property, administering the oath as to the correctness of accounts or statements of important documents, which are often necessary for transmissions to points where the parties directly in interest are unable to appear in person. The taking of depositions for actions pending in foreign or distant courts. The taking of the affidavits of mariners and masters of ships, their protests, etc., requiring care and judgment. In all such cases the notary's certificate or jurat, when accompanied with his official seal of office and proper certificates of his official character if the act is to be used beyond his own county or State is received as prima facie evidence.

This makes the office very important and necessarily one of caution and care, for in most cases the notary is supposed to know the parties with whom he is dealing, he is supposed to know what he is doing, considerate not only of the interests of the parties immediately present, but of the interests of all who shall subsequently be obliged to review or rely upon his work.

§ 2. The office is one of greater importance than is generally considered. Grave complications are likely to arise from their mistakes, making them and their bondsmen liable for damages. If possible they should be familiar with the law, mindful of what are legal holidays, maturing paper and presentment of same for acceptance or payment. They should have a seal and use it on all papers when the statutes requires.

§ 3. In the United States their office, powers and duties are regulated by statute and differ but slightly in the various States and territories. Courts take judicial notice of notaries within the county where the court is sitting.[2]

A notary public is a public officer, so recognized by the common law, the civil law and the law of nations.[3]

His duties are principally connected with commercial law, but he has many duties added by statute. A bank acting as collecting agent for its correspondent, in employing a notary in his official capacity, is bound to place the paper in the hands of a competent and careful notary and pay him for his services the legal fee, charging the same to their correspondent.[4]

[2] Schaefer v. Kienzel, 123 Ill., 430; Hertig v. People, 59 Ill., 237.
[3] Olive Nat. Bk. of Washington v. Hopkins, 8 Court of App., D. C., 146; supported by Governor v. Gordon, 15 Ala., 72; Pierce v. Judsith, 106 U. S., 546, 549.
[4] Id.

§ **4. Eligibility.**—They must be citizens of the State of which they are ministerial officers, usually twenty-one years of age, and of good moral character.

A notary public is a public officer and under the constitution of Nevada, anyone holding a lucrative office under the government of the United States, or any other power, is ineligible to the office.[5]

In some States bankers and persons holding official relations with the bank are incompetent to act as notary in cases where such bank is interested.[6]

§ **5. Women.**—By the common law no woman under the dignity of a queen could take part in the government of the State, and could hold no office except parish offices. Although a citizen she is not entitled to take any part in the government in the absence of constitutional or legislative provision. Several of the States have removed this restriction by legislative enactment.[7]

Some States have passed enabling acts providing for their appointment.

§ **6. Appointment.**—In the United States appointment is usually made by the Governor, either with the advice and consent of the senate, or by special legislative enactment. (See State following.)

In England they are appointed by the Court of Faculties and are obliged to serve an apprenticeship of five years, and then furnish a certificate from two notaries stating fitness for the office. A penalty is imposed for acting without authority. In London seven years' apprenticeship is required. The duties are similar to those in the United States.

On the continent of Europe they are appointed by the executive.

§ **7. A commission, or license,** is issued on the filing of the bond and oath of office, for which a fee, varying in each State, is required; this is usually remitted with the application for the appointment. Some States exact an annual fee.

§ **8. The term of office** is regulated by statute.

§ **9. Bond.**—A bond is usually required for a given sum, with sureties, approved by some State officer, usually the secretary of the State, assuring the faithful discharge of the duties of the office and accepting the liability for any damages sustained by parties from negligence or wrongful acts of the notary.

[5] State v. Clarke, 21 Nev., 333.
[6] Bank v. Butler, 41 O. S., 519.
[7] State v. Davidson, 92 Tenn., 531; Re House Bill, 9 Colo., 628; Opinions of Justices of Sup. Ct., 150 Mass., 586.

§ 10. An oath of office is required from notaries in all the States, and is usually attached or noted on their bond.

§ 11. Duties.—The duties of the office consist in making public acts requiring publicity, as, presenting for acceptance or payment and protesting for non-payment commercial paper, taking acknowledgments or proofs of deeds and other instruments in writing, taking depositions, affidavits, marine protests and administering oaths. Drawing legal documents, as deeds, mortgages, etc. Their duties and powers are regulated mainly by statute.

§ 12. Powers.—Notaries public of the several States, territories and the District of Columbia are 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 commissioners of the United States Circuit Court. The statutes of the United States confer no general authority to notaries public to administer oaths nor as to the manner of administering.[8]

A clerk of the United States courts may take acknowledgments in Illinois.[9]

In Illinois notaries public, although appointed in towns and cities, are county officers, and are not confined to the towns in which they reside. An acknowledgment of a deed can be taken by a notary public anywhere within the limits of the county,[10] or within the State.[11] Courts, ex-officio, take notice of the civil officers of the county in which it holds its sittings.[12] The characters "N. P." clearly indicate the office of notary public.

In attachment cases the affidavit may be made before any officer authorized by the laws of this State to administer oaths. If in the county, seal is not required, but is if outside the county or State.[13] In Tennessee a deed cannot be probated before a notary public by subscribing witnesses; his duty is to take acknowledgments, and the proof by witnesses must be made before the clerk of the County Court.[14] A notary public having acted as agent in obtaining a loan on property for a party is not disqualified from taking the party's acknowledgment to the mortgage on the property.[15] A notary hav-

[8] U. S. v. Hall, 131 U. S., 50.
[9] Woodruff v. McHarry, 56 Ill., 218.
[10] Hill v. Bacon, 43 Ill., 477.
[11] Guertin v. Mombleau, 144 Ill., 32.
[12] Dyer v. Flint, 21 Ill., 80; Thielman v. Burg, 73 Ill., 293.
[13] Rowley v. Berrien, 12 Ill., 198.
[14] McGuire v. Gallagher, 95 Tenn., 349.
[15] Penn v. Garvin, 56 Ark., 484.

ing acted as such for claimant violates no law by acting subsequently in the same matter as the claimant's attorney.[16]

A notary public of another State must certify that he has power to administer oaths; it cannot be presumed.[17] Proof of the official character of a notary public using a notarial seal is not required.[18] The general presumption is that a notary can administer oaths, unless proof to the contrary is offered.[19] A notary has power to imprison a witness for refusing to answer a question to a deposition.[20]

§ **13. Acts.**—Generally, their acts can only be impeached on the ground of fraud. Every act is accepted prima facie as true, and for that reason, if no other, they are of the most solemn character. Too much stress cannot be placed upon this, for often the office is looked upon as one of slight importance. A notary in Ohio was removed from office and fined for having certified blank receipts for the salary of a public officer, which receipts were subsequently filled out for fraudulent amounts. All documents should be properly filled out and signed by the party acknowledging before the signature of the notary is attached. Also, in case of the acknowledging of deeds, the parties must be known, or their personality declared by attesting witnesses to the officer taking the acknowledgment, and their signature to the paper must be signed in his presence or acknowledged to him. A notary public is an officer known to the law of nations, hence his official acts receive credence, not only in his own country, but in all others in which they are used as instruments of evidence.[21]

The unsupported testimony of a party to a deed that he did not execute it cannot prevail over the official certificate of the officer taking the acknowledgment.[22] A notary cannot be offered in evidence to impeach his own certificate of acknowledgment.[23] The characters N. P. clearly indicate the office of notary public.[24] Courts take judicial notice of the officers of their county, and proof of the official character of these officers is not required.[25]

In Michigan, a notary public, being a State officer, may act in any part of the State; while it is proper for him to

[16] Sullivan v. Hall, 86 Mich., 7.
[17] Keefer v. Mason, 36 Ill., 406.
[18] Harding v. Curtis, 45 Ill., 252.
[19] Crone v. Angell, 14 Mich., 339; Pinkham v. Cockel, 77 Mich., 265.
[20] DeCamp v. Archibald, 50 Ohio St., 618.
[21] Kerksey v. Bates, 7 Porter, Ala., 529.
[22] Kerr v. Russell, 69 Ill., 666.
[23] Shapleigh v. Hull, 21 Colo., 419.
[24] Rowley v. Berrian, 12 Ill., 198.
[25] Graham v. Anderson, 42 Ill., 514; Irving v. Brownell, 11 Ill., 402.

sign himself a notary public in and for the county for which he is appointed, his certificate of acknowledgment is not fatally defective if his county is omitted.[26] An officer is not disqualified from acting for parties when he is beyond the fourth degree of relationship to the parties.[27] By the universal consent of nations credence is given to the attestation of a notary.[28] As a public officer his office affects the people generally, and does not concern alone a particular district or private individuals. This is shown from the antiquity of the office, nature of their duties, and the fact that their acts have always been respected by the custom of merchants and the courts of all countries.[29] In Louisiana a notary's statement that a will was written by him, as dictated by the testator, in the presence and hearing of the witnesses, whose names are mentioned, and then read by him to the testator in the presence and hearing of said witnesses, at one and the same time, without interruption or turning aside, meets all the code requirements.[30] As an officer de facto his acts cannot be collaterally assailed by third parties. If an officer is in his place by appointment or election, and proceeds in the regular discharge of his duties, though he has not in all respects, in qualifying, complied with the statutes, his acts are entitled to credit. The statutes do not declare that the acts of the notary who fails to comply with their provisions shall be null and void, but they provide for a penalty.[31]

§ **14. A seal** is a plate or disc of metal, usually of circular form, having some device engraved upon it, with which an impression may be made on wax or other substance, on paper or parchment, for the purpose of authentication. Of this description are the seals of a government, the seals of courts, of public notaries and other public officers.[32]

Notaries must provide an official seal as required by statute; usually of a certain size, circular in form, having engraved on its surface in the outer circle his name, county and State, and in the inner circle the words "Notary Public." In some States the State coat of arms is also required. With this they shall authenticate all their acts. On removal from office this is deposited with an officer designated by statute. In all cases where a seal is necessary by law to any commission, process, or other in-

[26] Hall v. Sullivan, 86 Mich., 7.

[27] Churchill v. Churchill, 12 Vt., 661; Reed v. Newcomb, 62 Vt., 75.

[28] Spegail v. Perkins, 2 Root, 274.

[29] Keeney v. Leas and Lyon, 14 Ia., 464.

[30] Monroe et al. v. Lieberman et al., 47 La. Ann., 155.

[31] Keeney v. Leas and Lyon, 14 Ia., 464.

[32] Hinckley v. O'Farrell, 4 Blackf., 355; Connolly v. Goodwin, 5 Cal., 220. Burrell.

strument provided for by the laws of Congress, it shall be lawful to affix the proper seal by making an impression therewith directly on the paper to which such seal is necessary; which shall be as valid as if made on wax or other adhesive substance. (U. S. Rev. Statutes, 1878, Sec. 6.)[33] The impression of the seal on the paper in such manner as to be identified is sufficient.[34]

A notary cannot act until he has procured a seal. His official acts are void unless attested by it.[35] He must authenticate with his official seal, and not with a scrawl.[36] As a general rule, throughout the United States, official acts of a notary must be authenticated by seal as well as by his signature.[37] Some States require it to be attached to the certificate of protest.[38] While in others it is not, the certificate being sufficient evidence of the fact.[39] The notary's certificate of acknowledgment is incomplete without it.[40] Courts take judicial notice of the seals of notaries public, they are officers recognized by the commercial law of the world and are entitled to full faith and credit.[41] But the notary must state in his certificate that he has authority to act to verify the seal.[42] Some States require the notaries of other States and countries to have their official character certified to by the Clerk of the County Court under the court seal, or by the Secretary of the State under the great seal of the State. The seal authenticates the notary's signature. The Clerk of the County Court may certify to his appointment but not to his signature.[43] The seal of a notary is enough to indicate his official character. Nothing need be written after his signature,[44]

[33] Rowley v. Berrian, 12 Ill., 198; Beardsley v. Knight, 4 Vt., 471; Innis v. Withrow, 10 Ia., 305; Hinckley v. O'Farrell, 4 Blackf., 185; Stout v. Slattery, 12 Ill., 162; Dyer v. Flint, 21 Ill., 80.

[34] Pierce v. Indseth, 106 U. S., 546.

[35] Miller v. State, 122 Ind., 355; Innis v. Withrow, 10 Ia., 305; Gage etc. v. Dubuque & P. R. Co., 11 Ia., 310; Stephens v. Williams, 46 Ia., 540.

[36] Moore v. Titman, 33 Ill., 358; Hinckley v O'Farrell, 4 Blackf., Ind., 185; Dumont v. McCracken, 6 Blackf., 355; Booth v. Cook, 20 Ill., 129; Rindskoff v. Malone, 9 Ia., 540.

[37] Clark v. Wilson, 127 Ill., 449.

[38] Kirksey v. Bates, 7 Porter. Ala., 529.

[39] Bank of Ky. v. Pursley, 3 T. B. Mon., 238.

[40] Mason v. Brock, 12 Ill., 273; Rowley v. Berrien, 12 Ill., 198; Thompson v. Scheid, 39 Minn., 102.

[41] Pierce v. Indseth, 106 U. S., 546; Bradner's Evidence, p. 92; Gaylord v. Hibernian Bk., 68 Ill. App., 485; Kruse v. Wilson, 79 Ill., 233; Chiniquy v. Cath. Bishop, 41 Ill., 148; Hertig v. People, 159 Ill., 240; Schaefer v. Kienzel, 123 Ill., 430; Fellows v. Menasha, 11 Wis., 558; Walsh v. Dart, 12 Wis., 635; Sloane v. Anderson, 57 Wis., 123; Ely v. Wilson, 20 Wis., 523; Hayes v. Trey, 54 Wis., 503; Stoddard v. Sloan, 65 Ia., 680.

[42] Smith v. Lyons, 80 Ill., 600.

[43] Brown v. Phila. Bank, 6 Serg. & Rawle, 384; Stephens v. Williams, 46 Ia., 540.

[44] Gaynor v. Hibernian Bk., 68 Ill. App., 485; Moore v. Titman, 33 Ill., 358; Kruse v. Wilson, 79 Ill., 233; Chiniquy v. Cath. Bishop, 41

providing he states in his certificate that he has authority to act.[45] A notary's acts should always be attested by a notarial seal.[46] He must provide his own official seal. Its use is required to all acknowledgments outside the county or State where the notary resides.[47] Also the officer's name must be subscribed.[48] It is not essential to the validity of a deed that the notary's seal should be attached.[49] The seal is not essential, except in cases required by statute or the common law.[50] Proof of the official character of a notary public using a notarial seal, is not required.[50a] A notary's signature to his jurat without his seal is sufficient within his county, but not outside.[51] The use of another notary's similar seal instead of the notary's own, does not invalidate the instrument acknowledged, but is a breach of duty.[52] Notaries in taking affidavits need not use their seal if the affidavit is to be used within their county, but for use outside their county or outside the State their seal must be attached.[53] Under the statute of 1867 of Illinois notaries public were not required to authenticate their jurats to be used within the county for which they were notaries by their official seals.[54] An official seal imparts verity and is universally recognized as evidence of authenticity when accompanied by the notary's statement in his certificate that he has authority.[55] Affixed to an instrument makes it a specialty.[56] The statutes of Nebraska do not require the initials or name of the notary to be engraved on his seal.[57]

§ **15. Record.**—They are required to keep a record of many of their official acts, especially the protesting of commercial paper, with service of notice of same, the names of the parties interested and a description of the paper protested.

§ **16. On removal** from office, by expiration of term, death or otherwise, it is required to deposit with some public officer,

Ill., 148; Hertig v. People, 159 Ill., 240; Warvell's Abstracts, p. 207, sec. Ed.

[45] Smith v. Lyons, 80 Ill., 600.

[46] Booth v. Cook, 20 Ill., 129; Rindskoff v. Malone, 9 Ia., 540; Innis v. Withrow, 10 Ia., 305.

[47] Rowley v. Berrian, 12 Ill., 198.

[48] Clark v. Wilson, 127 Ill., 449.

[49] Robinson v. Robinson, 156 Ill., 250.

[50] Schaefer v. Kienzel, 123 Ill., 430; Mineral Point R. R. Co. v. Keep, 22 Ill., 9.

[50a] Harding v. Curtis, 45 Ill., 252; Stephens v. Williams, 46 Ia., 540.

[51] Stout v. Slattery, 12 Ill., 162; Dyer v. Flint, 21 Ill., 80; Moore v. Titman, 33 Ill., 358; Holbrook v. Nichol, 36 Ill., 161; Rowley v. Berrian, 12 Ill., 198.

[52] Muncie Nat. Bk. v. Brown, 112 Ind., 474.

[53] Dyer v. Flint, 21 Ill., 80; Stout v. Slattery, 12 Ill., 162; Rowley v. Berrian, 12 Ill., 200.

[54] Thielmann v. Berg, 73 Ill., 293.

[55] Moore v. Titman, 33 Ill., 358.

[56] Bouvier's Law Dictionary.

[57] Weeping Water v. Reed, 21 Neb., 261.

usually the clerk of the county, all records and papers of an official character, within thirty days after such removal.

§ 17. **Liability.**—A notary public, by assuming to perform any official duty or request of a party concerned, impliedly undertakes to discharge it faithfully, and is liable to the extent of any resulting injury if he fails to do so. An illustration is where commercial paper is delivered to him for protest and notice to the endorsers, or where he undertakes to certify to the acknowledgment of a conveyance.[58] For any misconduct, negligence or unskillfulness in performance of duty, he is liable for resulting damages. Failure to state that the acknowledging party to a deed was personally known or identified by a witness is negligence. A notary holds himself out to the world as fully capable of discharging the duties of his office.[59] They are liable for negligence in giving insufficient notice of protest.[60] Failure to give notice is a breach.[61] They are liable for negligence to the holder for commercial paper placed in their hands for protest by a bank. The bank is not liable in such cases.[62] They act independently for the owner of the note they protest, and not as agent for the bank placing same in their hands.[63] At common law, formal protest and notice by a notary are only necessary upon foreign bills and notes, and not on inland. When the notary makes the protest and gives the notice, in giving the notice the notary acts as the owner's agent and not officially. This is changed by statute and the act is official, as his certificate or entry upon a book is made evidence, and required. The rights of the parties depend upon the manner in which he discharges his duties. He is selected as a public officer, and failure to discharge his duty is a breach of his bond and renders his bondsmen liable for damages or loss sustained by the party who sought his services.[64] Most of the States positively forbid the attestation or acknowledgment of an instrument by the officer unless he positively knows, or has satisfactory evidence, on the oath or affirmation of credible witnesses, that the person making the acknowledgment is the in-

[58] Cooley on Torts, 466 sec. Ed; Marston v. Bank of Mobile, 10 Ala., 284; Curtis v. Colby, 39 Mich., 456; Com'l Bank v. Varnum, 49 N. Y., 269; Fogarty v. Fenlay, 10 Cal., 239; Bank v. Murfey, 68 Cal., 455; Ware v. Brown, 2 Bond., 267.

[59] Fogarty v. Finlay, 10 Cal., 239.

[60] Bowling v. Arthur, 34 Miss., 41.

[61] Tevis v. Randall, 6 Cal., 632.

[62] Bowling v. Arthur, 34 Miss., 41; Tiernan v. Com'l Bk. of Natchez, 7 Hav. Miss., 648; Bank v. Butler, 41 O. S., 519; Bank v. Bank, 49 O. S., 351.

[63] Bank v. Butler, 41 O. S., 519.

[64] Wheeler v. State of Tenn., 65 Tenn., 393, citing Nichols v. Webb, 8 Wheaton, 326; Morgan v. Vandugen, 2 Johnson, N. Y., 202.

dividual described in and who executed the instrument. A disregard of these requirements renders the officer or his sureties liable for any resulting loss or damage, unless the losing party is the proximate cause.[65] The false or fraudulent certificate of a notary renders the bondsmen liable for the damages sustained. The bond is conditional that the notary will faithfully discharge the duties of his office.[66] The sureties on a notary's bond are liable to the extent of their bond for the official misconduct only. It is no part of the notary's duty to receive money from or for anybody.[67] A notary's bond, furnished in compliance with a special law requiring it, is a legal bond, which the law forms part of. It is a contract to be strictly construed. The object being to make certain the faithful performance and discharge of all the duties of the office, and in case of his failure to do so, or any loss sustained, the sureties to be held liable. The bond is so conditioned for the protection of all persons employing him professionally. Before he and his sureties can be held it is necessary to determine whether the act done or not done, committed or omitted, was or not authorized by law and whether injury has been sustained. The liability of the sureties is only on his failure to discharge the duties of his office well and faithfully.[68] Faithful performance of duties voluntarily assumed and carried on for personal profit involves more than mere honesty, it involves care, diligence, attention and reasonable competency.[69] To hold liable the notary or his bondsmen the default must have been the proximate cause of the injury sustained. The measure of damages is the amount of the loss proximately sustained by the default.[70] No damages can be recovered from a notary or his bondsmen for official misconduct or neglect when no damage has been sustained.[71] He is not liable if he acts according to instructions; nor where the owner of the paper, advised of the notary's negligence, omits other proceedings or remedies which would have prevented loss; nor where the owner by his own laches has deprived the notary of the right of subrogation.[73] A bank is liable for the acts of a notary when

[65] Taylor v. W. P. R. R. Co., 45 Cal., 323; Bank of Cal. v. West. Union T. Co., 52 Cal., 280; Bank of Savings v. Murphy, 68 Cal., 455; Overacre v. Blake, 82 Cal., 77; Hatton v. Holmes, 97 Cal., 208.

[66] Doran v. Butler, 74 Mich., 643.

[67] Heldt v. Minor, 89 Cal., 115; Detroit Sav. Bk. v. Ziegler, 49 Mich., 157; Doran v. Butler, 74 Mich., 643.

[68] Monrose v. Brocard, 20 La. Ann., 78; Lescouzeve v. Ducatel, 18 La. Ann., 470; Schmitt v. Widow O. Drouet, 42 La. Ann., 1064; Weintz v. Kramer, 44 La. Ann., 35.

[69] Weintz v. Kramer, 44 La. Ann., 35.

[70] Mechems P. O. § 710, 712.

[71] McAllister v. Clement, 75 Cal., 182.

[73] Mechems P. O., § 705.

he acts as its agent.[74] Notaries public continue in office so long as they renew their bonds, unless suspended by the court. Failure to file their bond may be just cause for suspension, but the code does not provide for its vacating the office.[75] The law does not authorize notaries to receive money to erase mortgages.[76] The purchaser of property who, without authority, pays the price into the hands of the notary, incurs the risk of the deposit, and if the notary embezzle the money, the purchaser must sustain the loss.[77] Under the New York statutes a notary public is a public officer, and as such is forbidden by the constitution from accepting any free pass, free transportation, franking privilege, etc., from any person or corporation, or from making use of same while holding his office.[78]

§ **18. Liability to taxation.**—Authority to tax "trades, occupations and professions" does not authorize a tax on notaries public.[79]

§ **19. Fees.**—A notary's fees are all fixed and regulated by law. He has no right to ask more nor less, nor has any person for whom his services are rendered a right to require his services for less than his prescribed fees. A bank employing his services is bound to pay his prescribed legal fees.[80] An assignment by a public officer of his fees or salary before due is contrary to public policy and void.[81] Independent of any corrupt bargain nobody can deal with the fees of a public officer. The law presumes, with reference to an office of trust, that the officer requires the fees assigned him for the purpose of upholding the dignity of the office, and it will not allow him to part with them, or any portion, or to encumber them. It is against public policy and void.[82]

§ **20. Marine Protest.**—A declaration by a master of a vessel

[74] Wood River Bk. v. Omaha F. N. Bk., 36 Neb. — 744.

[75] Monroe v. Liebman, 47 La. Ann., 155.

[76] Monrose v. Brocard, 20 La. Ann., 78; Soloy v. Bank, 39 La. Ann., 90.

[77] Brown v. Schmidt, 7 La. Ann., 349; Soloy v. Bank, 39 La. Ann., 90.

[78] People of the State of N. Y. v. Rathbone, 145 N. Y., 434.

[79] Cooley on Taxation, supported by New Orleans v. Brenvenn, 23 La. Ann., 710.

[80] Ohio Nat. Bk. of Washington v. Hopkins, 8 Court of App. D. C., 146.

[81] Ohio Nat. Bk. of Washington v. Hopkins, 8 Court of App. D. C., 146, supported by Bangs v. Dunn, 66 Cal., 72; Schloss v. Hewlet, 81 Ala., 266; Bank v. Fink, 86 Tex., 303; Beal v. McVicker, 8 Mo. App., 202; Bliss v. Lawrence, 58 N. Y., 442.

[82] Ohio Nat. Bk. of Washington v. Hopkins, 8 Ct. App. D. C., 146, supported by Palmer v. Vaughan, 3 Swanst., 173; Parsons v. Thompson, 1 H. B., 322; Maguire v. Corwine, 101 U. S., 108.

before a notary, or other proper officer, of the causes of the distress or necessity under which he has been compelled to put into a port not of destination.[83] 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. Such protest, if not made before the collector, shall be produced to him, and to the naval officer, if any, and a copy thereof lodged with him or them. The master shall also, within forty-eight hours after such arrival, make report in writing to the collector of the vessel and her cargo, as is directed hereby to be done in other cases. And if it appear to the collector, by the certificate of the wardens of the port, or other officers usually charged with and accustomed to ascertain the condition of vessels arriving in distress, if any, or by the certificate of two reputable merchants, to be named by the collector for that purpose, if there are no such wardens, or other officers duly qualified, that there is a necessity for unloading the vessel, the collector and naval officer, if any, shall grant a permit for that purpose, and shall appoint an inspector to oversee such unloading, who shall keep an account of the same, to be compared with the report made by the master of the vessel.[84]

STATUTORY REQUIREMENTS.

§ 21. Ala.—ELIGIBILITY—Citizenship. WOMEN, are eligible. APPOINTMENT—By the Governor. COMMISSION, Fee—None seems to be required. TERM—Three years. BOND—$1,000, with sureties approved by the county probate judge. File and record same with him. OATH, to be taken. DUTIES—To administer oaths, take affidavits, acknowledgments, or proofs, of instruments. Demand acceptance or payment and protest commercial paper. Give notice of protest, collect delinquent taxes, issue attachments. Determine the offense of cruelty to animals. SEAL of office to be procured, with name of notary, office, State and county of appointment. RECORD—To be kept of all official acts, and certificates given when required and paid for. REMOVAL from office by death, expiration or otherwise, all records and papers to be deposited with the county probate judge within thirty days thereafter under penalty. Removal from the county vacates the office. CERTIFICATE under his seal and hand is evidence of facts stated. Justices act when there are no notaries, but they must

[83] Kinney's Law Dictionary, p. 554.

[84] U. S. Rev. Stat. 1878, Sec. 2891.

so state. FEE Bill—Collecting taxes, 25 per cent.; acknowledgments, 50c; presentment for acceptance or payment, 50c; protesting, $1.00; notice of, each, 50c; other protests, $2.00; oaths, 50c; copies from register per 100 words, 20c; certificate and seal, 25c; other certificates, 50c.

§ **22. Ariz.**—ELIGIBILITY—Must read and write the English language. WOMEN over 21 years of age are eligible. APPOINTMENT—By the governor. COMMISSION will issue from the Secretary of State to the County Recorder, who will notify the applicant. Fee, $2.50. TERM—Four years. BOND—$1,000, with sureties approved by the chairman of the board of supervisors. File with County Recorder. OATH to be taken before an officer authorized to administer oaths. Within twenty days same to be recorded with County Recorder. DUTIES—To take acknowledgments or proofs of instruments in writing, affidavits, depositions, oaths and affirmations, demand acceptances or payment, protest commercial paper. SEAL to be procured containing "Notary Public," his name and county. Authenticate all acts with same. Acts received as evidence throughout the State. RECORD to be kept of all official acts. REMOVAL from office, by death or otherwise, deposit all records and papers with County Recorder within three months, under penalty of from fifty to five hundred dollars. Destruction or defacing records subjects to heavy fine. JURISDICTION throughout the State. Residence in the county of appointment. Oaths and affidavits required to be taken in other States, may be taken before any judge or commissioner of a court of record, master in chancery or notary public authorized, under their official seals. FEES—Protesting a bill or note for non-acceptance or non-payment, registering and seal, $2.00; each notice of protest, 50c; protest in other cases for each 100 words, 20c; certificate and seal to such protest, 75c; taking acknowledgments, etc., 75c; taking acknowledgment of married woman, 75c; administering oath or affirmation, 75c; certificates under seal not provided for, 75c; copies of records, certificate and seal, less than 200 words, 75c; if more than 200 words, per additional 100, 20c; all other notarial acts, 50c; deposition of witness per 100 words, 20c; swearing witness to deposition and other business therewith, 75c.

§ **23. Ark.**—ELIGIBILITY—Citizen of the county for which appointed. APPOINTMENT—By governor. TERM of Office—Four years. COMMISSION Fee, $5.00. BOND—$1,000 with security. OATH required. DUTIES—To take, acknowledgments or proofs of written instruments, depositions, in and out of the State, affidavits, to administer oaths and affirmations. SEAL—He must provide a seal of his office, to represent by its impression the emblems and devices presented by the great seal of State, surrounded by the words "Notary Public," County of ———, Ark. All official acts to be authenticated therewith. Must state when his commission expires, on all acknowledgments or jurats. Penalty for omission is $5.00. RECORD—Shall keep a record of all his official acts in a book for that purpose and give a certified copy of any record to any person applying therefor on payment of the fee. REMOVAL—All papers and records to be delivered to the County Clerk. Acts received as evidence of the facts stated. FEES—For noting for protest, 50c; entering pro-

test, 75c; registering protest, 40c; notice to endorsers, etc., each, 50c; taking acknowledgment, 50c; each marine protest, $2.00; protest to secure insurance, $2.00; copy of record and papers in his office, each 100 words, 5c; for taking deposition, each deposition, $2.00; mileage to and from place to officer's office, per mile, 5c; all fees not to exceed for the day, $5.00; if more than one day, for each day, $2.00; for issuing subpœna, 50c; for issuing order of arrest, 50c.

§ **24. Cal.**—ELIGIBILITY—Must be a citizen of the United States and of this State, 21 years of age, resident of county for six months. WOMEN having these qualifications can be appointed. County officers cannot act, except district attorneys and treasurers. APPOINTMENT—By the governor. Commission Fee to State Secretary, $5.00. Certificate, bond and oath are filed as soon as certificate of same, signed by the County Clerk, must be sent to the Secretary of State. OATH to be taken. TERM—Four years. BOND—$5,000, to be approved by the judge of the County Superior Court. The same to be filed and recorded as other county officers' bonds. SEAL—To provide and keep an official seal, having engraved thereon the arms of the State, the words "Notary Public," and the county for which commissioned. All acts to be authenticated therewith. Same is prima facie evidence of the facts contained therein. DUTIES—To take acknowledgments or proofs of instruments in writing in his county. To take depositions, affidavits, administer oaths and affirmations incident to the office or to be used before any court, judge, officer, or board in this State. When requested to demand acceptance and payment of bills of exchange, or promissory notes, to protest same for non-acceptance or non-payment, to exercise such other powers and duties as by the law of nations and commercial usages, or by the laws of any other State, government, or country, may be performed by notaries. REMOVAL, by death, resignation or disqualification, all records must be delivered to the County Clerk within thirty days. RECORD—All their official acts, parties to, date, and character of every instrument acknowledged or proved by them. To give certified copies of same when so requested and upon receipt of their fees. LIABILITIES—Notary and his sureties liable for his misconduct or neglect to all parties injured, for damages. FEES—Protest, $2.00; notice of, $1.00; recording same, $1.00; drawing affidavit, deposition or other paper not herein mentioned, each folio, 30c; taking acknowledgments, etc., for the first two signatures, $1.00 each; additional signatures, 50c each; administering oath or affirmation, 50c; every certificate, including writing and seal, $1.00.

§ **25. Colo.**—ELIGIBILITY—Citizenship. WOMEN—Not eligible. APPOINTMENT—By Governor. COMMISSION to be recorded with the County Clerk before entering upon the duties of the office. TERM—Four years. BOND—$1,000 bond with sureties approved by the County Clerk. OATH—To be taken before entering upon the duties of the office. Bond, and oath endorsed thereon, to be recorded with the County Register of Deeds. POWERS AND OFFICIAL DUTIES—Take proofs of acknowledgment of all instruments of writing relating to commerce and navigation, administer oaths, make declarations, protests, and all acts usually performed by notaries in other States and territories. Act only in the county of appointment. SEAL—To pro-

vide an official seal, consisting of an impression on paper or wax, setting forth the notary's name and residence. He shall designate in writing the date of expiration of his commission. All official acts to be attested therewith. RECORD—Must keep record of all his official acts, and when required, give certified copies of same upon receiving his usual fee. REMOVAL—Within thirty days all papers and records to be deposited with County Register of Deeds. LIABILITY—Failure to do so is unlawful, and the aggrieved party may recover damages upon his bond of not less than $100.00 for each offense, and shall forfeit commission for unfaithfulness in office. FEES—Noting for protest, 50c; protesting and record, 75c; notices, each, 50c; certificate and seal, each 50c; acknowledgments, one, 50c; additional, each, 25c; depositions, per 100 words, 15c; swearing, seal and certificate, 25c; other fees same as justices.

§ **26. Conn.**—ELIGIBILITY—Citizen—Women are eligible. APPOINTMENT—By Governor. COMMISSION FEE—$1.00, half payable to State Treasurer. TERM—Two years from February 1. BOND—Not required. OATH—Yes, to be filed with the County Superior Court Clerk. Filing record of commission and oath, recorded with County Superior Court Clerk, who may certify to his authority and official acts. In New London County the record is made by the Clerk of the Court of Common Pleas. The Secretary to give notice of Revocation of commission within five days to the Clerk of the County Superior Court. SEAL—Not required. RECORD—Not required. REMOVAL—No statute. LIABILITIES—No statute. Jurisdiction—Any place in the State. FEE OF NOTARY—Marine protest, $2.00; entering protest of bill or note, or noting without protest, or administering an oath, to a pensioner, taking acknowledgment under seal, 50c; noting a bill or note for protest, recording protest, each notice to endorsers, etc., 25c; travel, per mile, 10c; oath to a pensioner, 25c; fee of witness per day, 50c; fee of witness for travel, per mile, 10c; depositions in State, each, $3 00; depositions out of State, each, $5.00; acknowledgments, 25c; affidavits, 10c; oaths, out of court, 10c; subpœna, 25c.

§ **27. Del.** —ELIGIBILITY—A citizen of the United States, to reside in the hundred for which appointed. APPOINTMENT—By the Governor. COMMISSION FEE—For appointment, $10; payable to the Secretary of State. TERM—Seven years. OATH, to faithfully discharge the duties of his office, duly signed and certified, shall be filed with the County Recorder. DUTIES AND POWERS—To acknowledge deeds and other instruments. To take the private examination of married women parties to a deed, administer oaths, etc. DUTIES notaries public in the City of Wilmington and New Castle. To give notice of the non-acceptance, non-payment and protest of any negotiable instrument, by mail, on the same day in which it was protested, directed to the residence or place of business of the party sought to be charged. The notice to be mailed personally by the notary, to which fact the notary shall make oath or affirmation if necessary. SEAL—To have a seal engraved with name of notary, title, date of appointment, anything else desired, term of office. RECORD to be kept of official acts. REMOVAL or expiration of office deposit records with County Recorder. A notary appointed for a bank, having an official position in

the bank, shall cease to act as notary when he ceases to hold his connection with such bank. LIABILITY for unfaithfulness in duties. FEES allowed them—Taking an acknowledgment, $1.00; taking and certifying an affidavit, 50c; taking depositions, court to allow a reasonable fee.

§ 28. D. C.—ELIGIBILITY—Resident of the district. APPOINTMENT—By the President. TERM OF OFFICE—Five years. BOND for $2,000 with security approved by the Supreme Court or a Justice thereof. OATH of office to be taken. He shall deposit an impression of his seal in the office of the Clerk of the Supreme Court of the District. DUTIES—To take depositions, to take acknowledgments, to take affidavits, oaths, to demand acceptance and payment of bills of exchange, etc., and to protest the same. They may perform such other acts for use and effect beyond the jurisdiction of the District according to the law of any State, territory or foreign government. SEAL—To provide a notarial with which he shall authenticate his official acts. RECORD—To keep a fair record of all his official acts, and when required, to give a certified copy of any record in his office to any person upon payment of the fees therefor. REMOVAL from office by death, resignation or removal from office, all records and official papers to be deposited with the Clerk of the Supreme Court of the District. LIABILITY—Any notary taking a higher fee than allowed shall be fined $100 and be removed from office by the Supreme Court of the District. The original protest of a notary public, under his hand and official seal, of any bill of exchange or promissory note for non-acceptance or non-payment, stating the presentment, service of notice, mode of notice, reputed residence of the party, and the nearest postoffice, same shall be prima facie evidence of facts stated. The certificate of a notary public, under his hand and seal of office, drawn from his record, stating the protest and the facts therein recorded, shall be evidence of the facts. Seal and official documents are exempt from execution. NOTARY'S FEES—Certificate and seal, 50c; taking depositions, per 100 words, 10c; administering an oath, 15c; taking acknowledgments with certificate, 50c; protesting and recording, $1.75; each notice of protest, 10c; each demand for acceptance or payment, if accepted or paid, $1.00. To be paid by the party accepting or paying the same; each noting of protest, $1.00.

§ 29. Fla.—ELIGIBILITY—Citizen of the United States. COMMISSION FEE, $1.00. APPOINTMENT—By the Governor. TERM—Four years. BOND for $500, with two sureties, subject to approval of the County Commissioners and Comptroller, which with oath is to be filed with the Secretary of State. TAKE OATH for faithful performance of duties. DUTIES—To take oaths, acknowledgments, protests, and solemnize marriages. SEAL—To procure an official seal for authenticating his acts. RECORD to be kept of official acts. REMOVAL from or expiration of office, records to be deposited with County Comptroller. LIABILITY for unfaithfulness. FEES—For protesting bills, notes, etc., $2.00; noting marine protest, etc., $2.00; administering oath, 10c; attendance at a demand, tender or deposit and noting, $1.00; each order for survey, 50c; copying papers necessary,

per 100 words, 20c; additional 100 or fraction, 10c; acknowledgments, 50c; each certificate with seal, 50c.

§ 30. **Ga.**—ELIGIBILITY—Citizen of the United States, 21 years old, or an attorney, and of good moral character. APPOINTMENT—By the judges of the Superior Courts, in vacation or in term time. TERM OF OFFICE—Four years, revocable at any time by the judges. COMMISSION—The Clerk issues it and keeps a register of their names. FEE for same, $2.00 in full. BOND—None required. OATH of office to be taken before the Clerk of the Superior Court, before entering upon their duties, which shall be entered on the minutes of the court, as follows: I, do solemnly swear, (or affirm,) that I will well and truly perform the duties of a notary public for the County of ———, to the best of my ability; and I further swear, or affirm, that I am not the holder of any public money belonging to the State, and unaccounted for. So help me God. DUTIES AND POWERS—To take acknowledgments relating to commerce and navigation, and to witness such deeds and papers as they are permitted by law. To demand acceptance and payment of commercial paper, or paper entitled to days of grace, to note and protest the same. To certify all official acts when required. To administer oaths which are not required by law to be administered by a particular officer. To exercise all other powers incumbent upon them by commercial usage or the laws of this State. They cannot issue attachments or garnishments, or subscribe affidavits or approve bonds for the same. JURISDICTION—The county of their residence and appointment. Removal from the county vacates the office. SEAL to be provided for authenticating his official acts, having the impression of his name officially, the name of the State and county of his appointment. No seal is required to his attestation of deeds. RECORD to be kept of his official acts signed by him with dates. REMOVAL from county vacates office. LIABILITIES for excess of charges. FEES—Every protest and oath, $2.00; noting protest, $1.00; registering protest, per copy sheet, 10c; copy of protest, per copy sheet, 10c; administering an oath, 30c; attendance on any person to make proof as a notary and certifying same, $1.00; every other certificate, 50c. The cost of registering is a charge and must be charged in the costs at the same time and paid by the party for whose benefit the noting and protesting was done.

NOTARIES FOR MILITARY DISTRICTS.—APPOINTMENT—By judges of the Superior Court in their respective circuits at the term of court next preceding the vacancy or at some succeeding term after such vacancy has occurred. Recommendation of to be by the grand juries of each county. COMMISSIONED by the Governor. TERM—Four years. They are ex-officio justices of the peace. Removable on conviction of malpractice in office. ACTS—Bills of exchange, drafts and promissory notes, required by the laws of this State, may be proved by the certificate of such notary under his hand and seal; certificate must be filed in court at first term and remain until trial. JURISDICTION extends over their districts, and of other districts in certain cases. They may sue or be sued before the other in the district; may preside in any district of their county when the other is disqualified. OATH, before entering on their office, to be taken and subscribed before the ordinary of the county, viz.: "I do swear that I will administer

justice without respect to persons, and do equal rights to the poor and to the rich, and that I will faithfully discharge all the duties incumbent on me as a justice of the peace for the County of ———, agreeably to the constitution and laws of this State, and according to the best of my ability and understanding. So help me God.

§ 31. **Idaho.**—ELIGIBILITY—An elector and a resident of the county. APPOINTMENT—By Governor. COMMISSION FEE, $10.00. TERM—Four years. BOND—With sureties for $1,000, approved by the County Probate Judge. OATH of office to be taken. Bond and oath of office with signature and impression of his official seal to be filed with the Secretary of State. Certificate of the filing under the seal of the Secretary of State must be filed with the Clerk of the County District Court. DUTIES—To demand acceptance and payment of bills of exchange, or promissory notes; to protest same for non-acceptance or non-payment, and such acts as the law of nations and commercial usages require; to take acknowledgments, depositions, administer oaths and affirmations. PROTEST—Under his hand and seal stating presentment and non-acceptance or non-payment thereof, the service of notice specifying the mode, place of residence of the party and the postoffice nearest to, is prima facie evidence of the facts. SEAL—To provide and keep an official seal having on "Notary Public" and name of his county. All official acts to be authenticated with same. RECORD of his official acts to be kept by him, and to give certified copies of when requested and paid for. ON REMOVAL, by death, resignation or removal from the county, or disqualification, his records and papers must, within thirty days, be delivered to the County Recorder, who must deliver them to the notary's successor. A notary having the records and papers of his predecessor may grant certificates or give certified copies with same effect as his predecessor. LIABILITY—For official misconduct or neglect the notary and his sureties are liable to the parties injured for all damages. FEES—Protesting, $3.00; serving notice of protest, $1.00; recording protest, 50c; drawing papers not here provided for, per folio, 30c; taking an acknowledgment, 50c; administering oath, 25c; certificate under seal, 50c.

§ 32. **Ill.**—ELIGIBILITY—Twenty-one years of age; a citizen of the United States, and a resident of Illinois for one year. WOMEN are eligible. APPOINTMENT—By the Governor, with the advice and consent of the Senate. As many as he deems necessary in each county. A petition, signed by fifty legal voters of the city, town, village or precinct, where the applicant resides shall be sent with the application. COMMISSION fee, payable to the Secretary of State when the application is made, is $2.00. TERM OF OFFICE—Four years, unless sooner removed by the Governor. BOND—Payable to the State of Illinois, for $1,000, with sureties approved by the Governor, conditioned for the faithful discharge of the duties of the office. OATH of office to be taken and subscribed to. Oath and bond to be deposited with the Secretary of State. On receipt of commission, same must be recorded in the office of the County Clerk, for which a fee of twenty-five cents shall be paid. SEAL—An official seal shall be procured, with engraved words descriptive of the office, the name of the place or county where resident. With this he shall authenticate his official acts. All the

above is required before acting. DUTIES AND POWERS—To protest commercial paper for non-acceptance or non-payment and to give written notice of same on the same day of protest to each and every endorser and maker, or within forty-eight hours of the time of such protest; personal notice to be served if within one mile of his office or if town has over ten thousand inhabitants, then service made by mail; take depositions, oaths, acknowledgments. JURISDICTION—Can execute the duties of his office throughout the State, while he remains in the same county. RECORD to be kept of all protests and notices of same with description of instrument and amount. ON REMOVAL, by expiration of office or death, all his official records shall be deposited with his County Clerk. If reappointed to office he shall retain same throughout the term of reappointment. CERTIFICATE OF MAGISTRACY can be procured from the Clerk of the county where entry was made under the Clerk's hand and official seal, or can be procured from the Secretary of State, under the great seal of the State. Fee, 25c. All notarial acts of notaries in this State authenticated by seal prior to the passage of the present law are held good and valid. Act of May 1, 1873, S. and C., p. 2818. All certificates of notaries in this State prior to the present law, failing to show the name of city, town or county for which the notary was commissioned, if shown from the certificate to have been performed in this State, are validated. (L. 1869.) S. and C., 1896, Ed. p. 2819. LIABILITY for neglect. Where the law imposes an obligation and confers the power to enforce it it implies a liability for neglect of the obligation. Gillett v. Ellis, 11 Ill., 579. FEES—For taking acknowledgment of a deed, mortgage, power of attorney, or other writing, with certificate under seal, 25c; for noting a bond or promissory note, or bill of exchange for protest, 25c; for protesting bond or bill of exchange, 75c; for noting protest, 25c; for noting marine protest and furnishing one copy thereof, $1.00; for extending marine protest and furnishing one copy thereof, $4.00; each additional copy furnished, $1.00; for giving notice to drawees and endorsers, each, 25c; for any other certificate under seal, 25c; for administering oath to an affiant, 25c; for taking depositions, for each one hundred words, in counties of first and second classes, 15c; in counties of the third class, 10c.

§ 33. **Ind.**—ELIGIBILITY—Upon certificates of good moral character, and qualifications from the judges of the Circuit Courts of the county of the applicant. WOMEN are eligible. APPOINTMENT—By the Governor. COMMISSION Fee, $1.00. For recording bond, 25c, to Secretary of State and Clerk of Circuit Court. TERM OF OFFICE—Four years. Wilfully acting after expiration subject to a fine from $25 to $500. BOND—To be filed with the Clerk of the County Circuit Court; approval by him for $1,000. AN OATH of office to be taken before entering upon their duties. POWERS—To do all acts authorized by the common law and the custom of merchants; to certify acknowledgments, affidavits, depositions; administer oaths. JURISDICTION—Throughout the State but not compulsory beyond his resident county. SEAL—To procure a seal indicating his official character, with such other devices as he may choose. All acts not attested by such seal to be void. But one protest on bank notes. All the bank

notes held or owned by any individual or his lawful attorney on any one day and presented at any bank for protest, shall be, by the notary public, carefully counted, sealed up in a package, and forwarded to the office of the auditor of State, and shall be entitled to but a single protest. LIABILITY—Overcharging and unfaithfulness is a misdemeanor punishable by a fine not exceeding one hundred dollars for each offense and loss of notarial commission. RECORD of official acts to be kept. REMOVAL or expiration of office, deposit records with County Circuit Clerks. A notary's certificate, attested with his official seal, is presumptive evidence of the facts stated. Applicable to all notaries in the United States. WHO CANNOT ACT AS A NOTARY—An officer in any corporation, association or bank in the business of such concerns cannot act as a notary; nor a person holding a lucrative office there. Penalty from $10 to $1,000 and imprisonment of from ten days to six months. FEES—Certificate and seal, 50c; taking deposition, for 100 words, 10c; administering an oath, 10c; each protest, 50c; each notice of protest, 25c; copying protest, for 100 words, 10c; acknowledgments and seal, 25c.

§ 34. **Iowa.**—ELIGIBILITY—Citizen of the United States. WOMEN—Not eligible. APPOINTMENT—By Governor. COMMISSION fee, $5.00. If satisfactory the commission will issue from the Secretary of State, who will advise the Clerk of the District Court of the county. He will file same for record. Revocation occurring, the Secretary of State will advise the party and the Clerk of the District Court. TERM—Three years from July 4. Secretary of State will notify on expiration. BOND—For $500, approved by the Clerk of the County District Court, shall with signature and impression of official seal attached be filed with the Secretary of State. OATH of office to be taken. POWERS and duties of the office are such as pertain by the custom law of merchants. May take acknowledgments in counties adjoining that of their residence in which a certified copy of their certificate of appointment may be on file with the Clerk of the District Court. SEAL—To procure a seal having the words "Notarial Seal," "Iowa" and the notary's name. RECORD of all notices sent and to whom sent is required. REMOVAL FROM OFFICE or the county, the records of the office are to be deposited with the Clerk of the County District Court within three months under penalty and liability to party injured thereby, Clerk to keep same and give attested copies of when required. LIABILITY—Acting after removal or expiration of office, or signing documents when the parties have not appeared before him, shall be fined not less than $50 and removed from office. FEES—Protesting, 75c; registering protest, 50c; being present and noting a demand, tender or deposit, 50c; administering an oath, 5c; certifying to same under seal, 25c; certificate under seal, 25c; other services same as justices of the peace; drawing and certifying an affidavit, 25c; affixing seal, 35c; manuscript of papers under his control, for 100 words, 10c; taking deposition, for 100 words, 10c.

§ 35. **Kas.**—ELIGIBILITY—Citizen of the United States. WOMEN—Not eligible. APPOINTMENT—By Governor. The commission, bond, oath of office, signature and impression of his seal to be recorded

with the Clerk of the County District Court and a fee paid of one dollar. After record the papers to be sent to the Secretary of State with a fee of one dollar for filing the same. TERM of office, four years. BOND to be given with sureties approved by the County District Court Clerk for $1,000. Sureties on official bonds may designate the amount of their surety. Laws 1891, p. 273. OATH of office to be taken. DUTIES AND POWERS—To take acknowledgments, administer oaths, demand acceptance or payment of bills of exchange and promissory notes, protest same when required, and to exercise such other powers and duties as required by the law of nations and commercial usage. SEAL—To be procured, containing notary's name and place of residence. All official acts to be authenticated with it. He shall add to his signature the date of expiration of his commission. Neglect of same is a misdemeanor punishable by fine of one hundred dollars. A RECORD to be kept of his official acts, certified copies to be given when required, and the customary fee paid. Protests for banks shall be kept in a book provided by the bank for that purpose, the same to be delivered to the bank when removed from office. ON REMOVAL from office by death, or otherwise, all official records and papers to be placed on file with the Clerk of the County District Court. Limitation of suit against a notary or his sureties is three years after the action accrues. FEES—Protest and recording, 25c; notice of, 10c; certificate and seal, 25c; other services the same fees allowed District Court Clerk; pension cases, no fee over 15c.

§ 36. Ky.—ELIGIBILITY—Citizen not disqualified from holding another office. APPOINTMENT—The Governor with consent of the Senate to issue commission. COMMISSION—Fee for $2.00. TERM of office, four years. BOND wth good sureties to be filed in his county Court for faithfulness. OATH of office to be taken in his County Court before acting, to honestly and diligently discharge the duties of his station. DUTIES AND POWERS—Take acknowledgments, oaths, protest commercial paper. Notice of Dishonor—After protesting, notice of dishonor to be sent to all parties thereto; to fix their liability when their residences are unknown to him, he shall send the notices to the holders. Names of the parties to whom notice was sent shall be stated in the protest, also the time and manner of. Same being prima facie evidence of the facts stated. JURISDICTION—Named in the commission. SEAL to be procured to authenticate acts. RECORD of protests to be recorded in an indexed book. Copies of which, certified by the notary under his official seal, shall be prima facie evidence in all courts of this commonwealth. REMOVAL—By expiration, death, or otherwise, all records of office to be filed with the Clerk of the County Court. The Clerk's certified copies from such records shall be evidence in all the courts of the State. Date of expiration of commission to be stated on all his certifications. His signature and official seal is sufficient authentication when placed on all instruments required. Vacancies filled by the Governor during the Senate's recess, the appointment to expire at the end of the next session of the Senate. Protests in other States properly certified shall be received as evidence in this State. LIABILITY—A false statement in protest of notices being sent shall be deemed false swearing, for which he shall be confined in the peni-

tentiary not less than one nor more than five years. Failure to record protests, subjects to forfeiture of fee and a fine of five dollars recoverable before any justice of the peace. NOTARIAL FEES—Every attesting, protesting, or taking, acknowledging, and certifying under seal, 50c; recording same, 75c; notice of protest, each, 25c; administering oath with certificate, 20c.

§ 37. **La.**—ELIGIBILITY—A male citizen, resident of the parish five years, to pass examination before the judge of the Supreme, District or Parish Court. In New Orleans; two years' residence, of good moral character and competent. APPOINTMENT—By the Governor with consent of Senate. N. O. parish, 40 to 150 can be appointed. TERM—Five years or as often as bonds are renewed. BOND—$5,000 for N. O. parish, $1,000 for other parishes, with approved security, executed before any District Court Clerk, same with certificate to be filed with auditor of public accounts. Renewable every five years. In New Orleans, $10,000. OATH. DUTIES—To make inventories, appraisements, partitions, receive wills, protests, matrimonial contracts, conveyances, contracts and instruments in writing; to hold meetings of creditors and families, take acknowledgments, affix seals upon deceased persons' effects, and raise same; to administer oaths. Jurisdiction—Their resident parish. SEAL—To procure seal. RECORD required for protests, parties, etc., with facts. Also all deeds to be recorded with register for New Orleans within 48 hours after passage. Acts to be performed in their office unless party prevented. Names—Christian name of married or widowed woman to be given adding that she is the wife or widow of ——. Christian name and not initials always to be given by notary under penalty of $100. Registration refused if otherwise. Married women over 21 years can, with husband's consent, renounce her dotal, paraphernalia and other rights in favor of third parties. Sale of property acts can't pass until all taxes are paid. Penalty for violating is $50 to $200. Movable property acts to be recorded with parish recorder; also marriage contracts and all acts passed within 15 days. In New Orleans the office to be kept in a brick building, covered with tile, slate or terrace, under penalty. LIABILITY to suspension and damages for misfeasance, failure to record acts. Absence granted by Governor.

§ 38. **Maine.**—ELIGIBILITY—A citizen. APPOINTMENT—By the Governor with consent of the council. COMMISSION Fee, $5.00, to be paid before acting. TERM—Four years. BOND to be given. OATH of office to be taken and subscribed to. DUTIES AND POWERS—When requested he shall record all losses or damages sustained or apprehended on sea or land, and all averages, and such other matters pertaining to his office; grant warrants of survey on vessels; all facts, extracts from documents and circumstances so noted, signed and sworn to by the parties protesting, he shall note, extend and record the protests made, grant authenticated copies thereof under his signature and official seal when requested and paid for; present any negotiable paper for acceptance or payment to party liable; notify parties thereto; record and certify contracts; take depositions the same as a justice of the peace and quorum; take acknowledgments; administer oaths; certify country products, and do all acts authorized by law and the usages of merchants.

SEAL—Shall keep a seal having engraved thereon his name, "Notary Public," "Maine," the State coat of arms, or other device, as he chooses. RECORD—To record same in a book for that purpose. Acts under his seal and signature shall be received as evidence in all courts. REMOVAL by resignation or otherwise, or by death, his records shall, within three months, be deposited with the Clerk of the County Judicial Courts. Neglect forfeits from fifty to five hundred dollars. LIABILITY—A wilful destruction, defacing or concealment of these records forfeits not less than two hundred nor more than one thousand dollars, and liability for damages to party injured. The penalties provided for one-half accrues to the State, balance to the prosecutor. The Secretary of State shall on the first days of June and December forward to the Clerks of the State courts, registers of probate courts, judges of municipal and police courts, clerks of the United States courts, and United States pension agents in the State a list of all notaries in the State. FEE for protesting, notifying parties and recording, $1.50. Oaths, affidavits, depositions, 20c; writing depositions, per page, 12c; acknowledgments, 20c; Marine protest, etc., no statute.

§ 39. **Md.**—ELIGIBILITY—Good character, integrity and abilities, citizens of the United States, resident of this State two years, to be resident in such place designated in the commission. APPOINTMENT—By the Governor, with consent of the Senate; two to a county. Not more than twelve to be commissioned for Baltimore City, one to be conversant with the German language. COMMISSION Fee—Baltimore, $20. Payable to the Clerk issuing the commission. BOND with security for $6,000 to be given, subject to the approval of the Governor, if the appointment is for Baltimore City, and $2,000 if for any county in the State. Neglect to give bond within thirty days forfeits the appointment. OATH—To be taken and subscribed to before the Clerk of the Superior or Circuit Court. DUTIES—To administer oaths, take acknowledgments, make protests, certified under his seal of office. Any special acts required to be performed in another county. SEAL of office to be procured by the notary for attesting his official acts, having engraved upon it such device as he may desire and the name, surname and office of the notary and his residence. RECORD of all official acts to be kept and certified copies given when required and payment made for. ON REMOVAL by death or otherwise all official records to be deposited with the County Court Clerk within sixty days. If in Baltimore, in the office of the Superior Court Clerk. One-half protest fees to be paid the State Treasurer in the first week of January, April, July, and October, under forfeiture of fifty dollars in each case, providing fees exceed $350.00 per annum, and in Baltimore $500.00. The statement of protest fees to be given upon oath. No protest to be signed or issued unless stamped by the Comptroller, under penalty of $500.00 for each offense, to be recovered by indictment, one half for the State, balance for the informer. No protests to be rejected as evidence if otherwise admissible. LIABILITY for misfeasance or unfaithfulness in office. NOTARIES PUBLIC FEES—Protesting, $2.00; drawing proceedings exceeding two sides, 50c; do., per side, 25c; registering or copying proceedings, for every side, 10c; presenting for acceptance if accepted and not protested, $1.00; noting for non-acceptance, if not

protested, $1.00; noting a marine protest, $1.00; affixing seal, 50c; every search where no copy is made, 25c; administering an oath or taking an acknowledgment, 12½c; traveling more than 3 miles, per mile, 20c; each notice mailed or delivered, 5c; presenting and collecting note or bill, $1.00; other acts in proportion.

§ 40. **Mass.**—ELIGIBILITY—Citizenship. APPOINTMENT—By the Governor, with consent of the council. COMMISSION Fee, $5.00. TERM—Seven years, unless removed. BOND—None required. OATH—Must take. DUTIES—Can administer oaths, take affidavits of banks, protest commercial paper, and give notice of, take acknowledgments, depositions and oaths. Notice to owners of insecure buildings, who live out of the commonwealth, may be served by a notary public, under his official seal. Notaries can be appointed Registrar of Voters and License Commissioners. Jurisdiction in all counties of the State. SEAL—Official seal required. RECORD to be kept of official acts. REMOVAL by any cause, records and papers to be deposited with the County Clerk within three months under a penalty not exceeding five hundred dollars. LIABILITY—Knowingly destroying, defacing or concealing such records subjects to a penalty not exceeding $1,000 and liability for damages. Acting after expiration of office is punished by fine of $100 to $500. Must be satisfied as to the identity of party making oath to nomination papers under penalty of $10 to $50 for each offense. FEES—Protesting, $500 or more, $1.00; protesting, less than $500, 50c; recording same, 50c; noting, 75c; notice, each, 25c; provided a $500 or more does not cost over $2.00; provided less than $500 does not cost over $1.50; the noting, recording and notice not to cost over $1.25.

§ 41. **Mich.**—ELIGIBILITY—21 years of age, resident of the county and a citizen of the State. WOMEN are eligible. APPOINTMENT—By the Governor. COMMISSION—On a written application, stating age, and the endorsement of a member of the Legislature, or of the Circuit or Probate Judge of the county district or circuit where applicant resides, same to be presented to the Governor with a fee of $1.00 enclosed. TERM—Four years. OATH OF OFFICE to be taken before the County Clerk and with him filed within ninety days after receiving notice of appointment. On the last days of December, March, June and September the Clerk transmits to the State Treasurer and Secretary of State a written list of all persons and their addresses to whom he has delivered commissions during the quarter; also the date of the filing of their oath and bond. For which applicant pays 50c. County Clerk, if appointed, files his oath with the County Probate Judge. BOND—$1,000, approved by the County Clerk. DUTIES AND POWERS—To take acknowledgments of deeds, oaths, affidavits, demand acceptance of bills of exchange, promissory notes, protest same for non-payment or non-acceptance, and to perform such other duties as required by the law of nations and commercial usage or by the law of other States, government or country. Residence must be in the county for which appointed, but they can act throughout the State. SEAL—To provide a seal to authenticate his acts. REMOVAL—When occurring, all official records and papers shall be deposited with the County Clerk within three months under a penalty of $50.00 or $200.00. RECORDS OF THE OFFICE—To be kept on file by the County Clerk.

If previously destroyed or concealed, the party so doing shall forfeit and pay damages to the party injured not exceeding $500. Attorneys in a case cannot administer oaths when notaries. Acts received as presumptive evidence when under his hand and official seal. FEES—Administering oath for pension, etc., to soldiers or sailors, 15c; no fee for administering oath of office to legislators, military or township officers; protest, when necessary by law, 50c; protest, otherwise, 25c; notice of protest, each, 25c; affidavit, per folio, 20c; copy, per folio, 6c; drawing affidavit or other papers not mentioned, per folio, 20c; copying the same, per folio, 6c; taking acknowledgments, etc., 25c for one, 10c add.

§ 42. **Minn.**—ELIGIBILITY—Citizen of the State, 21 years of age. APPOINTMENT—By Governor. COMMISSION Fee, $3.00. Record of commission to be made with the Clerk of the County District Court on payment of one dollar. TERM—Seven years. BOND—$2,000 with sureties approved by the Governor. OATH—Required for faithfulness, etc., which, with the bond, to be filed with the Secretary of State. POWERS—Jurisdiction throughout the State while resident of the county for which appointed. To administer oaths, take depositions, certify acknowledgments, receive, make out and record notarial protests, to compel attendance of witnesses. SEAL—Must provide with same design on as the State seal, together with the words notary public; size 1⅝ inches in diameter; also the name of the county where resident. RECORD to be kept of protests and notices. ON REMOVAL from office the seal and register to be deposited with the Clerk of the County District Court. LIABILITY—For acting after expiration of office or for appending signature when parties have not appeared before him, $100 and removal from office. For overcharging or misfeasance in office. FEES—Witnesses, per day, $1.00; witnesses, travel, per mile, 6c; commission for taking deposition, per folio, 15c; protest, when necessary by law, $1.00; protest, otherwise, 50c; notice of protest, each, 50c; drawing affidavit, per folio, 20c; copying affidavit, per folio, 6c; administering oath, 25c; taking acknowledgments, 25c; taking deposition, per folio, 15c; recording instrument, per folio, 10c.

§ 43. **Miss.**—ELIGIBILITY—Citizen and belief in a supreme being. APPOINTMENT—By the Governor. COMMISSION Fee. TERM—Four years. BOND—For $2,000 with sureties approved and conditioned by the Board of Supervisors and County Chancery Clerk. OATH of office to be taken. Oath and bond to be filed with the Clerk of the County Chancery Court. DUTIES—To administer oaths incident to his office, receive proofs or acknowledgments, make declarations, and other matters commercial usage requires, all under official seal. SEAL—To be provided, having on the name of the city or town, with that of the State, his name on the margin, and "Notary Public" across the center. All his official acts to be attested with same. RECORD—He shall keep a register of all his official acts and give certified copies of same when requested and paid for. REMOVAL, by any cause, all official papers and records to be deposited with the County Clerk within thirty days. The Clerk may maintain action for them. Ex-officio notaries, justices of the peace, clerks of the Circuit and Chancery Courts, by virtue of their office, can discharge all the duties of notaries and attest their acts by the common seal of office with the

same effect. The Board of County Supervisors to provide a notarial seal with the inscription "Notary Public of the County of ———," around the margin and the image of an eagle in the center, which seal shall be kept in the office of the Clerk of the Circuit Court for the use of ex-officio notaries public. LIABILITY—Unfaithfulness in office. FEES—Protesting, $1.00; registering same, 50c; attesting letters of attorney, 50c; affidavit to an account, 50c; oaths, 50c; notarial procuration and seal, $1.00; certifying sales at auction, 50c; taking proof of debts, 50c; copy of record and affidavit, $1.00; insurance protest, $1.00; acknowledgments, 25c.

§ 44. **Mo.**—ELIGIBILITY—Age 21 years if male; A citizen of the United States and of this State. WOMEN are eligible; 18 years of age. APPOINTMENT—By the Governor. COMMISSION Fee, $5.00. TERM of office, four years. BOND—With two securities for $2,000. In counties of more than 100,000, $5,000, approved by the Clerk of the County Court (in St. Louis, by the Clerk of the Circuit Court). Bond and oath shall be filed and recorded with the County Clerk; in St. Louis, with the Circuit Clerk. The bond after recording shall be filed with the Secretary of State. No suit shall be instituted against any notary or his sureties more than three years after action accrued. OATH to be taken and endorsed on the commission. DUTIES—May administer oaths and affirmations, take acknowledgments, affidavits, depositions, make declarations and protests, under official seal. Have the power and perform the duties of register of boatman. SEAL—Shall provide a notarial seal having on their name, "Notary Public," county or city where resident, and the name of the State. Shall designate in writing, in certificates signed by them, the date of expiration of their commission; shall not change their seal. Shall authenticate all their official acts therewith. RECORD—Shall keep a record of their official acts, except those connected with judicial proceedings. ON REMOVAL from office, records and papers to be given to successor. LIABILITY—Upon the application of any Clerk of a Circuit or Criminal Court of this State the Secretary of State shall send to the Clerk the original bond of any notary when required as evidence in a suit at law or for any indictment, the Clerk to safely keep and return same when suit is determined. Sureties on the bond may be discharged from all future liability by petition in writing addressed to the County Court (in the City of St. Louis to the Circuit Court) by conforming with Sections 8354-8362, Chap. 158, Revised Statutes. FEES—Noting for protest, 15c; noting without protest, 35c; entering protest, 35c; registering protest, 35c; notice to each endorser, 15c; travel, per mile, 8c; taking acknowledgments, etc., 50c; marine or fire insurance protest, $5.00; drawing contract of a boatman, 75c; certificate attested by seal, 50c; entering of a boatman not acting according to contract, 15c; sealing same, 10c; copies of records, etc., per 100 words, 15c; other fees the same as justices of the peace.

§ 45. **Mont.**—ELIGIBILITY—A citizen of the State and resident of the county. APPOINTMENT—By the Governor. May be removed on ten days' notice. COMMISSION—Fee, $5.00. File with County Clerk, fee, 50c; each certificate, 50c. TERM—Three years. BOND—$1,000, approved by the County Clerk. Same with oath and signature to be

filed with Secretary of State. OATH—Of office to be taken and subscribed to in ten days. DUTIES—Demand acceptance, payment of or protest of commercial papers; take acknowledgments, depositions, affidavits; administer oaths, etc.; give certified copies of records in his office when required and paid for. SEAL—To provide a seal, having engraved on "Notarial Seal," State, county, and his name. All his official acts to be authenticated with same, except on certificate or oath, or an affidavit, then name and words "notary public in and for ——— County." Always sign name and office. RECORD to be kept of official acts. ON REMOVAL from office, official documents, etc., to be deposited with the County Clerk. Liable for neglect to do so. Clerk to furnish certified copies when required and paid for. LIABILITIES—With bondsmen, for misconduct and neglect. Attempts at fraud or deception, penalty one to fourteen years. FEES—Protesting, $1.00; notice of protest, $1.00; recording every protest, $1.00; affidavit, deposition, per folio, 20c; acknowledgments, $1.00; additional signature, 50c; oaths, 25c; certifying affidavit with oath, 50c.

§ 46. Neb.—ELIGIBILITY—Resident of county. WOMEN are eligible. APPOINTMENT—By the Governor upon petition of twenty-five legal voters of the county. COMMISSION—Shall be forwarded to the County Clerk, who shall within five days notify the person appointed of its receipt, the person shall within thirty days execute a bond, deliver it to the Clerk, qualify, and receive his commission. Fee to Secretary, $1.00; to Clerk, $2.00; both payable to the County Clerk. TERM—Six years, unless sooner removed. BOND—To be given for $2,000, with two county resident sureties, or one surety if an incorporated surety company authorized by the State to transact such business. Sureties shall make oath on the bond that they are resident freeholders of the county and are worth at least $2,000 over all indebtedness and liabilities, and subscribed to before a person authorized to take oaths, who shall attach his certificate. OATH—To be endorsed on the bond, subscribed and certified before an authorized officer. The County Clerk shall file the bond, record the commission, bond, justification of the sureties and oath and send the Secretary of State notice. DUTIES—Within his county, to administer oaths, take depositions, issue summons and punish for refusal to testify, acknowledgments, demand acceptance, payment, or protest and give notice of, and duties customary. His acts and record, certified and sealed over his signature, shall be presumptive evidence in all courts of this State. SEAL—Shall provide a seal having engraved on "Notarial Seal," name of the county, "Nebraska," and, if desired, his name, and the date of expiration of his commission. All his official acts shall be authenticated therewith, including signature, also the date of expiration of office. RECORD of all his protests, and notices of, shall be kept with copy of instrument. ON REMOVAL, by any cause, or removal from the county, or death, within thirty days he shall enter in his official record a certificate, over his hand and seal, that such record is his official record to the time of expiration of office. Deposit it with the County Clerk. Failure to comply subjects to a forfeit and penalty of $200. LIABILITY—For any neglect or misconduct in office. FEES—Protest, $1.00; recording same, 50c; notice of protest, each, 25c; administering oath,

10c; taking affidavit, 25c; taking deposition, each ten words, 2c; certificate and seal, 25c; taking acknowledgments, 50c; per mile in serving notice, 5c.

§ **47. Nev.**—ELIGIBILITY—Citizen. APPOINTMENT—By the Governor, and varies in each county. COMMISSION—Fee, $10, to Secretary of State. TERM—Four years, unless removed. BOND—For $2,000, sureties approved by County District Judge. OATH—To be taken and endorsed on commission. Bond and oath to be recorded with County Recorder. DUTIES—To demand acceptance and payment or protest commercial papers, take acknowledgments on the instrument or attached, depositions, affidavits; administer oaths, etc. SEAL—To provide a seal having engraved on his name, county, initials of the State and words notary public. All official acts to be authenticated with same. RECORD—To be kept of all acts with names of parties, etc. This and seal are exempt from taxation. REMOVAL from office by any cause, records to be delivered to the County Recorder within sixty days, or to his successor on the termination of his office. LIABILITY—For neglect or misconduct, with damages and a fine not exceeding $2,000, with removal. Certified copies of his records, under his hand and seal, are prima facie evidence in courts of the State. FEES—Drawing and copying protest, $2.00; serving notice of protest, $1.00; drawing affidavit, deposition or other paper not provided for, per folio, 20c; taking acknowledgment with seal and certificate, for first signature, $1.00; additional signatures, each, 50c; administering oath or affirmation, 25c; each certificate including writing and seal, 50c.

§ **48. N. H.**—ELIGIBILITY—Citizen. WOMEN are eligible. APPOINTMENT—By Governor, with advice of the council. COMMISSION Fee, $1.00. TERM—Five years. BOND—None required. OATH of office to be taken. DUTIES AND POWERS—Protest bills, notes, etc. Same certified under his hand and official seal shall be evidence of the facts stated. In addition, he shall have the same powers as justices of the peace as to depositions, acknowledgments and oaths. REMOVAL—By any cause, within six months, all records, etc., must be deposited with the Secretary of State. Certified copies given when required and paid for. LIABILITY—Refusal or neglect to deliver records on demand, or knowingly destroying or concealing same subjects to a fine not exceeding one thousand dollars, one half for the prosecutor, the other half for the county; also liable for damages for injuries resulting to any person. For overcharging, a fine of fifty dollars each time. FEES—Protesting under seal, 25c; certificate under seal, 25c; waiting on person for payment or witnessing and certifying under seal, 50c; every notice of non-payment, 25c; taking depositions, per page, 17c.

§ **49. N. J.**—ELIGIBILITY—Citizenship. WOMEN may act. APPOINTMENT—By the Governor. COMMISSION Fee, $5.00, to be sent with the application and returned if appointment not made. TERM—Five years. BOND—None required. OATH—To be taken and subscribed to before the County Clerk for faithfulness in office. Fee for same, 50c. POWERS—To protest bills and notes. SEAL—To be procured to authenticate official acts; not required to oaths. RECORDS—To record all bills of exchange or promissory notes, protested by them, the time, place, when, where, upon whom demand was made,

with a copy of the notice of non-payment, how served, time, when, if sent, manner, to whom, address, time of mailing and where, name to be signed. ON REMOVAL by any cause, record to be deposited with the County Clerk. Certified copies to be made under their hand and seal when required and paid for. Records of notaries of other States, duly proven copies, shall be received as evidence in any court of this State, notice having been previously given the adverse party. LIABILITIES—For excessive fees and unfaithfulness in office. FEES—Protesting foreign bills, $1.75; protesting notes and inland bills, each $100.00, $1.50; less than $100.00, $1.30. Forfeit for each overcharge, $25, with cost for collection.

§ 50. N. M.—ELIGIBILITY—Citizen. APPOINTMENT—By the Governor. Military posts in the territory may also have a resident notary, appointed by the Governor, who shall be invested with same powers. COMMISSION—$5.00; half to Secretary of State, half to Probate Clerk. TERM—Four years. BOND—To be given to the territory for $500, with two securities, conditioned for faithful performance of his duties. OATH of office to be taken and endorsed on his commission before entering upon his duties. Bond, commission and oath to be recorded with his County Recorder, and the bond filed with the Secretary of the Territory, to be sued upon by any injured party. Suit on bond must be instituted within three years after the cause of action occurs. DUTIES AND POWERS—To administer oaths, affirmations, receive proofs or acknowledgments, make declarations and protests, certify same under their hand and official seal. SEAL—To be procured containing his name, title and county. All acts to be authenticated therewith. RECORD to be kept of all official acts, and certified copies furnished when required and paid for. ON REMOVAL, by any cause, all official papers, etc., to be deposited with the County Probate Court Clerk within thirty days, who will deliver same to the successor. The certificate of a notary, under his official seal, shall be prima facie evidence of the facts. LIABILITY—Any notary public wilfully issuing a false certificate shall be punished by a fine of not less than twenty dollars nor more than five hundred dollars, and liable to the party injured. FEE—Protest and certificate, $2.00; notice of, each, 25c; costs recoverable with the original debt. Oaths, 5c; acknowledgments, 25c.

§ 51. N. Y.—ELIGIBILITY—Citizen, to reside where appointed. WOMEN are eligible. APPOINTMENT—By the Governor, by and with the consent of the Senate; 4 to each 1,000 population in the county, but of such number one can be appointed for each bank applying during recess of Senate. He can appoint for vacancies. FEE FOR COMMISSION—In New York County or Kings County, $10. In any city having a federal or State enumeration of more than fifty thousand and less than six hundred thousand, $5. If elsewhere, $2.50. Neither the Clerk of the City and County of New York, nor of the County of Kings, shall file a certificate of appointment, other than New York or Kings, until $7.50 is received. COMMISSIONS may be signed by the Governor's private secretary. Removal from office during the term may be made by the Governor, the notary to be given a copy of the charges filed against him and allowed hearing. County Clerk will notify of appointment, upon receipt by him of commission, by enclosing

notice in an envelope having the Clerk's address printed thereon. Failure to file oath of office and pay fee within fifteen days after notice or within fifteen days after term of commencement, vacates the office. TERM—Two years from March 30th. POWERS AND DUTIES—Anywhere in the State to demand acceptance and payment, or protest bills and notes, to exercise such powers and duties as the law of nations and commercial usage allow. In the county of his appointment, and elsewhere, to administer oaths, affirmations, take affidavits, certify same. A notary for the Counties of Kings, Queens, Richmond, Westchester, Putnam, Suffolk, Rockland, Orange or Dutchess, or for the City and County of New York, upon filing in the Clerk's office in any of such counties his autograph signature and a certificate of the County Clerk of the county of his appointment, setting forth the fact of his appointment and qualification; or any notary appointed for any county of the State, upon filing in the Clerk's office of an adjoining county, his autograph signature and a certificate of the Clerk of the county, in and for which he is appointed, setting forth the fact of his appointment and qualification as such notary public, may exercise all the functions of his office in the county in which such autograph signature and certificates are filed. The County Clerk where so filed, shall, when requested, subjoin to any certificate of acknowledgment signed by such notary, a certificate under his hand and seal stating the facts of filing, that he is acquainted with the handwriting and believes the signature genuine. Such instrument shall then be entitled to be read in evidence or to be recorded. Protest may be made by a notary public, or by any respectable resident of the place where the bill is dishonored in the presence of two or more credible witnesses. must be made on the day of its dishonor. When a bill has been noted the protest may be subsequently extended as of the date of the noting. SEAL—To procure an official seal for authenticating his official acts. Oaths need not be sealed, nor other acts. RECORD—To be kept of official acts. REMOVAL—On expiration of office, all records to be delivered to their successors. FEES—Notice for non-payment or assessment of tax on mortgages, 75c; protesting, 75c; notice of protest, 10c; not exceeding five, acknowledgments, 25c; each additional, 12c; oaths, 12c. A fee for an affidavit as to child's age under the employment act is illegal.

§ 52. N. C.—ELIGIBILITY—Citizen. APPOINTMENT—By the Governor. COMMISSION Fee, $3.00.—Certificate of commission to be filed with the clerk of the court, who shall note the qualifications of the notary. Clerks of the Superior Courts may act as notaries in their several counties by virtue of their office, and may certify their notarial acts under the seals of their court. TERM of office, two years. BOND—None required. OATH—To take oath of office before the Clerk of their County Superior Court. DUTIES AND POWERS—To take and certify acknowledgment and proofs, depositions, administer oaths, take affidavits, and take the privy examination of femmes covert, verify pleadings in or out of the State. JURISDICTION—Throughout the State. SEAL—None required. RECORD—Not required. REMOVAL—Not required. LIABILITIES—For misfeasance in office. FEES—Certificate and seal, 50c; protesting, $1.00; acknowledgment of chattel mortgage, 25c; seal and certificate, 10c. (Not applicable to notary at

Matthews in Mecklenberg County.) FEES OF JUSTICE OF THE PEACE—Probate of deeds or writing proved by a witness, including certificate, 25c; same executed by a married woman, acknowledged, and examination and certificate, 25c; probate of a chattel mortage and certificate, 10c.

§ **53. N. Dak.**—ELIGIBILITY—Citizen of the State, of either sex, of electoral age. APPOINTMENT—By the Governor. COMMISSION Fee, $5.00. Commission to be recorded with the County District Court Clerk, together with signature and impression of official seal. On removal from the county same method to be pursued. TERM—Six years. REMOVAL—By any cause, records and papers to be deposited with the Clerk of the County District Court within three months after vacancy of office, under penalty of $50 to $500 and liability to party injured. BOND—For $500, with sureties approved by the District or County Court Clerk. OATH of office to be subscribed to. DUTY—To protest bills and notes, etc., and give notice to its maker and indorsers, administer oaths and such duties required by law. Service of notice personally or by mail. Oath, bond and impression of seal to be filed with the Secretary of State. JURISDICTION—Throughout the State. SEAL—Notary to procure an official seal. RECORD—To be kept of all protest notices, time, manner of service, names of all parties, description and amount. LIABILITY—Penalty for acting when disqualified, $100 for each offense and removal from office. FEES—Protest notice and postage, 25c; protest, $1.50; recording same, 50c; taking affidavit and seal, 25c; administering oath, 10c; taking deposition, per ten words, 1½c; certificate and seal, 25c; acknowledgment, 25c; witness fees, per day, $1.00; mileage, per mile one way, 10c.

§ **54. Ohio.**—ELIGIBILITY—An elector, a citizen of this State, residing in the county for which appointed, must produce a certificate from a judge of a Common Pleas, Circuit or Supreme Court, that he is of good moral character, a citizen of the county, possessed of sufficient qualifications and ability to discharge the duties of the office, the judge must have personal knowledge of the fact, otherwise the applicant must pass an examination under such rules as the judge may prescribe. No banker, broker, cashier, director, teller, or clerk of any bank, banker, broker, or other person holding any official position to any bank, banker or broker shall be competent to act as notary in any matter to which said bank, banker or broker is in any way interested. APPOINTMENT—By the Governor. COMMISSION Fee, $1.00. Commission, with oath of office endorsed thereon, to be filed for record with the Clerk of the County Court of Common Pleas, and indorsement made on the margin of the record and on the back of the commission the time of its receipt, also a proper index to be made of it. A certified copy of same, under the seal of the court, to be given upon application. Fee for recording and indexing, 40c. TERM of office, three years, unless commission is revoked. BOND—To be given to the State for $1,500 with sureties approved by the Governor, to be filed with the Clerk of the Common Pleas Court. OATH of office to be taken and subscribed on the commission. POWERS—Within their county to administer oaths, take depositions, acknowledgments, make and record protests. If he resides in a city or town situated in more than one county he

can protest and record within the limits of such city or town. Protests under the laws of this or any other State accompanying a bill or note protested by such notary shall be held and received as prima facie evidence of the facts. It may be contradicted by other evidence. SEAL—To be provided by the notary before acting. It shall be not less than 1¼ inches in diameter and surrounded by the words "Notarial Seal, ——— County, Ohio," (insert name of county). REGISTER to be provided by the notary, in which every certificate of protest and note shall be recorded. REMOVAL—Seal and register are exempt from execution, and upon the death, expiration of office without reappointment, or removal from office, the register shall be deposited in the office of the County Recorder. LIABILITY—Acts done after expiration of term are valid. Knowingly performed, shall forfeit any sum not exceeding five hundred dollars, recoverable in the name of the State. Such an act renders the notary ineligible to reappointment. Excess of legal charges, or unfaithfulness or dishonesty in office, on complaint filed and substantiated in the County Common Pleas Court, subjects the notary to removal from office by the court and the fact reported to the Governor, and renders the party thereafter ineligible to office. FEES—Protesting, demand, notices, on each bill or note, $1.00, and expenses for going beyond the limits of the city or town; recording same, per 100 words, 10c; taking acknowledgments, 40c; taking affidavits, 40c; taking oaths, 40c; taking depositions, per 100 words, 10c; issuing subpœna, 25c; pension oaths, 10c; certifying claim against an estate, 25c.

§ **55. Okla.**—ELIGIBILITY — Citizenship. APPOINTMENT — By Governor. COMMISSION—Fee, $1.00 to Secretary, $1.00 to County Clerk. TERM—Four years. BOND—$1,000, with sureties approved by the County Clerk. OATH of office to be taken. Commission, oath, bond, impression of seal and signature to be filed with the County Clerk and Secretary of State. DUTIES—Take acknowledgments, administer oaths, demand acceptance or payment, and protest commercial paper, and such acts as commercial usage requires. SEAL—To provide such, and authenticate acts with, adding date of expiration of office and name. REGISTER—To be kept of his official acts, and certified copies given when required and paid for. REMOVAL, by any cause, all official books and papers to be deposited with County Clerk. LIABILITY—For failure to add date of expiration of commission, fine not exceeding $50. Limitation of action, three years after cause accrues. FEES—Protest and record of, 25c; each notice of, 10c; certificate and seal, 25c; acknowledgments, 25c; affidavits, 25c; other fees same as Clerk of the District Court. No fee allowed for administering any oath or giving certificate to a discharged soldier or seaman, or widow, orphan or legal representative thereof, for pension bounty or back pay, nor for any voucher required for periodical dues. Penalty for violating, ten to twenty-five dollars.

§ **56. Ore.**—ELIGIBILITY—Citizenship. APPOINTMENT—By the Governor. COMMISSION—Fee, $2 to Secretary of State, and $1 to County Clerk for recording. Record appointment with the County Clerk, fee $1.00. He shall certify the official character of the notary when required. TERM—Two years. BOND—To be given to the Governor for $500 with surety. OATH of office to be taken

before acting. DUTIES—To protest commercial paper and give notice of same to parties in interest immediately. Service to be personal, provided they reside within two miles of the notary, otherwise service by mail. POWERS—To take acknowledgments and administer oaths. Full faith given to all their acts. JURISDICTION—Throughout the State. SEAL—To be provided and an impression of it with oath and bond to be deposited with the Secretary of State. RECORD—To be kept of all such notices, manner and time of service, names of parties, description and amount of the instrument, same to be competent evidence in all courts of this State. REMOVAL from office by death, etc., the records shall be deposited with the County Clerk within 90 days, who shall keep and give certified copies of same when required. LIABILITY—A forfeit of from fifty to five hundred dollars for failure as above. Knowing destruction, defacing or concealing of same shall subject to same penalty and damages to party injured. FEES—Protesting, $1.00; attesting instrument and seal, $1.00; noting, $1.00; registering protest, $1.00; affidavit and seal, $1.00; acknowledgment, $1.00; proofs, per folio, 25c; depositions, per folio, 25c; oaths, administering, 25c.

§ 57. Pa.—ELIGIBILITY—Of good character, integrity and ability. To reside where designated one year. Resident of the State two years. Must not be a stockholder, director, cashier, teller, clerk or other officer in a bank or banking institution or in its employ, or hold any judicial office in this State, or any office of trust or profit under the constitution of the United States. Residence may be in a different part of the county, or adjoining county, provided an office is kept where the commission names. WOMEN twenty-one years of age and citizens of the State can act. If one marry while in office return to Governor her commission with married name, before performing any notarial act; he will return a new commission without fee. A new bond with security required. APPOINTMENT—By the Governor. COMMISSION—Fee, $25.00. If disqualification forbids, a commission money paid will be refunded on a certificate of the facts, indorsed by the Governor. TERM—Four years. If appointed during recess of Senate, the commission expires at the end of the next session of the Senate, unless confirmed by the Senate, which entitles to a commission for four years from confirmation. BOND and two sureties to be given, approved by the Governor, same to be recorded in office for recording of deeds within the county. Subject to be sued on by parties injured. OATH, or affirmation to be taken and subscribed to for the faithful performance of all duties and the State constitution before acting. POWERS—To administer oaths incident to their office, to take acknowledgments or proofs of instruments in writing, to make declarations, to protest, to take depositions and affidavits. ACTS performed outside of the county are valid. SEAL—Secretary of State to procure a seal at the expense of the notary. Device same as on the great seal of the State with the name of the county. REGISTER—To be kept of all their official acts and certified copies given when required and fee paid. On REMOVAL from office for any cause, he shall within ten days, de-

posit his register and official papers with the County Recorder, who shall give certified copies of same when required and paid for. Same, certified under his official seal, shall be evidence in all cases when required. LIABILITY—Failure or neglect to so deposit, subjects to forfeiture and payment of $100.00, and the further sum of $100.00 for each ten days thereafter negligent, recoverable for the use of the party suing, and shall be liable in damages to persons injured. The Recorder may bring action for the register and papers. Their official acts, protests and attestations, certified according to law under their hands and seals of office, may be received in evidence, provided other parties may contradict same by other evidence. TAX—In making up the State tax they shall deduct from the amount due the State the true, legitimate expenses of their offices. In Philadelphia they shall pay annually five per cent. of their gross receipts in lieu of other taxes. Returns made under oath annually on or before the 31st day of December. A refusal or neglect of thirty days forfeits their commission. Justice of the peace can act as a notary in Delaware County. The acts of foreign notaries, in accordance with the laws of their country, shall be prima facie evidence of the matters set forth. The consul or vice-consul of the United States at or near the notary's residence shall certify (under) his seal that such notary is a proper officer and acts are in accordance with the laws of the country. FEES—Certificates of copy ready made, 50c; comparing same, per hundred words, 7c; certificates of sales at auction, 50c; taking proof of debts to be sent abroad, proof and acknowledgment of letters of attorney for receiving and transferring public securities, 50c. In Allegheny County—Making demand for payment, 50c; protesting same, 50c; registering protest, 50c; each notice, exceeding two, 10c; oaths or affirmations, writing and certifying, $1.00; probate to bill or account and certifying, 50c; acknowledgments, 25c; depositions, first page, folio cap, $1.00; depositions, each additional page, folio cap, 75c; marine protests, with affidavits, certificates, seal, etc., $10.00; protesting, registering, etc., $1.00; affidavit, 25c; attesting letter of attorney, 50c; registering foreign sea protest, $1.00; registering copy of each protest, 12c; registering foreign bill protested and certificate, 50½c; registering protest of a bill of exchange or promissory note for non-acceptance or non-payment, 25c; entering or noting sea protest to be deducted from the legal charge for the protest if extended, $1.00; noting a bill of exchange, note or thing properly protestable, 37½c; drawing and taking proof of the acknowledgment of a bill of sale, bottomry, mortgage, or hypothecation of a vessel or charter party, $1.00; certifying power of attorney, 25c; drawing and certifying affidavit, $1.00; oath or affirmation, 12½c; notarial procuration under seal, 75c; letter of attorney, for transferring stock, etc., and certifying same, 50c; drawing and taking acknowledgment or proof of substitution to a letter of attorney, $1.00; being present at demand, tender or deposit, and noting same, 50c.

§ 58. **R. I.**—ELIGIBILITY—A citizen. APPOINTMENT—By the Governor. COMMISSION—Within thirty days after its date, party shall deliver to the Secretary of State a certificate that he has been duly engaged thereon, signed by the person before whom such engagement shall have been taken. Failure to do so forfeits the ap-

pointment. Fee for same, $2.00. TERM of office, one year. After expiration of office, if not reappointed, he may continue to act thirty days after the first day of July in each year. BOND—None seems required. OATH—Of office to be taken for faithful performance of duties. DUTIES—Protest bills and notes, take acknowledgments and depositions, and matters within their office. Issue subpœnas. No protest shall be made by any notary who is the president, cashier, director, clerk, or agent of any bank or institution for savings, wherein such note, draft or check has been placed for collection or discount. SEAL—Official seal required to authenticate acts. RECORD—To be kept of important acts. REMOVAL—From office, records of official acts to be delivered to successor. LIABILITIES—For failure to deliver records to successor and for unfaithfulness in performance of duties. FEES—Depositions—To officers for every hour employed, 40c; for every page of 200 words, 30c; for every mile's travel to place of caption, 10c. Acknowledgments—For taking, 50c; for engaging every officer, 25c. For recording and certifying—Every page of 100 words, 15c; searching record, by the hour, 40c. Noting a marine protest, $1.00; drawing, recording and extending same, $1.50; taking affidavits, 25c; noting a bill, etc., 25c; each notice, 25c; travel, more than one mile, 10c; extending and recording protest, 57c.

§ 59. S. C.—ELIGIBILITY—Citizen. APPOINTMENT—By the Governor. COMMISSION—Fee, $3.21. TERM of office, during the Governor's pleasure. BOND—Required with approved sureties. OATH of office and the oath regarding duelling to be taken, and certified copies to be filed with the Secretary of State. POWERS AND DUTIES—To administer oaths, take depositions and acknowledgments, affidavits, protests and renunciation of dower. JURISDICTION—Throughout the State. SEAL—Of office to be provided, same to be affixed to his acts of publication and protestations. Its absence shall not invalidate his acts, provided his official title be affixed. Use of by notaries in other States required. RECORD to be kept of important acts. REMOVAL or expiration of office, all records to be given to his successor. LIABILITIES on bond for unfaithfulness. FEES—Taking depositions and swearing witnesses, per copy sheet, 25c; protesting, $2.00; duplicate of deposition, protest and certificate, per 100 words, 10c; for attendance on person for proving a thing and certifying, 50c; notarial certificate and seal, 50c; oath or affidavit, 25c; renunciation of dower, $2.00.

§ 60. S. D.—ELIGIBILITY—Citizen resident in State 90 days; in the county, 60 days. WOMEN—Citizens 21 years of age are eligible to the office. APPOINTMENT—By the Governor. COMMISSION—Fee, $2.00. Same to be conspicuously posted in his office. Notice of expiration will be sent thirty days previously by the Secretary. TERM—Four years. BOND—$500; file with County District Court Clerk. OATH—To be taken and filed with County District Court Clerk. DUTIES—Take oaths and affirmations in their county, protest commercial papers and serve notice, personally or by mail. Jurisdiction, the State. SEAL—To be procured with, "South Dakota," an impression to be filed with Secretary of State and the Circuit Court Clerk. Fee for each, 25c. RECORD—To be kept of protests and notices

with names of parties. REMOVAL—From office, all records to be filed with the County District Court Clerk within three months. LIABILITIES—Neglect to file records on removal or expiration of office, or destroying same subjects to fine of from $50 to $500 and damages sustained by party. Acting after removal, etc., $500 each offense. FEES—Protests, 50c; notices, 25c each, and postage; recording, 50c; oath or affirmation, each, 10c; depositions, each 10 words, 1½c; certificate and seal, 25c; acknowledgments, 25c.

§ **61. Tenn.**—ELIGIBILITY—Citizenship, 21 years of age. APPOINTED by the justices of the County Court. COMMISSION issued by the Governor. No fee for. TERM of office, four years. BOND—To be given with good sureties for $5,000. OATH—Of office to be taken and subscribed to before a justice of the peace in his county. DUTIES—To take and certify depositions in their county, to administer oaths, take affidavits, protest bills and notes and notify the proper parties. OFFICE to be kept in the town of the county in which he was appointed. The County Court may require a notary to keep his office where any bank may be located in the county out of the county town, or where convenient to the people. SEAL—Of office to be provided by him, and surrendered to the County Court when removed by any cause. His acts to be under his official seal, received as evidence. RECORDS—To be kept of protests and notices of. REMOVAL—Or expiration of office, all records to be delivered to successor. LIABILITIES—If incligible to office, for not delivering books to successor, and neglect of duty. Notaries of other States may take depositions in their State for use in this State, must certify and show date of commencement and expiration of their commission. FEES—For recording in his record book, $1.00; protesting, $1.50; taking acknowledgments, 50c; each deposition, $1.00; for other services same fees as allowed other officers.

§ **62. Texas.**—ELIGIBILITY—Citizenship. APPOINTMENT—By the Governor, with Senate's consent. COMMISSION—Secretary of State sends it to the County Court Clerk, party to appear and qualify within ten days and pay $1.00 fee. Excusable for absence or sickness. Date of notice to be endorsed on it and notification sent the Secretary by the Clerk. TERM—Two years. BOND—$1,000, with sureties approved by County Court Clerk. OATH—To be taken and subscribed to and endorsed on back of bond. All recorded by Clerk. DUTIES—Take acknowledgments, certify same under his hand and official seal, administer oaths, make declarations, protests, take depositions, etc., incident to the office. SEAL—To be provided, having in the center a star of five points and "Notary Public, County of ———, Texas," around the margin (filling in his county in the blank space. All official acts to be authenticated therewith. No other seal to be used by him. RECORDS of all his official acts to be kept. Subject to inspection and for certified copies. REMOVAL from office by death, etc., all records to be delivered to County Clerk, under penalty not less than $100. Can sell his seal. Removal from county vacates office. LIABILITY—For neglect or misfeasance. COUNTY CLERK may certify to his official acts. Secretary of State to furnish County Clerks lists of notaries. FEES—Protesting, registering and seal, $2.50; each notice, 50c; other protests, per 100 words, 20c; certificate and seal to such, 50c; acknowledg-

ments, 50c; acknowledgments of married women, $1.00; oath, 25c; certificate under seal, 50c; copies of records, per 200 words, 15c; other acts, 50c; depositions, per 100 words, 15c; swearing witness to deposition, seal, certificate, etc., 50c.

§ 63. **Utah.**—ELIGIBILITY.—Citizenship. APPOINTMENT—By the Governor. COMMISSION—Fee, $5.00. With oath and bond to be recorded with the Secretary of State. No suit shall be instituted on bond three years after the cause of action accrues. TERM—Four years. OATH of office to be taken before acting. BOND—For $500, with sureties approved by the Secretary of State. POWERS AND DUTIES—To administer oaths, take acknowledgments, affidavits and depositions, make declarations and protests, and other acts usually done by notaries in other States and territories. Date of expiration of their commission to be affixed to all acknowledgments. A violation is a misdemeanor. Protests, when made, written notice to be given the maker and endorsers or security of the instrument as soon as practicable. Service to be personal when the person resides in the same town or city with the notary, otherwise by mail or other safe conveyance. SEAL—To contain the name of the county in which he resides. All his official acts to be attested with it. RECORD—To be kept of official acts, including notices, time, manner of service, names of all parties to whom directed, description and amount of instrument protested. Record shall be competent evidence for legal proof. Certified copies to be given when required and the fee is paid. REMOVAL—When office is vacated all records and papers to be deposited with the Secretary of State within thirty days, he to give certified copies thereof when required and fee received. LIABILITY—Affixing their official seal, wilfully, after expiration of their commission is a misdemeanor. FEES—Protesting, $1.00; notices, drawing and serving, each, 35c; recording protests, 50c; affidavit or deposition, for first folio, 50c; subsequent folio, 15c; taking acknowledgments, for first signature, 50c; each additional signature, 25c; administering oath or affirmation, 25c; every certificate including writing and seal, 50c.

§ 64. **Vt.**—ELIGIBILITY—Citizenship. APPOINTMENT—By the judges of the County Court, for their county, signed by two or more of them. COMMISSION—Fee not required. TERM of office, during the term of the judge. BOND—Not required. Record to be made with the County Clerk of his oath of office, and certificate of his appointment. Clerks shall forward a certificate of same, with term of office, to the Secretary of State immediately. OATH of office to be taken. DUTIES AND POWERS—Protest and give notice of commercial papers, administer oaths, take acknowledgments, issue subpœnas and attachments for witnesses, take depositions. JURISDICTION—Throughout the State. SEAL of office to be provided by him, and affixed to all his official acts. Seal need not be affixed to acknowledgments or oaths. RECORD—Protests and notices to be recorded. REMOVAL or expiration of office, all official papers to be delivered to his successor. LIABILITIES for neglect, and collecting illegal fees. County Clerks, by virtue of their office, are notaries public. FEES—Protests and notices, $1.00; certificates under seal, each, 25c.

§ **65. Va.**—ELIGIBILITY—Citizenship. APPOINTMENT—By the Governor, not exceeding one for every five hundred population. COMMISSION—Fee for appointment, $3.00. TERM—Four years. BOND—To be given in the County Court of or corporation for which appointed, within four months from date of commission, under a penalty not less than $500. The Clerk to immediately forward a copy to the Secretary of State, same to be approved by the court or officer taking it. OATH of office to be taken. DUTIES—Conservator of the peace, administer oaths, collect tax on seals, protest commercial paper, give notice of, take acknowledgments, oaths and affidavits. An annual report to be made of tax to the County Commissioner of revenue between September 1st and October 1st. Taxes on the seal of a notary shall be paid to him. When seal is annexed to any pension claim or for military service, either State or national, or when annexed to an affidavit or deposition no tax charged. No deed or contract to be admitted to record (except for a church or school) or no will admitted to probate, and no grant of administration until tax is paid to the Clerk. JURISDICTION may be for two or more counties or corporations. SEAL—Procure a seal to authenticate his acts. RECORD to be kept of his official acts. REMOVAL from the county or corporation, unless into a county also appointed for, shall be construed as a vacation of office. County Clerk or of corporation shall at once inform the Governor of vacancies or deaths. LIABILITY for failing to return statement of taxes, three hundred dollars and an additional fifty dollars for each month failing to make statement. Also liable for acting before giving bond and taking oath, $100 to $1,000. FEES—Protest, record of, notice to one person besides the maker or acceptor, $1.00; each additional notice, 10c; acknowledgments, 50c; oath, 25c; certifying affidavits or depositions of witnesses, when done in one hour, 75c; each additional hour, 75c. Fees to be stated at the foot of affidavits or depositions, also to whom charged, and if paid, by whom.

§ **66. Wash.**—ELIGIBILITY—An Elector. APPOINTMENT—By the Governor, upon petition of twenty freeholders of the county. COMMISSION—Fee, $10. PROCURE A SEAL having engraved on it "Notary Public," "State of Washington," and date of expiration of commission, with surname in full, and at least the initials of the Christian name. TERM—Four years. BOND—To the State for $1,000; sureties approved by the County Clerk. OATH of office required. File with the Secretary of State, bond, oath, treasurer's receipt and impression of seal, the latter subject to the approval of the Governor. DUTIES—In the county, to protest bills and notes, and matters relating to protest, and such other duties pertaining to the office by the custom and laws merchant, take acknowledgments, depositions, affidavits and administer oaths. Every attorney who is a notary may administer any oath to his client. Seal not required on an oath, but in all other cases it is. RECORD to be kept of all notices of protests, with time and manner given, copy of the instrument, and notice. Said record, or a copy, 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 stated. The same may be contradicted by other competent evidence. REMOVAL, by death, etc., and at the expiration of office, provided his commission is not renewed, records and official papers shall, within

three months, be deposited with the County Clerk. Neglect shall forfeit a sum not exceeding one thousand dollars, recoverable in a civil action by the person injured. The executor or administrator is likewise liable. LIABILITY—For unfaithfulness in office. FEES—Protest, $1.00; attesting with seal, 50c; taking acknowledgment, two persons with seal, 50c; taking acknowledgment, each person over two, 15c; certifying affidavit without seal, 25c; same, with seal, 50c; registering protest, 50c; being present at demand, tender or deposit, and noting same besides mileage at 10c per mile, 50c; noting a bill or note for non-acceptance or non-payment, 50c; copying any instrument or record, besides certificate or seal, per folio, 15c. The Secretary of State shall file with the County Clerk the date of commission. Either may certify the official character of the notary, when required, under their official seal. Fee, $1.00.

§ 67. **W. Va.**—ELIGIBILITY—A citizen of the State, must reside in the county of appointment. APPOINTMENT—By the Governor. COMMISSION—Fee, $2.50, to State Secretary. TERM—During good behavior. BOND—To be given for not less than $250.00 nor more than $1,000, with security approved by the County Court. Must qualify within sixty days of notice of appointment, otherwise office is vacant. Acting without qualification forfeits not less than fifty nor more than one thousand dollars. OATH of office required to support the State and United States constitution and to faithfully discharge the duties of the office. DUTIES AND POWERS—To administer oaths, take affidavits, depositions, acknowledgments, examine privily married women respecting any written instruments. He shall be a conservator of the peace, exercising therein the powers of a justice of the peace. Protest bills, demand acceptance or payment thereof, and such other duties as commercial usage require. JURISDICTION—The county of his appointment. SEAL—To procure and authenticate official acts with. Not necessary in taking oaths, affidavits, depositions and acknowledgments. RECORD—To be kept of official acts. REMOVAL from office, all records and official papers shall be deposited with the County Court Clerk within three months after death or removal from office, under a penalty not exceeding five hundred dollars. LIABILITY—Disqualifications, conviction of treason, felony or bribery in an election, before any court in or out of this State, fighting or encouraging a duel. Wilful destruction, defacing or concealing of the records or papers forfeits a sum not exceeding one thousand dollars, and damages to the party injured thereby. The protest of bills and notes shall be prima facie evidence of the facts stated if signed by the notary. FEES—Protesting, recording, drawing instrument and notice, $1.00; notices, additional, 10c; acknowledgments, 50c; administering and certifying an oath, other than to a witness, 25c; affidavits or depositions of witnesses, per hour employed, 75c; for other services, the same as allowed Circuit Court Clerks.

§ 68. **Wis.**—ELIGIBILITY—Resident elector, 21 years of age. WOMEN may be appointed. APPOINTED—By Governor. COMMISSION—Fee, $2.00, payable to Secretary of State. Commission must be filed, together with notary's autograph and seal impression, with his County Circuit Court Clerk. TERM—Four years. BOND—Five hun-

dred dollars, and surety approved by the county judge or Clerk of the County Circuit Court. OATH—To be taken for faithfulness in office. Oath, bond and seal impression to be filed with Secretary of State. DUTIES AND POWER—To demand acceptance of bills of exchange, promissory notes, protest same, administer oaths, take depositions and acknowledgments, and other duties accorded by the law of nations or commercial usage. Jurisdiction throughout the State. SEAL—To have impression of his name, office and county. RECORD to be kept of official acts. REMOVAL from office, all records and papers to be filed with the County Circuit Court Clerk. Penalty for failure to so do, within three months, $50 to $500. Also liable to injured party for damages arising. Notice of resignation to be sent to the Secretary of State who will notify the County Circuit Court Clerk. Removal from county vacates his office. LIABLE—For misconduct or neglect to party injured. FEES—Protest, when necessary, non-acceptance or non-payment, 50c; protest, otherwise, 25c; notice of protest, 25c; affidavit, per folio, 25c; copying affidavit, per folio, 6c; acknowledgments, 25c; taking depositions, per folio, 12c.

§ 69. **Wyo.**—ELIGIBILITY—Of good moral character, a citizen of the United States, over the age of twenty-one years, able to read and write the English language, a resident of the State and of the county. APPOINTMENT—By the Governor on the petition of five or more reputable freeholders of the county. COMMISSION—Fee, $3.00. TERM of office, four years. BOND—To be given within sixty days of appointment for $500, with two sureties approved and filed with the Register of Deeds conditioned for faithfulness in office. OATH or affirmation to be subscribed to before any county officer authorized to administer oaths. POWERS AND DUTIES—To administer oaths and affirmations, take depositions, acknowledgments, demand acceptance or payment of bills, promissory notes and obligations in writing, to protest for non-acceptance or non-payment, and such powers and duties required by the law of nations and commercial usage. Jurisdiction, his county. SEAL of office to be provided to authenticate his acts, having engraved thereon his name, the words "Notary Public," the name of his county and Wyoming. RECORD—Official register to be provided for recording his official acts. The register and seal not subject to levy or sale. Record to be kept of every bill of exchange, promissory note or obligation received for demand and protest, official acts and dates, name of each drawer, indorser or other person notified and the place where notice was delivered. REMOVAL—For any cause, deposit of register with the Register of Deeds shall be made within thirty days after expiration of term or removal from office, or by death. Neglect to do so subjects him or his executors to a penalty of $200, recoverable by any citizen of the county, to be applied to the school fund of the county. LIABILITY—Persons damaged or injured by his acts may maintain action on his bond, and a recovery shall not bar any future action to the full amount of the bond. It is a felony to sign any false certificate of acknowledgment or jurat, punishable by imprisonment in the penitentiary for one year. Any one requesting or assenting shall be deemed guilty of the same offense. Evidence—His certificate, signed and sealed, shall be presumptive evidence in all courts of this State of the facts stated,

provided that any person interested as a party to a suit may contradict by other evidence the notary's certificate. FEES—Protesting, $1.00; notices, each, 50c; certificate and seal, 50c; oath or affirmation administered, 50c; acknowledgment of, 50c; additional acknowledgment, 25c; depositions, taking, per folio, 15c; other services, $5.00.

§ **70. Canada.**—ELIGIBILITY—A British subject, not a barrister or solicitor. Subject to examination before a judge of the Supreme or County Court. APPOINTMENT—By the Lieutenant-Governor in council. For all or part of Province. TERM—During Lieutenant-Governor's pleasure. COMMISSION—Fee, $5.00, payable to the examiner. To act in entire province, $20; lesser jurisdiction, $10. To the consolidated revenue fund. DUTIES—To attest commercial instruments brought to him for protest and such acts usual to the office. Acknowledgments, affidavits. SEAL—Yes.

CHAPTER II.

ACKNOWLEDGMENTS AND CONVEYANCES.

§ **71. A conveyance** is the transfer of the title of land by one or more persons to another or others. Not only natural persons, but corporations. The instrument which conveys the property is also called a conveyance. It may be by deed, record or by devise.[1]

§ **72. A deed** is an instrument under seal, written or printed, containing some contract or agreement, and which has been delivered by the parties.[2]

The requisites of a deed are that there be sufficient parties, that it be in writing or printing, on paper or parchment; that there be a consideration; that sufficient words be used; that it be read when required; that it be signed and sealed; that it be witnessed; that it be delivered, acknowledged and recorded.[3]

Parties to a deed are: The grantor, who makes the deed, and the grantee, to whom it is made. Care should be had as to the names and surnames of the parties.

A consideration is of little consequence as between the parties, one dollar is accounted sufficient; but when creditors are affected it becomes necessary to inquire into it. It may be founded on a good or a valuable consideration.

Sealing is very ancient. At common law it was required. In many of the States of this country it has been abolished. A scroll is all that is now required, except for corporations, which are required to have the name of the corporation engraved on a metal disc so as to leave an impression.

A witness to a deed was not required at common law. It is required now only in certain States of this country. An unacknowledged deed requires witnesses.

A deed will be construed according to the apparent intent where the language is defective, and, if necessary, the clauses may be re-

[1] Bouvier's Institutes, Secs. 2000-2002.

[2] Bouvier's Institutes, 2002.

[3] Bouvier's Institutes, Sec. 2009.

jected or transposed so as to give it its apparent construction.[4] Instruments in writing should be so construed as to render them valid and effectual rather than void.[5] Where one part of the description is false and impossible, but by rejecting that, a perfect description remains, the false and impossible should be rejected and the deed held good.[6]

The delivery of a deed is when its effect takes place and not from its date. A date is not necessary.[7]

No particular form is necessary, so long as the intent of the parties is clearly set forth and can be readily ascertained in the deed. Uncertain language vitiates it. Many of the old English forms are still followed in this country unfortunately, and to disadvantage often. Some of our Western States have wisely adopted in their statutes very short forms.

Deeds, when made by an attorney, should be in the name of the principal. The attorney must be appointed by letter of attorney. If by a corporation, it must be executed in the corporation's name by officers authorized, and under the corporation seal.[8]

The parts of a deed are:

1. The premises; names of the parties, reasons for the contract or transfer, the consideration and the description of the property.
2. The habendum; to have, the estate the grantee shall have.
3. The tenendum; to hold, now little used, generally merged in the habendum.
4. Reddendum, the thing reserved by the grantor out of what he before granted, and must be explicit.
5. Conditions; warranty.
6. The covenants; express or implied.
7. The conclusion; the execution and date.

§ **73. A contract** is a promise from a person or persons to another or others, actual or implied in law, to do or to refrain from doing some lawful thing, such promise being under seal, or reduced to a judicial record, or accompanied by a valid consideration, or executed, and not in a form forbidden or declared inade-

[4] Warvell's Venders, p. 350, citing Cumberland, etc., Ass'n v. Aramingo, etc., Church, 13 Phil. (Pa.), 171; Stanton v. Mullis, 92 N. C., 623.

[5] Anderson v. Baughman, 7 Mich., 69.

[6] Anderson v. Baughman, 7 Mich., 69.

[7] Bouvier's Institutes, Sec. 2022; Harvey v. Alexander, 1 Rand. Va., 241; Hood v. Brown, 2 Ohio, 268; Fairbanks v. Metcalf, 8 Mass., 230; Harrington v. Gage, 6 Vt., 532; Robinson v. Wheeler, 25 N. Y., 252; McConnell v. Brown Litt Sel. Cas., Ky., 459.

[8] Bouvier's Institutes, Sec. 2010; Plummer v. Russell, 2 Bibb., 174; Elwell v. Shaw, 16 Mass., 42; Hatch v. Barr, 1 Ohio, 390.

quate by the law.[9] There must be a sufficient consideration and the parties must agree, they must also be of legal capacity, to make a contract.

§ **74. A curtesy** is an estate for the duration of his life, to which a husband is entitled in his wife's estate after her death, providing they have lawful issue alive capable of inheriting, it is an estate of freehold.

§ **75. Dower** is an estate for life, which the wife has in the lands and tenements of her deceased husband, which was acquired any time during their coverture. At common law, and in most of the United States, it is one-third of the estate.

§ **76. An estate** is the degree, quantity, nature, and extent of interest which one has in real property.[10]

§ **77. A lease** is an estate for a determinate period, the lessee or tenant to pay a rent or recompense for the same.[11]

§ **78. A lien** is every case in which real or personal property is charged with the payment of any debt or duty, and the right of detaining it until the claim is satisfied.[12]

§ **79. A mortgage** is a conveyance by deed of lands by a debtor, called a mortgagor, to his creditor, called a mortgagee, as a pledge and security for the payment of the money borrowed, or the performance of a covenant, with a proviso that the conveyance be void on the payment of the money and interest on a certain day, or the performance of the covenant by which the conveyance of the land becomes absolute at law; yet the mortgagor has an equity of redemption in a reasonable time and to call for a reconveyance. A note or bond usually is given with the mortgage.[13]

§ **80. Power of attorney.**—A written instrument, by which one or more persons, called constituents, authorize one or more other persons, called attorneys, to do some lawful act by the latter, for or instead and in the place of the former.[14] Anyone can authorize another to do what he is authorized to do himself.

§ **81. A release** is a discharge of a right of action, which the releasor has against the releasee. The operative words are, remised, released, and forever quit claimed.[15]

§ **82. An acknowledgment** is the act of one who has executed a deed, in going before some competent officer or court and

[9] Kinney's Law Dictionary, 195.
[10] Bouvier's Institutes, Sec. 1693.
[11] Bouvier's Institutes, Sec. 1775.
[12] Bouvier's Institutes, 2517.
[13] Bouvier's Institutes, Sec. 884.
[14] Bouvier's Institutes, Sec. 893.
[15] Bouvier's Institutes, 2066.

declaring it to be his act or deed. The acknowledgment is certified by the officer or court; and the term is sometimes used to designate the certificate. Its object is to authorize the deed to be given in evidence without further proof of its execution; and to enable it to be recorded.[16]

§ **83. Before me.**—The words "Before me" have not been held necessary in all cases.[17]

§ **84. Certificate of acknowledgment.**—When a party, who has executed a deed, desires to acknowledge his execution, he appears before the officer authorized to take acknowledgments and declares: "I acknowledge this instrument to be my free act and deed." If the acknowledging party is not personally known to the officer, he must bring with him a witness to satisfy the officer beyond all reasonable doubt that he or she is the grantor, and owner mentioned in the deed. The officer then writes a certificate on the instrument stating that on a certain day named the grantor who was personally known or was proved by the testimony of a witness (giving name) to be the person described in and who executed the deed, personally appeared before him and acknowledged the instrument to be their free act and deed. He signs his name and affixes his official seal by impressing it upon the instrument. The deed is then entitled to record. No officer shall take the acknowledgment of the execution of a deed unless he shall know, or have satisfactory evidence, that the person making the acknowledgment is the individual described in and who executed the conveyance. He is required to put his certificate upon the deed to that effect.[18] A deed may be valid and binding on the parties who execute it, without any acknowledgment. The purpose of the certificate of acknowledgment is to prove the execution of the deed, and where there is no certificate of acknowledgment, other proof may be resorted to to prove the execution of the instrument, and when thus proven, the deed is as operative and binding on the parties as it would be if properly acknowledged before an officer.[20] As between the grantor and grantee, a deed neither acknowledged nor recorded, will pass the title.[21]

The policy of the law is to uphold all certificates of acknowledgments of deeds; wherever substance is found mere clerical errors

[16] Bouvier Dictionary; Bowman v. Wettig, 39 Ill., 416; Harrington v. Fish, 10 Mich., 415.

[17] Clement v. Bullen, 159 Mass., 193; Empey v. King, 13 M. & W., 579.

[18] Fryer v. Rockefeller, 63 N. Y., 268.

[20] Robinson v. Robinson, 116 Ill., 250.

[21] Galligher v. Connell, 46 Neb., 372; 35 Neb., 517; Harrison v. McWhirter, 12 Neb., 155.

and technical omissions are disregarded.[22] The officer's omission of the words "in and for said county" in his certificate of acknowledgment will not invalidate it, if the name of his State and County appear in the caption or body of the instrument.[23]

§ 85. Acknowledgments are to authenticate.—The statutes of all the States provide for a proof of execution of conveyances of land, by an acknowledgment of same before some officer provided by statute, and his certificate of authentication. Such acknowledgment authorizes the production of the instrument in evidence without other or further proof of its execution, and is usually a prerequisite to registration. The certificate of authentication is no part of the conveyance, and is not the act of either party to it, but only evidence in regard to its execution and acknowledgment, and, like all other evidence, should be reasonably considered and construed.[24] [Note.—This is not the only mode of proof of execution.] The law never requires the notary to certify that the person acknowledging and the person executing the instrument are one and the same.[25]

§ 86. Conformity to statute required.—The office of acknowledgment is to authenticate the deed, but to be effective for this purpose, it must conform to, or substantially follow, the directions of the statute, both as to the certifying officer and the form and substance of the certificate.[26] The certificate must state the fact of acknowledgment. It is this which forever after binds the party. The officer is bound to know and certify the identity of the person making the acknowledgment.[27]

§ 87. Literal compliance to statute not necessary.—A certificate of acknowledgment substantially complying with the statute as to the facts to be embodied in it, is sufficient.[28] The laws of 1833 and 1845 of Illinois required the facts should be set forth in the acknowledgment.[29]

[22] Summer v. Mitchell, 29 Fla., 179.

[23] Douglass v. Bishop, 45 Kan., 200.

[24] Warvell's Abstracts, p. 207; Scaver v. Spink, 65 Ill., 441; Harrington v. Fish, 10 Mich., 415; Short v. Conlee, 28 Ill., 219.

[25] Overacre v. Blake, 82 Cal., 77.

[26] Warvell's Abstracts, p. 224; Short v. Conlee, 28 Ill., 219; Boothroyd v. Engles, 23 Mich., 19; Ennor v. Thompson, 46 Ill., 221.

[27] Bryan v. Ramirez, 8 Cal., 562; Short v. Conlee, 28 Ill., 219; Tully v. Davis, 30 Ill., 103; Warvell's Abstracts, sec. Ed., p. 227.

[28] Vance v. Schuyler, 1 Gilman, 160; Livingston v. Kettelle, 1 Gil., 116; Davar v. Cardwell, 27 Ind., 478; Dickerson v. Davis, 12 Ia., 353; Owen v. Norris, 5 Blackf., 479; Schley v. Pullman Car Co., 120 U. S., 575; Brunswick-Balke Co. v. Brackett, 37 Minn., 58.

[29] Coleman v. Billings, 89 Ill., 183; Gil v. Fontleroy, 8 B. Mon. (Ky.), 177; Wetmore v. Laird, 5 Biss., 160.

The omission of the words "notary public" after his signature cannot invalidate his certificate of acknowledgment, so long as his official character and the fact that he is acting officially, appear in the body of the certificate.[30] The requirements of the statutes must be complied with and all deeds acknowledged before an officer must be signed by him; merely writing his name elsewhere will not suffice.[31] The statutes must be complied with, both as to the terms, and acknowledgment of the deed, prescribing homestead exemptions, release, waiver, or conveyance, as against the person entitled to the exemptions or estate.[32] A trustee's certificate of acknowledgment to a deed stating "to be his act and deed for the purpose therein mentioned" is a sufficient acknowledgment.[33] Anyone taking a signed deed to an officer and acknowledging the signature as his own, thereby effectually makes it his.[34]

§ **88. Locality.**—A certificate of acknowledgment must contain some assignable locality, which the court can judicially notice, in order to render the deed admissible as evidence without proof of its execution; and a notarial seal will not cure the defect.[35]

§ **89. Essentials of an acknowledgment.**—These are the fact of acknowledgment and personal knowledge of the parties.[36] The grantor must say and the certificate must show that he executed the deed.[37] It is sufficient that the title and county of the officer be cited in the body of the certificate; it is not necessary that it be repeated after his signature.[38] Technical rules of construction are not to be resorted to where the meaning of the parties is plain and obvious.[39]

§ **90. Personally known.**—The Illinois act of 1853 provides that no officer shall take the acknowledgment of any person to any deed unless the grantor shall be personally known to the officer, or shall be proved by a credible witness, and the officer shall so state in his certificate. The act clearly and explicitly requires the certificate to show that the wife was personally known, or proven by a credible witness in order to release the dower.[40] An acknowl-

[30] Lake Erie etc. R. Co. v. Whitham, 155 Ill., 514.

[31] Marsten v. Brashaw, 18 Mich., 81.

[32] Gage v. Wheeler, 129 Ill., 197.

[33] Dawson v. Hayden, 67 Ill., 52.

[34] Tunison v. Chamblin, 88 Ill., 378; Stanton v. Button, 2 Conn., 527; Spitznogle v. Vanhesoch, 13 Neb., 338.

[35] Vance v. Schuyler, 1 Gil., 160.

[36] Hartshorn v. Dawson, 79 Ill., 108; Hayden v. Westcott, 11 Conn., 129; Smith v. Garden, 28 Wis., 685.

[37] Short v. Conlee, 28 Ill., 219.

[38] Colby v. McOmber, 71 Ia., 469.

[39] Noyes v. Nichols, 28 Vt., 159.

[40] Coburn v. Herrington, 114 Ill., 104; Hartshorn v. Dawson, 79 Ill., 108; Becker v. Quigg, 54 Ill., 390; West v. Krebaum, 88 Ill., 263; Hanners v. Dole, 61 Ill., 307; Logan v. Williams, 76 Ill., 175; Hart

edgment taken before the passing of the act is valid.[41] The certificate of acknowledgment must state that the maker of the instrument was known to the officer taking it, or proven to him on oath to be the person who executed it, and by whom proven.[42] A certificate attached to a deed of land in Illinois, that on the 27th of May, 1856, personally came C. L. and W. L., her husband, "known to me to be the persons who executed the foregoing instruments, and acknowledged the same to be their free act and deed," is equivalent to stating that they came before the officer, and were personally known to him to be the real persons who subscribed to the deed, and in this is sufficient.[43] The omission of the word "known" in a certificate of acknowledgment is fatally defective, as it fails to show that the grantor is personally known to the officer.[44]

A certificate showing that the parties whose names are subscribed to the deed are personally known to the officer, is sufficient, although ungrammatically expressed.[45] The certificate of the officer must show that the person making the acknowledgment was known to him to be the grantor in the conveyance or that proof of the fact was made before him.[46] It must be so stated in the certificate, otherwise the instrument is of no greater force than if no attempt had been made to acknowledge it. They may convey all other rights without acknowledgment.[47] But not the homestead rights. The identity of the grantor, and not the person who merely signs the deed, must be established before the officer can act.[48]

§ 91. By whom taken.—Persons dealing in property affected by instruments which require acknowledgment, are protected against the consequences of false acknowledgments made by officers.[49] The statute of Illinois requires the name of the officer to be subscribed to his certificate of acknowledgment.[50] The curative statute of 1829 validates acknowledgments taken before it was enacted by unauthorized officers.[51] In taking acknowledgments, an officer acts under the sanction of his official oath, and his certifi-

v. Randolph, 142 Ill., 521; Muir v. Galloway, 61 Cal., 498; Kelley v. Calhoun, 95 U. S., 710; Hiller v. La Flesh, 59 Wis., 465.

[41] Logan v. Williams, 76 Ill., 175.

[42] Kimball v. Semple, 25 Cal., 441.

[43] Schley v. P. Car Co., 120 U. S., 575.

[44] Blain v. Rivard, 19 Ill. App., 477; Kimball v. Semple, 25 Cal., 446.

[45] Hartshorn v. Dawson, 79 Ill., 108.

[46] Davidson v. Wallingford, 88 Tex., 619; Brown v. McCormick, 28 Mich., 215; Munroe v. Eastman, 44 Mich., 531; Fryer v. Rockefeller, 63 N. Y., 268.

[47] Gage v. Wheeler, 129 Ill., 197.

[48] Lyon v. Kain, 36 Ill., 362.

[49] Bartels v. People, 152 Ill., 557.

[50] Clark v. Wilson, 27 App. Ill., 610; 127 Ill., 449; Marston v. Brashaw, 18 Mich., 81.

[51] Lyon v. Williams, 76 Ill., 175.

cate of his acts, required by law to be made, should be regarded as high a grade of evidence as if given under oath.[52]

A master in chancery is not authorized by law to take the acknowledgment of deeds out of this State.[53] (California.)

Acknowledgments can be taken by a notary public anywhere within the limits of the county or State.[54] The authority given him to take acknowledgments and certify thereto, relates wholly to real estate.[55] The Illinois law of 1819 did not confer this right.[56]

See—Notaries' powers and duties under each State, §§ 21-70.

After the adoption of the act of 1829 in Illinois notaries were authorized to take acknowledgments of power of attorney.[57] His certificate attached to a power of attorney, not relating to the sale, conveyance or disposition of real estate, has no probative force or effect to establish the fact that the maker executed said power.[58]

The taking of an acknowledgment of a deed or mortgage is not a duty imposed upon the clerks of probate courts.[59]

In taking acknowledgment of deeds under the 11th section of the act of 1827, in Illinois, the officers authorized so to do under act of 1829, must follow the form of the first named act. The laws of two States cannot be united in taking acknowledgments outside the State; there must be entire conformity to the law of one or the other State.[60] A deed executed out of the State is properly acknowledged if executed according to the laws of the State where the execution takes place.[61] A mortgage for land in Illinois, acknowledged in another State in conformity with the laws of Illinois, is admissible as evidence in Illinois courts, and the uncorroborated evidence of the mortgagor that she did not acknowledge the mortgage in the manner recited in the certificate of acknowledgment is not sufficient to overcome these recitals.[62] The statute only authorizes a certificate of conformity by a clerk in the State where the deed is acknowledged. It must appear that the officer making the certificate is an officer of the State within which the acknowledgment is made, and that he is acting under and by authority of its

[52] Warrick v. Hull, 102 Ill., 280.
[53] Kimball v. Semple, 25 Cal., 441.
[54] Hill v. Bacon, 43 Ill., 477; Guerten v. Mombleau, 144 Ill., 32.
[55] Openheimer v. Giershofer, 54 Ill. App., 39.
[56] Choteau v. Jones, 11 Ill., 300.
[57] Holbrook v. Nichol, 36 Ill., 161.
[58] Oppenheimer & Co. v. Greishofer & Co., 54 Ill. App., 38.
[59] People v. Bartels, 38 Ill. App., 428.
[60] Adams v. Bishop, 19 Ill., 395; Montag v. Linn., 19 Ill., 399.
[61] Esker v. Hefferman, 159 Ill., 38; Summer v. Mitchell, 29 Fla., 179; Slaughter v. Bernards, 88 Wis., 111; Bowman v. Wittig, 39 Ill., 416; Keller v. Moore, 51 Ala., 340.
[62] Post v. F. Nat. Bk., 138 Ill., 559.
[63] Lyon v. Kain, 36 Ill., 362.

laws.[63] The officer who certifies to the due execution of the deed, explains the meaning of any abbreviations by attesting the official character of the person employing the abbreviation.[64]

§ 92. The officer a party in interest.—An acknowledgment of the execution of an instrument in writing, when required by law, should be made before an officer wholly disinterested. An officer cannot execute process in his own favor. This applies with equal force to the taking of an acknowledgment.[65]

§ 93. Seal.—A notary's acts should always be attested by a notarial seal.[66] The official seal attached to an acknowledgment imparts verity, and that the act is official and not individual.[67] The use of the word "notarial" before the word seal in a justice of the peace's certificate of acknowledgment of a deed is mere surplusage, and does not invalidate the certificate.[68] No seal is necessary to certificates of acknowledgment unless the statutes expressly require it.[69] When the statutes require, it must be complied with, or the deed will be insufficient and not entitled to be read in evidence or record.[70] The Illinois statute of 1819 simply required the officer should certify the acknowledgment under his hand and seal, upon the back of the conveyance.[71]

An acknowledgment to a deed taken before a notary public in Missouri under his official seal, in conformity with the Illinois statute for lands situated in Illinois, is sufficient.[72]

The law with regard to the acknowledgment of deeds and mortgages is not unconstitutional and void, as impairing the obligation of contracts. It is within the legislative power to enact, as to future contracts, that the same shall not be binding or effective in auy way without a seal or without an acknowledgment of a specific kind or without being recorded. Statutes simply prescribe what shall be essential to constitute a valid contract.[73]

In an abstract of title, the letters L. S. after the notary's signature, sufficiently indicate that a seal was used.[74]

§ 94. Proof of execution.—It is not necessary to state that

[64] Final v. Backus, 18 Mich., 218.

[65] Hammers v. Dole, 61 Ill., 307; Groesbeck v. Seeley, 13 Mich., 329; Rothschild v. Daugher, 85 Tex., 332; Hogans v. Carruth, 18 Fla., 587.

[66] Holbrook v. Nichol, 36 Ill., 161; Dyer v. Flint, 21 Ill., 80; Clark v. Wilson, 27 Ill. App., 610; Mason v. Buck, 12 Ill., 273; Booth v. Cook, 20 Ill., 129.

[67] Moore v. Titman, 33 Ill., 358.

[68] Foster v. Latham, 21 Ill. App., 165.

[69] Thompson v. Morgan, 6 Minn., 292; Baze v. Arper, 6 Minn., 220.

[70] Meskimen v. Day, 35 Kan., 46; Hastings v. Vaugh, 5 Cal., 315.

[71] Coleman v. Billings, 89 Ill., 183.

[72] Dawson v. Hayden, 67 Ill., 52.

[73] Parrott v. Kumpf, 102 Ill., 423.

[74] Bucklen v. Hasterlik, 155 Ill., 423.

the subscribing witness subscribed his name in the presence and at the request of the grantor.[75]

When the statutes require two witnesses to a deed, one only will invalidate the deed.[76] It is not required that the "competency" of the subscribing witness be stated in the proof of acknowledgment; that is presumed.[77]

The purpose of a certificate of acknowledgment is for record and evidence without further proof; no neglect is excusable.[78] Prima facie proof of the execution of deed may be made by one of the subscribing witnesses.[79]

§ 95. Impeachment of the certificate.—The certificate of acknowledgment is conclusive as to all matters which it is the duty of the acknowledging officer to certify, if he has jurisdiction. But as between the immediate parties to the deed, the acknowledgment may be impeached for fraud, collusion or imposition, but not otherwise.[80]

The certificate of the officer imparts verity, and is conclusive to the same extent that a record is. It can only be overcome by the strongest and most unequivocal testimony, by evidence that is clear and convincing beyond a reasonable doubt; by evidence of the clearest, strongest and of the most convincing character, and by disinterested witnesses; by evidence that is most full, clear and satisfactory; and that, like a record, it can only be impeached for fraud.[81]

Proof having been given that the certificate of acknowledgment by an authorized officer of the law was attached to a lost deed, is sufficient, after a lapse of 28 years, to overcome the wife's denial that she released her dower.[82]

The law has made the certificate of the acknowledging officer proof of the execution of the deed, and while it is not conclusive, public policy forbids that it should be overcome but by clear and undoubted evidence that it is a forgery.[83]

[75] Job v. Tebbetts, 4 Gil., 143.

[76] Thompson v. Morgan, 6 Minn., 292; Parret v. Shabhut, 5 Minn., 323.

[77] Job v. Tibbetts, 4 Gil., 143.

[78] Fogarty v. Finlay, 10 Cal., 239.

[79] O'Sullivan v. Overton, 56 Conn., 102; Melcher v. Flanders, 40 N. H., 139; Gelatt v. Goodspeed, 8 Cush., 412.

[80] Fitzgerald v. Fitzgerald, 100 Ill., 385; Warrick v. Hull, 102 Ill., 280; Washburn v. Roesch, 13 Ill. App., 268; Tunison v. Chamblin, 88 Ill., 378; Baird v. Jackson, 98 Ill., 78; Griffin v. Griffin, 125 Ill., 430; Fisher v. Stiefel, 62 Ill. App., 580; Foster v. Latham, 21 Ill. App., 165; Lickman v. Harding, 65 Ill., 505.

[81] O'Donnell v. Kelliher, 62 Ill. App., 641.

[82] Berdel v. Egan, 125 Ill., 298.

[83] Tunison v. Chamblin, 88 Ill., 378.

The evidence to impeach must be so full and satisfactory as to convince the mind that the certificate is false or forged. A mere suspicion, or even preponderance of evidence less than sufficient to establish a moral certainty to that effect, is insufficient.[84]

§ 96. Acknowledgments as evidence.—A notary's seal attached to the acknowledgment of a deed without the notary's signature cannot be received as evidence of the execution of the deed.[85] It is presumed that the notary's official seal was impressed on the certificate when the certificate so states.[86] No objection having been made, when the deed was put in evidence, that the official seal of the notary did not appear on the certificate of acknowledgment, the objection will be regarded as having been waived.[87] The certificate of acknowledgment of a notary or consul is prima facie evidence of their official character.[88]

§ 97. Amending certificate.—An officer having taken an acknowledgment of a deed, and made a certificate thereof, cannot afterwards amend or change his certificate for the purpose of correcting a mistake. This can only be done by the parties reacknowledging the deed.[89] The same is true if the deed had been delivered.[90]

§ 98. Acknowledgments by corporations.—An officer in a corporation can attest the execution of its deeds, if an officer authorized by law to take acknowledgments. A deed signed by the vice-president, as vice-president, with the seal of the company attached, is valid.[91]

An acknowledgment of a chattel mortgage by a corporation residing in another State can, according to the Illinois statute, be taken before any officer authorized by law to take acknowledgment of deeds.[92] If taken at the home office of the corporation mortgagor, it conforms with the statute.[93]

§ 99. The officer liable.—Technical adherence to the statute is of vital importance. The notary is required to certify that the parties appeared in person before him, that he knows them to be the parties named, in and who executed the instrument in question, and that they acknowledged they executed it as their free

[84] Griffin v. Griffin, 125 Ill., 430; Baird v. Jackson, 98 Ill., 78.
[85] Clark v. Wilson, 27 Ill. App., 610; 127 Ill., 449; Foster v. Latham, 21 Ill. App., 165.
[86] Baker v. Baker, 159 Ill., 394.
[87] Baker v. Baker, 159 Ill., 394.
[88] Mott v. Smith, 16 Cal., 534.
[89] Merritt v. Yates, 71 Ill., 636.
[90] Griffith v. Ventress, 91 Ala., 966.
[91] Sawyer v. Cox, 63 Ill., 130.
[92] Hewitt v. Watertown Steam Engine Co., 65 Ill. App., 153.
[93] Hewitt v. Gen. Electric Co., 164 Ill., 420.

act and deed. In some States the acknowledgment of a married woman must appear to have been after an examination apart from her husband.[94]

The officer has no right to certify anything that he does not know.[95] Certifying when the party has not appeared before him or when he has not read the instrument is a misfeasance and renders him liable.[96]

§ 100. Certifying officers, official title must be given —A certificate in which the person taking the acknowledgment gives himself no official designation or title is fatally defective.[97]

If his title is given in full in the body of the certificate, its omission from the signature is immaterial. The initials of the title will suffice.[98]

The acknowledgment must be on the same sheet as the deed, otherwise it is void, unless the second sheet contains the testatum clause.[99]

§ 101. Statute form in substance, all that is required. —A substantial compliance with the statute prescribing its form and requisites is all that is required.[100]

§ 102. Officer must act within his state.—The acknowledgment and certification of a deed taken and made by an officer of a State must be taken and certified within the State under which the officer holds his authority to do the act.[1]

In Illinois, a notary public can take acknowledgments to deeds of real estate anywhere within the State.[2]

§ 103. Acknowledgment before notary who is stockholder and director.—A deed of trust to a loan association

[94] Mechem's P. O., Sec. 706; Tully v. Davis, 30 Ill., 103; Shephard v. Carriel, 19 Ill., 313; Gove v. Cather, 23 Ill., 585; Lindley v. Smith, 46 Ill., 523; Montag v. Linn, 19 Ill., 398; Fisher v. Meister, 24 Mich., 447; Hiles v. La Flesh, 59 Wis., 465; Dawson v. Hayden, 67 Ill., 52; Hughes v. Lane, 11 Ill., 123.

[95] Fisher v. Meister, 24 Mich., 447.

[96] Curtiss v. Colby, 39 Mich., 456.

[97] Warvell's Abstracts, p. 224; Hout v. Hout, 20 O. S., 119; Cassell v. Cook, 8 Serg. & R., 268; Lake Erie, etc., R. Co. v. Witham, 155 Ill., 514; Clark v. Wilson, 27 Ill. App., 610; id., 127 Ill., 449.

[98] Summer v. Mitchell, 29 Fla., 179.

[99] Winkler v. Higgins, 9 O. S., 599.

[100] Warvell's Abstracts, p. 224; Muce v. Schuyler, 1 Gil., 160; Livingston v. Kettelle, 1 Gil., 116; Hill v. Bacon, 43 Ill., 477; Hobson v. Ewan, 62 Ill., 146; Hope v. Sawyer, 14 Ill., 254; Lindley v. Smith, 46 Ill., 524; Russell v. Ramsey, 35 Ill., 370; Lane v. Soulard, 15 Ill., 123; Shepard v. Carriel, 19 Ill., 313.

[1] Rorer's Interstate Law (2nd ed.), page 290.

[2] Guertin v. Mombleau, 144 Ill., 32; Openheimer v. Greishofer, 54 Ill. App., 39.

acknowledged before a notary public who is a stockholder, director and attorney of the association, is not ipso facto void, but is voidable on proof of fraud, deception or undue advantage by reason of the notary's relationship to the grantee. In the absence of such proof, the acknowledgment will be upheld. Acknowledgments taken before officers who are related to either party or who are interested in the instruments, are contrary to public policy, and should be discountenanced. While not void, they are open to attack on the ground of fraud, oppression or other invalidation.[3]

§ 104. Acknowledgment of mortgage before notary who is secretary and treasurer of mortgagee.—The act of an officer in taking the acknowledgment of a grantor to conveyance of real estate is a ministerial one. Being secretary and treasurer of a corporation does not authorize the presumption that he is a stockholder. The relationship or interest possessed by an officer disqualifying him from taking an acknowledgment must be determined from the facts and circumstances of the case in which the question is presented rather than by any general rule. A notary public is not disqualified from taking an acknowledgment of a mortgage made to a corporation merely because it is shown he is its secretary and treasurer, it not appearing that he is a stockholder in such corporation, or otherwise beneficially interested in having the mortgage made.[4]

§ 105. Acknowledgment of mortgage before notary who is attorney of mortgagee.—An attorney who is a notary public is not disqualified from taking an acknowledgment of a mortgage made to his client merely because he holds for collection the claim secured by such mortgage, it not appearing that he has any beneficial interest in the mortgage, nor that the amount of his compensation in any manner depended upon such mortgage.[5]

§ 106. Acknowledgments by married women.—The law has endeavored to throw safeguards around the property of married women, owing to their peculiarly dependent position. In some States the wife is required to be examined separately and apart from the husband, by the officer taking the acknowledgment. She must be made fully aware of the contents of the instru-

[3] Cooper v. Hamilton Perpetual Building & Loan Assn., 97 Tenn., 285.

[4] Horbach v. Tyrrell, 48 Neb., 514.

[5] Havemeyer v. Dahn, 48 Neb., 536.

ment; she must acknowledge the act to be free and voluntary, without any compulsion or desire to retract.

The formalities attending the acknowledgment of a married woman's conveyances now differ in no material respects from other deeds. It was, and, in some few States is yet, customary to make a personal examination of the wife apart from the husband. "The law," says Proffat, "long looked upon th ewife as under the control of the husband, holding him liable for her torts committed in his presence, on the theory of the power of coercion over her."[6]

In Illinois, a married woman can, by joining with her husband, convey her interests in lands the same as if she were a feme sole.[7]

Since the act of 1869, the deed of a married woman is valid and binding, though not acknowledged as required by the act of 1845.[8]

§ 107. Requisites of the certificate.—A certificate of acknowledgment is defective and insufficient when it fails to show that the wife knew the contents of the deed; that the parties were known to the officer; when it fails to show that the parties acknowledged the deed both freely and voluntarily.[9]

§ 108. Exact compliance to statute.—Any conveyance good at common law will pass the estate of the husband, whether his wife joins him in it or not. The fact that it is not acknowledged before an officer will make no difference; whereas in the case of the wife, the statute requires that either the husband must join her in the deed, or, if executed by her alone, that it be acknowledged before some officer. This requirement is mandatory, and if not complied with, the deed is invalid.[10]

In the acknowledgment of a deed by a married woman, it is sufficient if it appears the statute has been substantially observed and followed. A mere literal compliance is not demanded or expected.[11]

Redundancy in a wife's acknowledgment to a deed does not invalidate. It should be regarded as surplusage.[12]

Where a femme covert was the owner of real estate in fee, and executed a deed with her husband, purporting to convey the estate, and the acknowledgment to the deed was in substance a mere

[6] Warvell's Abstracts, p. 267.
[7] Starr & Curtis' Anno. Statute of Ill., 1896, pp. 927, 930.
[8] Terry v. Eureka College, 70 Ill., 236.
[9] Lyon v. Kain, 36 Ill., 362; Stuart v. Dutton, 39 Ill., 91; Schley v. P. Car Co., 120 U. S., 575.
[10] Snell v. Snell, 123 Ill., 404.
[11] Stuart v. Dutton, 39 Ill., 91.
[12] Chister v. Rumsey, 26 Ill., 97.

relinquishment of dower, the deed did not convey the estate of the wife. The form of acknowledgment, when a femme covert pleads her right of dower, is different from that by which she transfers her estate of inheritance.[13]

While it is true, that a grammatical inaccuracy in the certificate of acknowledgment of the deed of a married woman for her lands should not vitiate it, still it should clearly express what is intended. Her execution and acknowledgment of it must appear certain.[14]

A deed dated May 27, 1856, by C. L., grantor, described as "sister and heir-at-law of H. M.," and as "of the county of St. Clair and State of Michigan," which conveyed to the grantee a tract of land in Illinois, and was signed and sealed by C. L. and by W. L., the name of W. L. not appearing in the granting clause of the deed, and which was acknowledged May 27, 1856, by said "C. L. and W. L., her husband," held sufficient to pass said title of husband and wife, under the statute of Illinois of February 22, 1847, then in force, respecting the conveyance of land or real estate situated in Illinois by a femme covert not residing within the State, and respecting her joining with her husband in the execution of the deed.[15]

§ 109. Private examination.—Under the Illinois statute of 1853, it was an essential part of the execution of the deed conveying the wife's estate, that the certificate of acknowledgment state that the wife was examined separate and apart from her husband, and that the contents of the deed were made known and explained to her. Failing to so state made the deed as to her and her heirs absolutely void.[16]

This is not necessary now. If the contents of the deed is fully made known and the act of transfer fully explained to her it is all that is required; she can transfer as if a femme sole. See Starr & Curtis Anno. Statutes 1896 Ed., p. 930.

Under the statute of Tennessee, a married woman may convey her separate estate without her husband joining in the deed, if she has a privy examination before a chancellor or circuit judge of the State, or clerk of the county court.[17]

§ 110. Wife's signature to the acknowledgment.—Where the official certificate to a deed shows that the wife, on a pri-

[13] Lane v. Dolick, 6 McL., 200.
[14] Merritt v. Yates, 71 Ill., 636.
[15] Schley v. P. Car Co., 120 U. S., 575.
[16] Mettler v. Miller, 129 Ill., 630.
[17] Robinson v. Queen, 87 Tenn., 445.

vate examination, acknowledged the execution thereof, that she freely and voluntarily relinquished her dower, as required by law, and all this without fear or compulsion of her husband, it is of no importance who put her name to the deed so long as it is of record that she acknowledged the signature.[18]

§ 111. Wife's private examination.—The provision of the law authorizing certain officers to take the private examination of the wife, was designed as a substitute for the proceeding at common law by fine and recovery, whereby the rights of the wife, on the one hand, might be guarded, and a sure, unquestionable transfer of her right secured on the other.[19]

An officer's certificate of the acknowledgment on the 27th May, 1856, of a deed of land in Illinois by a married woman showing her privy examination separate and apart from her husband, and which shows that she, fully understanding the contents of the instrument, acknowledged, etc., is a sufficient compliance with the statutes at that time.[20]

A certificate that the deed was executed "freely and voluntarily," relates to deeds made by husband and wife and not to a trustee's deed.[21]

The acknowledgment of a married woman before another notary than the husband's must show that it was her free act, a separate examination contents explained, a voluntary act by her and that she is still satisfied.[22]

§ 112. Wife's conveyance of her own property.—Greater strictness is required where a married woman seeks to convey her own real estate, for the reason the deed does not take effect by delivery, as in the case of a conveyance by a husband and wife conveying his estate, in which the wife has but an inchoate, uncertain and expectant interest, which may never be consummated. In the first case, her deed becomes operative only by her acknowledgment in the mode prescribed by statute. Until so acknowledged it has no vitality.[23]

It is the acknowledgment that gives effect to the deed, and that must be made substantially in conformity with the law; if not so made, the deed is invalid.[24]

Since the act of 1869, in Illinois the deed of a married woman

[18] Kerr v. Russell, 69 Ill., 666.
[19] Kerr v. Russell, 69 Ill., 666.
[20] Schley v. P. Car Co., 120 U. S., 575; Hughes v. Lane, 11 Ill., 123.
[21] Dawson v. Hayden, 67 Ill., 52.
[22] Ludlow v. O'Neill, 29 O. S., 181.
[23] Kerr v. Russell, 69 Ill., 666; Lindley v. Smith, 58 Ill., 250.
[24] Lane v. Dolick, 6 McL., 200.

is valid and binding upon her, though not acknowledged as required by the act of 1845.[25]

§ 113. Wife must be personally known to the officer.—In order to make a deed of the husband's real estate, executed by him and his wife, operative as a valid release of the wife's dower, it is necessary that the certificate of her acknowledgment should show that she was personally known by the officer taking the same to be the person named in the deed.[28]

§ 114. Wife's interest in homestead.—After the passage of the act of 1869 in Illinois, the execution of a conveyance of real property by a married woman joining with her husband was sufficiently authenticated by her signature. Her acknowledgment of its execution before an officer authorized to take acknowledgments was only required to render it admissible as evidence without further proof or to release her homestead right in the property. For its validity as a transfer of the grantor's interest, except as to the homestead rights therein, the acknowledgment was unnecessary.[27]

If the certificate of the notary to an acknowledgment by a married woman can be impeached by parole, the testimony of the notary that he did not recollect asking such woman whether she released her right of homestead, and did not think he did, the evidence is insufficient.[28]

A married woman can only relinquish her rights of homestead and dower in her husband's lands by joining with him in the execution of a deed or mortgage. All other contracts in relation thereto are void for want of capacity.[29]

Acknowledgments taken out of this State according to the statute of that State, for lands situated in this State, are valid. Husband's deed to land will pass the legal title without the wife joining. The object of wife joining is to pass her rights of dower.[30]

In California a homestead cannot be created upon land held in co-tenancy, or tenancy in common, in favor of one of the co-tenants.[31]

Where there is no homestead in land, the title of the husband can be conveyed by himself alone, it is not necessary that his deed be acknowledged to effect his transfer.[32]

[25] Terry v. Eureka College, 70 Ill., 236.
[26] Hart v. Randolph, 142 Ill., 521; Grove v. Cather, 23 Ill., 634.
[27] Knght v. Paxton, 124 U.S., 552.
[28] Minchrod v. Ullmann, 163 Ill., 25.
[29] Knox v. Brady, 74 Ill., 476.
[30] Eagan v. Connelly, 107 Ill., 458.
[31] Rosenthal v. Merced Bank, 110 Cal., 198; in re Carriger's Estate, 107 Cal., 618.
[32] Rosenthal v. Merced Bank, 110 Cal., 198.

§ 115. Dower.—The right to dower is a legal right which cannot be barred, unless it has been relinquished in the manner prescribed by law, and this may be accomplished either by a joinder of the wife in a conveyance by the husband, or by a separate deed of relinquishment. The release which a woman makes by joining with her husband operates against her only by estoppel and not by grant, and in the absence of any express legislative requirement to the contrary, the release will be valid and effectual without mention of her name, or of the dower in the body of the deed.[33]

Where a femme covert was the owner of real estate in fee, and executed a deed with her husband, purporting to convey the estate, and the acknowledgment to the deed was in substance a mere relinquishment of dower the deed did not convey the estate of the wife.[34]

§ 116. Certificate entitled to full credence.—In the absence of fraud or collusion, the certificate of the officer taking the acknowledgment is entitled to full credit.[35]

§ 117. Seal.—A notary cannot take acknowledgments of deeds without the use of their official seal. Whether to be used in or outside their county.[36]

§ 118. Bill of sale of personal property made by a husband to his wife, they living together, the same being acknowledged to before a notary, is void.[37]

§ 119. Sheriff's deed.—It is essential to the validity of a sheriff's deed, for land sold by him under an execution, that it should have been legally acknowledged. The property is conveyed against the will of the judgment debtor, the conveyance is not his act, but the act of the law; and the law, when acknowledgment is requisite, must be strictly complied with.[38]

§ 120. Acknowledgments by corporation officers.—The mode of execution of corporate conveyances is usually prescribed by statute, and ordinarily consists of the signature of the president or corresponding officer who subscribes as such officer, and the affixing of the corporate seal. In addition to this, even when not required by statute, it is customary for the secretary or person having the custody of the seal to attest same under his hand.[39]

[33] Warvell's Abstracts, 207-8.
[34] Lane v. Dolick, 6 McL., 200.
[35] Lickman v. Harding, 65 Ill., 505; Calumet v. Russell, 68 Ill., 426.
[36] Dyer v. Flint, 21 Ill., 80.
[37] Holzinger v. Gilbert, 62 Ill. App., 96.
[38] Warvell's Abstracts, p. 301.
[39] Warvell's Abstracts, p. 280; Sawyer v. Cox, 63 Ill., 130.

Under the Florida statutes, the vice president of a corporation, who is a notary public, can take an acknowledgment to a mortgage for the corporation, providing he is not a stockholder in the corporation.[40]

§ **121. Recording.**—While the Illinois statute requires a deed of assignment to be recorded in the county where the assignor resides, yet no possible reason is perceived for requiring it to be acknowledged there. The place of acknowledgment seems inconsequential.[41]

It is sufficient, to entitle a deed for record, that it be acknowledged before some officer in the State authorized by law to take the acknowledgment.[42]

A deed is valid as between parties to it without being acknowledged or recorded.[43]

§ **122. Town plats.**—Previous to the Illinois law of 1874, an acknowledgment to a town plat before a notary, was a nullity and did not vest the fee of the streets and alleys in the municipality. It is otherwise since the passing of the law of 1874.[44]

While a town plat, imperfectly acknowledged, fails to convey the fee, it is evidence tending to prove a common-law dedication, which vests an easement in the streets and alleys in the municipality.[45]

By the Illinois act of 1833 a plat of land laid out into lots, streets, etc., was required to be acknowledged by the proprietor of the land, and could not be acknowledged by an attorney in fact.[46]

A plat acknowledged by an attorney in fact did not, under that act, vest the legal title of the streets in the municipal corporation, yet if the owner of the land had made sales of lots, he could be estopped from questioning the existence of the streets, and such acts would become a common-law dedication of the streets.[47]

§ **123. Chattel mortgages.**—The Illinois statutes, by its own force and vigor, confers authority on a notary public of another State to take the acknowledgment of chattel mortgages when the mortgager resides in such State, as well as in cases of conveyances of real estate.[48]

The evidence of the officer who takes an acknowledgment of a

[40] Fla. Sav. Bk. & R. E. Ex. v. Rivers, 36 Fla., 575.
[41] Zimmerman v. Willard, 114 Ill., 364.
[42] Harding v. Curtis, 45 Ill., 252.
[43] Semple v. Miles, 2 Scam., 315.
[44] Gould v. Howe, 131 Ill., 490.
[45] Gould v. Howe, 131 Ill., 490.
[46] Earll v. City of Chicago, 136 Ill., 277.
[47] Earll v. City of Chicago, 136 Ill., 277.
[48] Hewett v. Watertown Steam Engine Co., 65 Ill. App., 153.

chattel mortgage is competent for the purpose of impeaching his official certificate.[49]

The omission to state the county in an acknowledgment to a chattel mortgage taken before a justice of the peace, is immaterial when it is perfectly certain that the acknowledgment was taken by a justice of the peace in and for a town of which the court has judicial knowledge to be in the proper county.[50]

STATUTORY REQUIREMENTS.

§ 124. Ala.—ACKNOWLEDGMENTS—IN THE STATE—Before whom taken. Judges of the Supreme and Circuit Courts, Clerks of such courts, chancellors, registers in chancery, probate judges, justices of the peace, notaries. OUTSIDE THE STATE—Federal judges and clerks, judges of courts of record, notaries, commissioners. OUTSIDE THE U. S.—Judges of courts of record, mayors, chief magistrate of any city, town, borough, or county, notaries, any diplomatic, consular or commerclal agent of the United States. PERSONALLY KNOWN—Must be personally known or proved to the officer. WITNESSES—Two required. PRIVATE SEALS are abolished. WOMAN—Age 18. SEPARATE EXAMINATION of wife required. DOWER—Released by joining with husband or by power of attorney. Waiver of homestead—Separate instrument attested by one witness. POWER OF ATTORNEY—Acknowledged same as deeds.

§ 125. Ariz.—ACKNOWLEDGMENTS TAKEN IN THE STATE BY—Clerk of court having a seal, notary, county recorder, justice of the peace. OUT OF THE STATE BY—Clerk of a court of record having a seal, commissioner of deeds appointed by the Governor of this State, or a notary public. OUT OF THE U. S. BY—A minister, commissioner, or charge d'affaires of the United States resident and accredited where the acknowledgment is made. A consul general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States resident in the country where the acknowledgment is made, or notary public. MUST APPEAR BEFORE and be known to the notary or his identity sufficiently substantiated by credible witnesses. WITNESSES—Two witnesses are required to deed. Dower and curtesy do not exist. PRIVATE SEALS are abolished except those of corporations. AGE TO CONVEY—Married woman 17 years of age. A MARRIED WOMAN'S CONVEYANCE of homestead must state that the instrument of conveyance was shown to and fully explained to her by the officer, that she was privily examined apart from her husband, that the same is her act and deed, that she willingly signed the same and does not wish to retract it. Conveyance of her separate property may be acknowledged in the same manner as if she were a femme sole. POWER OF ATTORNEY—To convey lands, must be signed, sealed, acknowledged and recorded.

§ 126. Ark.—ACKNOWLEDGMENTS IN THE STATE taken by the Supreme, Circuit Court, any of the judges of same, clerk of any court of record, justice of the peace, or notary. Must be under officer's seal.

[49] McCurley v. Pitner, 65 Ill. App., 17.

[50] Gilbert v. Nat. Cash Reg. Co., 67 Ill. App., 606.

WITHOUT THE STATE—By any United States court, any State court having a seal, the clerk of any such courts, notary, mayor of any city or town, or the chief town officer having a seal of office, a commissioner appointed by the Governor of this State, the clerk of any court of record of the Indian country having attached his seal of office. Officer's seal must be attached. WITHOUT THE UNITED STATES—Before any court of any State, kingdom or empire having a seal, mayor, chief officer of any town or city having an official seal, any officer authorized by such country to take probate of the conveyance of real estate of his country if he has an official seal. Officer's seal must be attached. PERSONALLY known or identity proved is required. WITNESSES—Two to a deed. PRIVATE seals are abolished. WOMAN'S age to convey, 18. Woman's separate examination—Yes, must be voluntary. DOWER is relinquished by joining the husband. CURTESY—Yes, as at common law. HOMESTEAD—Wife to join husband in conveyance. POWER OF ATTORNEY to transfer must be acknowledged and recorded.

§ **127. Cal.**—ACKNOWLEDGMENTS taken at any place in this State, by a justice or clerk of the Supreme Court, or judge of the Superior Court anywhere in State; within the city, city and county, county, or district for which the officer was elected or appointed by; a clerk of a court of record; a county recorder, court commissioner; a notary public; a justice of the peace. Without the State, but within the United States, it may be taken by a justice, judge or clerk of any court of record of the United States; a justice, judge or clerk of any court of record of any State; a commissioner appointed by the Governor of this State for that purpose; a notary public or any officer authorized by the State where the acknowledgment is taken. Each are confined to their jurisdiction. To be taken outside of the United States, can be taken by a minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the acknowledgment is taken; by a consul, vice-consul or consular agent, judge of court of record, residents of the country were taken, or commissioners appointed by the Governor of the State, or a notary public or their deputy if so authorized. PERSONALLY known or identified to officer on the oath or affirmation of a credible witness is required. Officers taking must affix their signatures, name of their office and their seals of office if their State or country authorize them to have a seal. DEFECTIVE CERTIFICATION may be corrected by action of any interested party through the District Court. WITNESSES not required. PRIVATE SEALS are abolished. A MARRIED WOMAN'S acknowledgment must show that she was made acquainted by the officer with the contents of the instrument on an examination without the hearing of her husband, that she executed the instrument and does not wish to retract such execution. Her conveyance has the same effect as if she were unmarried but has no validity until so acknowledged. DOWER and CURTESY do not exist. HOMESTEAD—Wife and husband join in conveying. POWER of attorney to convey property must be acknowledged and signed same as a deed.

§ **128. Colo.**—ACKNOWLEDGMENTS—Who may take in the State—County judges in their county, clerks of United States Circuit and

District Courts, or his deputy, under the seal of the court; any judge of a court of record; any clerk of such court, or the deputy of the clerk, judge or deputy clerk, county clerk, county recorder, or their deputy, under seal of the court; justice of the peace, provided, if the property lies out of his jurisdiction he shall have attached the certificate of the county clerk and county recorder of the proper county as to his official capacity and authenticating his signature; any notary public under his official seal. Outside the State, before Secretary of any State or territory under State seal; clerk of any court of record under court seal; notary public under his official seal; commissioner of deeds appointed under the laws of this State, under his hand and official seal; any officer of that State so authorized to act, with the certificate of the clerk of some court of record of his county, city or district, that he has such authority. Outside the United States—Any foreign court of record having a seal with the judge's certificate; any mayor or chief officer of any city or town having a seal; United States consul, resident. All under seal. May be in the language of the country and translated by one learned in the language attached to the instrument, sworn and subscribed to by the translator before a proper officer as a true translation. PERSONALLY KNOWN to the officer, or their identity proved by at least one credible witness known to the officer. Not necessary to state such fact in the certificate, except conveyance or mortgage of homestead. WITNESSES not required. PRIVATE SEALS are abolished. WOMAN—Age to convey, 18. SEPARATE examination not required. DOWER AND CURTESY—Abolished. HOMESTEAD—May be conveyed by husband, however, in case of mortgage wife must join and be examined separate and apart. POWER OF ATTORNEY—Conveyances can be made when executed same as by deed.

§ **129. Conn.**—ACKNOWLEDGED—If in this State, before a judge of a court of record of this State or of the United States; a clerk of the Superior Court, Court of Common Pleas, or District Court, justice of the peace, commissioner of the school fund, commissioner of the Superior Court, notary public, either with or without his official seal, town clerk or his assistant. In any other State, etc., before a commissioner appointed by the Governor of this State, residing there, or any officer authorized by that State to act. In any other country, before a consul of the United States, notary, or justice of the peace, within their jurisdiction. CONVEYANCE to be in writing, and to be free act and deed of grantor. Signed with his own hand or mark. PERSONALLY known—No, but must personally appear. WITNESSES—Two required. PRIVATE SEALS—L. S. or scroll required. WOMAN—Can convey as if unmarried; separate examination not required. DOWER AND CURTESY.—Exist. POWER OF ATTORNEY—Husband and wife can convey by, without joinder.

§ **130. Del.**—ACKNOWLEDGMENTS—In State, before the Superior Court, chancellor or any judge or notary public, or before two justices of the peace for the same county. Out of this State, may be made before any consul general, consul, vice-consul, consular agent or commercial agent of the United States duly appointed in any foreign country; before any judge of any District or Circuit Court of the United

States, or the chancellor or judge of a court of record of any State, territory or country, or the mayor or chief officer of any city or borough, certified to under their hand and official seal, or certified to by any such court or clerk thereof under the seal of the court; any commissioner of deeds appointed by the Governor of this State under his hand and official seal; any notary public. PERSONALLY known, or identification of acknowledging party required. WITNESSES—One required. PRIVATE SEALS—Scroll will answer. WOMEN—21 years can convey by joining husband. WOMAN, SEPARATE EXAMINATION OF, is required. DOWER AND CURTESY—Exist. POWER OF ATTORNEY to convey to be acknowledged or proved and recorded same as a deed. Married woman may so convey.

§ 131. D. C.—ACKNOWLEDGMENTS may be made before any judge of a court of record and of law, any chancellor of a State, any judge of the Supreme, Circuit, District or territorial court of the United States, any justice of the peace, notary public, commissioner of the Circuit Court of the district appointed for that purpose. Outside the district, within the United States, must be accompanied by a certificate of the register, clerk, or other public officer having cognizance of the fact, under his official seal, that, at the date of the acknowledgment the officer taking the same was in fact the officer he purported to be. In a foreign country, before any judge or chancellor of any court, master, or master extraordinary in chancery, or notary public, or any secretary of legation or consular officer of the United States. If made before any officer other than a secretary of legation or consular officer, the official character of the person taking must be certified to as above. If made before an officer other than a secretary of legation or consular officer of the United States, the official character of the officer must be certified as in this country, namely:

I, A. B. (give official title), in and for (county, city or parish, district, etc.) aforesaid, in the State of ———, do hereby certify that C. D. a party to a certain deed, bearing date on the —— day of ———, and hereto annexed, personally appeared before me in the county (or city) aforesaid, the said C. D. being personally well known to me as (or proved by the oaths of credible witnesses before me to be) the person who executed the said deed, and acknowledged the same to be his act and deed. Given under my hand and seal this ——— day of ———.

A. B. (Seal.)

PERSONALLY KNOWN, or identified to the officer, is required. WITNESSES—None required. PRIVATE SEALS—None required. WOMAN—Married, may convey their separate property as if femme sole. WOMAN, SEPARATE EXAMINATION OF, before signing, is required. DOWER—Right exists and conveyed by joining husband. CURTESY—Is none. POWER OF ATTORNEY to convey must be acknowledged, signed and recorded as a deed.

§ 132. Fla.—ACKNOWLEDGMENTS—If in this State, before any judge, clerk or deputy clerk of any court of record, notary public or justice of the peace of this State, under their court or official seal. In another State, before a commissioner of deeds for this State, a judge or clerk of any United States or State court having a seal, or before a notary or justice of the peace of such State having a seal. In foreign

countries, before any commissioner of deeds appointed by the Governor of this State resident there, before any notary having a seal, any minister, charge d'affaires, consul general, consul, vice-consul, commercial agent or vice-commercial agent of the United States appointed to reside there. Such proofs to be under the official seal of the officer. PERSONALLY KNOWN, or satisfactorily identified to officer, is required. WITNESSES—Two required to deed. PRIVATE SEALS—Scroll is required. WOMAN—Age 21 years; married woman; minor can convey; her separate examination required, and that she executed it freely and voluntarily and without compulsion, constraint, apprehension or fear of or from her husband. This is required in the officer's certificate. DOWER—May be released by joining husband in the conveyance. CURTESY—None. Spanish law preserved. HOMESTEAD—Husband and wife to join in conveyance. POWER OF ATTORNEY to convey to be acknowledged, signed and recorded. Husband must join wife in it.

§ **133. Ga.**—DEEDS must be in writing. ACKNOWLEDGMENTS—To authenticate the record of a deed, if executed in this State, it must be attested by a judge of a court of record of the State, or a justice of the peace, or a notary public, or clerk of the Superior Court, in the county where the last three hold their appointments, or if subsequent to its execution the deed is acknowledged in the presence of either of the named officers, that fact, certified on the deed by such officer shall entitle it to record. EXECUTED OUTSIDE THIS STATE it must be attested by or acknowledged before a commissioner of deeds for this State, a consul or vice-consul of the United States, their certificate under their seal being sufficient evidence of the fact; or by a judge of a court of record in the State where executed, with a certificate of the clerk under the court's seal of the genuineness of the judge's signature; or by a clerk of a court of record under the seal of the court; or by a notary puhlic of the State and county where executed, with a certificate under the court seal from the clerk of the court under which the notary holds his appointment, or if appointed by the Governor, then with a certificate from the Secretary of State, certifying that said notary was at the time of the execution of the deed regularly commissioned and authorized by law to attest deeds and take acknowledgments thereof. PERSONALLY known to officer, must be, or identified to. WITNESSES—Two required to deeds and three to wills. PRIVATE SEALS—Scroll required. WOMAN'S age to convey, ——; must join her husband in conveying her interest; separate examination required stating she joins with her husband of her own free will and consent, without any compulsion or force used by him to oblige her to do so. DOWER—Transferred by joining husband in the deed. CURTESY—None; separate estate of wife not subject to. HOMESTEAD—Application to sell must be made to the judge of the County Superior Court. POWER OF ATTORNEY—Wife may convey by.

§ **134. Idaho.**—ACKNOWLEDGMENTS may be made anywhere within the State before a justice or clerk of the Supreme Court. Within the city, county or district, before a judge or clerk of a court of record, a county recorder, notary or justice of the peace. Without the State, but in the United States and within the jurisdiction of, a justice,

judge or clerk of a court of record of the United States; a justice, judge or clerk of any State court of record; a commissioner, appointed by the Governor of this State; a notary or any officer authorized by his State laws. Outside the United States, before a minister, commissioner or charge d'affaires, a consul, vice-consul of the United States, resident and accredited; a judge of a county court of record; commissioners appointed by this State's Governor; a notary, or by the deputy of the four latter, all residents of the country. PERSONALLY known to the officer, is required, or positively identified. WITNESSES—One witness to deed if not acknowledged. PRIVATE SEALS—Scroll required. WOMEN—Age to convey, 18. Married women convey their property with joinder of husband. Separate examination required and to be made acquainted with contents , and state she executes the instrument and does not wish to retract it. DOWER AND CURTESY—Does not exist. HOMESTEAD—$5,000 exemption. Conveyance jointly. POWER OF ATTORNEY—Conveyance jointly.

§ 135. Ill.—ACKNOWLEDGMENTS taken in the State, master in chancery, notary, United States commissioner, Circuit or County clerk, justice of the peace, or any court of record having a seal. In other States, a justice of peace, notary, United States commissioner, commissioner of deeds, mayor, county clerk, judge or clerk of United States Supreme or Circuit or District Courts, same of any State Supreme, Circuit, Superior, District, County or Common Pleas Court. In foreign lands, any court having a seal, minister or consul of United States, any officer so authorized. Same to be authenticated with their official seals and authority to be shown in the certificate. PERSONALLY KNOWN TO OFFICER—Is required or positively identified. WITNESSES—None required. PRIVATE SEALS—Scroll required. WOMEN—Age to convey, 18 years. Separate examination of not required. DOWER—Can be conveyed by joining husband. CURTESY—Abolished. HOMESTEAD—Wife must join husband in deed to release and the homestead clause must be stated, "including the release and waiver of the right of homestead." POWER OF ATTORNEY—Married woman can convey her estate by as if femme sole.

ILLINOIS STATUTES.

§ 136. RELEASE OF HOMESTEAD.—No deed or other instrument shall be construed as releasing or waiving the right of homestead, unless the same shall contain a clause expressly releasing or waiving such right. And in such case the certificate of acknowledgment shall contain a clause substantially as follows: "including the release and waiver of the right of homestead," or other words which shall expressly show that the parties executing the deed or other instrument intend to release such right. And no release or waiver of the right of homestead by the bushand shall bind the wife unless she join in such release or waiver.—Starr & Curtis' Anno. Statutes, 1896, p. 942.

§ 137. PERSONALLY KNOWN.—No judge or other officer shall take the acknowledgment of any person to any deed or instrument of writing, as aforesaid, unless the person offering to make such acknowledgment shall be personally known to him to be the real person who and in whose name such acknowledgment is proposed to be made, or

shall be proved to be such by a credible witness, and the judge or officer taking such acknowledgment shall, in his certificate thereof, state that such person was personally known to him to be the person whose name is subscribed to such deed or writing, as having executed the same, or that he was proved to be such by a credible witness (naming him), and on taking proof of any deed or instrument of writing, by the testimony of any subscribing witnesses, the judge or officer shall ascertain that the person who offers to prove the same is a subscribing witness, either from his own knowledge, or from the testimony of a credible witness; and if it shall appear from the testimony of such subscribing witness that the person whose name appears subscribed to such deed or writing is the real person who executed the same, and that the witness subscribed his name as such, in his presence and at his request, the judge or officer shall grant a certificate, stating that the person testifying as subscribing witness was personally known to him to be the person whose name appears subscribed to such deed, as a witness of the execution thereof, or that he was proved to be such by a credible witness (naming him), and stating the proof made by him; and where any grantor or person executing such deed or writing, and the subscribing witnesses, are deceased or cannot be had, the judge or officer, as aforesaid, may take proof of the handwriting of such deceased party and subscribing witness or witnesses (if any); and the examination of a competent and credible witness, who shall state on oath or affirmation that he personally knew the person whose handwriting he is called to prove, and well knew his signature (stating his means of knowledge), and that he believes the name of such person subscribed to such deed or writing, as party or witness (as the case may be), was thereto subscribed by such person; and when the handwriting of the grantor or person executing such deed or writing, and of one subscribing witness (if any there be), shall have been proved, as aforesaid, or by proof of signature of grantor where there is no subscribing witness, the judge or officer shall grant a certificate thereof stating the proof aforesaid.—Starr & Curtis' Anno. Statutes, 1896, p. 939.

§ 138. BY WHOM TAKEN.—Deeds, mortgages, conveyances, releases, powers of attorneys or other writings of or relating to the sale, conveyance or other disposition of real estate, or any interest therein, whereby the rights of any person may be affected in law or in equity, may be acknowledged or proved before some one of the following courts or officers, namely:

WITHIN THE STATE.—First—When acknowledged or proved within this State, before a master in chancery, notary public, United States Commissioner, Circuit or County Clerk, Justice of the Peace, or any court of record having a seal, or any judge, justice or clerk of any such court. When taken before a notary public or United States Commissioner, the same shall be attested by his official seal; when taken before a court or the clerk thereof, the same shall be attested by the seal of such court; and when taken before a justice of the peace, there shall he added the certificate of the county clerk, under his seal of office, that the person taking such acknowledgment or proof was a justice of the peace in said county at the time of taking the same. If the justice of the peace reside in the county where the lands men-

tioned in the instrument are situated, no such certificate shall be required.

TAKEN WITHOUT THE STATE.—Second—When acknowledged or proved without this State, and within the United States or their territories, or the District of Columbia, before a justice of the peace, a notary public, United States commissioner, commissioner to take acknowledgments of deeds, mayor of a city, clerk of a county, or before any judge, justice, or clerk of the supreme or any circuit or district court of the United States, or any judge, justice or clerk of the supreme, circuit, superior, district, county or common pleas court of any of the United States or their territories. When such acknowledgment or proof is made before a notary public, United States Commissioner, commissioner of deeds mayor of a city, or clerk, it shall be certified by such officer, under his seal of office. If before a mayor of the city, it shall be certified under the seal of the city. If before a justice of the peace, there shall be added a certificate of the proper clerk, under the seal of his office, setting forth that the person before whom such proof or acknowledgment was made was a justice of the peace at the time of making the same. An acknowledgment or proof may be made in conformity with the laws of the State, territory or district where it is made; Provided, that if any clerk of a court of record, within such State, territory, or district, shall, under his hand and the seal of such court, certify that such deed or instrument is executed and acknowledged or proved in conformity with the laws of such State, territory or district, or it shall so appear by the laws of such State, territory or district, duly proved and certified copies of the record of such deeds, mortgages or other instruments relating to real estate, heretofore or hereafter made and recorded in the proper county, may be read in evidence as in other cases of such certified copies, upon such a certificate of conformity to the laws of the State, territory or district where such deeds, mortgages or other instruments were made and acknowledged, being exhibited therewith or annexed thereto.

TAKEN WITHOUT THE UNITED STATES.—Third—When acknowledged or proved without the United States, then before any court of any republic, state, kingdom or empire having a seal, or any mayor, or chief officer of any city or town having a seal, or before auy minister or secretary of legation, or consul of the United States in any foreign country, attested by his official seal, or before any officer authorized by the laws of such foreign country to take acknowledgments of conveyances of real estate, if he have a seal, such deed to be attested by the official seal of such court or officer. And in case such acknowledgment or proof is taken other than before a court of record, or mayor, or chief officer of a town having a seal, proof that the officer taking such acknowledgment was duly authorized by the laws of his country so to do, shall accompany the certificate of such acknowledgment.—Starr & Curtis' Anno. Statutes, 1896, pp. 932-937.

ACKNOWLEDGMENTS BEFORE JUSTICES OF ANOTHER COUNTY.—All deeds, mortgages and other instruments in writing, relating to or affecting any lands, tenements or hereditaments, situated within this State, other than the one in which such lands, tenements or hereditaments lie, and which have been or may be recorded in the county where such lands, tenements or hereditaments do

actually lie, shall be adjudged and treated by all courts as legally executed and recorded, notwithstanding there is no certificate attached to said mortgage or other instruments, by the proper officer, that the justice of the peace before whom said deed, mortgage or other instrument was acknowledged or proved, was, at the time of said acknowledgment or proof, an acting justice of the peace of the county in which said deed, mortgage or other instrument purports to have been acknowledged or proved; Provided, that the record or a certified transcript of such record shall not be read in evidence, unless the certificate of the proper county clerk, under his official seal, is produced, or other competent evidence introduced, showing that the person purporting to take such acknowledgment was a justice of the peace at the date such acknowledgment was taken, and for this purpose the certificate of the proper county clerk shall be prima facie evidence.—Starr & Curtis' Anno. Statutes, 1896, p. 939.

§ **139.** CERTIFICATE OF CONFORMITY—FOREIGN ACKNOWLEDGMENT.—Where any deed, conveyance or power of attorney has been or may be acknowledged or proved in any foreign state, kingdom, empire or country, the certificate of any consul or minister of the United States in said country, under his official seal, that the said deed, conveyance, or power of attorney is executed in conformity with such foreign law, shall be deemed and taken as prima facie evidence thereof: Provided, that any other legal mode of proving that the same is executed in conformity with such foreign law may be resorted to in any court in which the question of such execution or acknowledgment may arise.—Starr & Curtis' Anno. Statutes, 1896, p. 939.

FOREIGN ACKNOWLEDGMENT—EFFECT.—All deeds, conveyances and powers of attorney, for the conveyance of lands lying in this State, which have been or may be acknowledged or proved and authenticated as aforesaid, or in conformity with the laws of any foreign state, kingdom, empire or country, shall be deemed as good and valid in law as though acknowledged or proved in conformity with the existing laws of this State.—Starr & Curtis' Anno. Statutes, 1896, p. 939.

§ **140.** PROOF OF EXECUTION.—If any grantor shall not have duly acknowledged the execution of any deed or instrument entitled to be recorded, and the subscribing witness or witnesses be dead, or not to be had, it may be proved by evidence of the handwriting of the grantor, and of at least one of the subscribing witnesses, which evidence shall consist of the testimony of two or more disinterested persons swearing to such signature.—Starr & Curtis' Anno. Statutes, 1896, p. 941.

§ **141.** FRAUDULENT ACKNOWLEDGMENT.—If any officer authorized to take the proof and acknowledgment of any conveyance of real or personal property, or other instrument, wilfully certifies that such conveyance or other instrument was duly proven or acknowledged by any party thereto, when no such acknowledgment or proof was made, or was not made at the time it was certified to have been made, with intent to injure or defraud, or to enable any other person to injure or defraud, he shall be imprisoned in the penitentiary not less than one nor more than five years, or confined in the county jail

not exceeding one year, and fined not exceeding $1,000.—Starr & Curtis' Anno. Statutes, 1896, p. 1291.

§ 142. RECORDING.—Deeds, mortgages, powers of attorney, and other instruments relating to or affecting the title to real estate in this State, shall be recorded in the county where such real estate is situated; but if such county is not organized; then in the county to which such unorganized county is attached for judicial purposes.—Starr & Curtis' Anno. Statutes, 1896, p. 943.

§ 143. RECORD OF DEEDS, ETC., NOT ACKNOWLEDGED, NOTICE.—Deeds, mortgages and other instruments of writing relating to real estate shall be deemed, from the time of being filed for record, notice to subsequent purchasers and creditors, though not acknowledged or proved according to law; but the same shall not be read as evidence, unless their execution be proved in manner required by the rules of evidence applicable to such writings, so as to supply the defects of such acknowledgment or proof.—Starr & Curtis' Anno. Statutes, 1896, p. 953.

§ 144. ACKNOWLEDGMENTS BY OFFICERS.—All deeds which may be executed by any administrator, executor, guardian, conservator, commissioner, master in chancery, sheriff, or other officer, of any real estate sold in pursuance of any decree or on execution, upon being acknowledged or proved before any officer authorized to take acknowledgment or proof of deeds, and certified as other deeds, shall be admitted to record in the county where the real estate sold is situated.—Starr & Curtis' Anno. Statutes, 1896, p. 953.

§ 145. DEEDS, ETC., EVIDENCE—Every deed, mortgage, power of attorney, conveyance or other writing, of or concerning any lands, tenements or hereditaments, which by virtue of this act, shall be required or entitled to be recorded, as aforesaid, being acknowledged or proved according to the provisions of this act, whether the same be recorded or not, may be read in evidence without any further proof of the execution thereof; and if it shall appear to the satisfaction of the court that the original deed, so acknowledged or proved and recorded, is lost or not in the power of the party wishing to use it, the record or a transcript thereof, certified by the recorder in whose office the same may be recorded, may be read in evidence, in any court of this State, without further proof thereof.—Starr & Curtis' Anno. Statutes, 1896, p. 955.

§ 146. PROOF OF LOSS.—Whenever upon the trial of any cause in law or equity in this State, any party to said cause, or his agent or attorney in his behalf, shall, orally in court, or by affidavit to be filed in said cause, testify and state under oath that the original of any deed, conveyance or other writing, of or concerning lands, tenements and hereditaments, which shall have been or may hereafter be acknowledged or proved according to any of the laws of this State, and which by virtue of any of the laws of this State, shall be required or be entitled to be recorded is lost, or not in the power of the party wishing to use it on the trial of any such cause, and that to the best of his knowledge said original deed was not intentionally destroyed or in any manner disposed of for the purpose of introducing a copy thereof in

place of the original, the record of such deed, conveyance or other writing, or a transcript of the record thereof, certified by the recorder in whose office the same may have been or may hereafter be recorded, may be read in evidence in any court in this State, with like effect as though the original of such deed, conveyance or other writing was produced and read in evidence.—Starr & Curtis' Anno. Statutes, 1896, p. 955.

§ **147.** AFFIDAVIT.—Proof of Magistracy—All affidavits required to be made and produced under the foregoing section, may be made in any county in this State, before any officer authorized by the laws of this State to administer oaths and affirmations, and may also be made out of this State, before any judge of a court of record, justice of the peace, clerk of a court of record, notary public, or commissioner appointed under the laws of the State of Illinois, to take acknowledgments of deeds and administer oaths and affirmations, and certified to by the said officer, under his seal of office, if such officer have an official seal; but if taken and certified by any officer who does not require or use an official seal, the certificate of the proper clerk or other officer of the official character of the person certifying to such oath or affirmation shall also be produced with such affidavit and certificate.—Starr & Curtis' Anno. Statutes, 1896, p. 956.

§ **148.** LAYING OUT TOWN LOTS—SUBDIVISIONS.—Plats of town subdivisions when completed, must be certified by the surveyor and acknowledged by the owner of the land or his duly authorized attorney, in the same manner that deeds are acknowledged. The certificates and plats must be recorded in the recorder's office of the county where the land is situated.—See Starr & Curtis' Anno. Statutes, 1896, p. 2965.

§ **149.** CHATTEL MORTGAGES.—No mortgage, trust deed or other conveyance of personal property having the effect of a mortgage or lien upon such property, shall be valid as against the rights and interests of any third person, unless possession thereof shall be delivered to and remain with the grantee, or the instrument shall provide for the possession of the property to remain with the grantor, and the instrument is acknowledged and recorded as hereinafter directed; and every such instrument shall, for the purposes of this act, be deemed a chattel mortgage.—Starr & Curtis' Anno. Statutes, 1896, p. 2743.

Such instrument shall be acknowledged before a justice of the peace of the town or precinct where the mortgagor resides, or if there be no acting justice of the peace in the town or precinct where the mortgagor resides, then such instrument may be acknowledged before the county judge of the county in which the mortgagor resides; or, if the mortgagor is not a resident of this State at the time of making the acknowledgment, then before any officer authorized by law to take acknowledgment of deeds. The certificate of acknowledgment may be in the following form: This (name of instrument) was acknowledged before me by (name of grantor) (when the acknowledgment is made by a resident, insert the words "and entered by me"), this ——— day of ———, 18—. (Name of officer.)

Witness my hand and seal—

—Starr & Curtis' Anno. Statutes, 1896, p. 2751.

§ 150. RELINQUISHMENT OF DOWER.—A married woman may relinquish her right of dower in any of the real estate of her husband, or in any real estate, by joining with her husband in a deed, mortgage, conveyance, power of attorney release or other writing of or relating to the sale, conveyance or other disposition thereof. In all cases where the interest of the husband in any tract or parcel of land has been divested by process of law or otherwise, the wife may, by deed, duly executed and acknowledged, release and convey to the purchaser or purchasers, his or their grantee expectancy, in the same manner and with the like effect, as though she were sole and unmarried; and any deed by her so executed and acknowledged, shall be a valid and sufficient bar, in law and equity, to any right or choice of dower or other interest which she may thereafter assert in such premises.—Starr & Curtis' Anno. Statutes, 1896, p. 926.

§ 151. CONVEYANCE BY MARRIED WOMAN.—Any married woman being above the age of eighteen years, joining with her husband in the execution of any deed, mortgage, conveyance, power of attorney, or other writing of or relating to the sale, conveyance or other disposition of her lands or real estate, or any interest therein, shall be bound and concluded by the same, in respect to her right, title, claim or interest in such estate, as if she were sole.—Starr & Curtis' Anno. Statutes, 1896, p. 927.

§ 152. ACKNOWLEDGMENT BY MARRIED WOMAN.—The acknowledgment or proof of any deed, mortgage, conveyance, release of dower, power of attorney, or other writing of or relating to the sale, conveyance, or other disposition of lands or real estate or any interest therein, by a married woman, may he made and certified the same as if she were a feme sole, and shall have the same effect.—Starr & Curtis' Anno. Statutes, 1896, p. 930.

§ 153. Ind.—ACKNOWLEDGMENTS.—In this State, by a judge, clerk of a court of record, judge of Superior Court, justice of peace, notary, mayor, auditor, recorder. In other States the same, also com. of deeds, for this State, so appointed. In foreign lands, U. S. Ministers, consul, charge d' affaires, any officer so authorized by his country. Officer having no seal must have certificate attached of his circuit court clerk. PERSONALLY known to officer, required. WITNESSES—None required to deeds. PRIVATE seals not required. WOMEN—Age to convey, 18. Conveys by joining her husband in the deed. Separate examination not required. If married to an alien, does not bar her rights to hold or convey. DOWER—Abolished. CURTESY—Abolished. POWER OF ATTORNEY—Married woman can join her husband in conveyance by power of attorney acknowledged.

§ 154. Ia.—ACKNOWLEDGMENTS—IN THIS STATE, before a court having a seal, the court, judge or clerk, justice of the peace or notary public, the county auditor or his deputy. OUT OF THIS STATE —Before a court of record or the officer holding its seal, commissioner appointed by the Governor of this State, a notary, justice of the peace, the latter must have a certificate showing his authority by the proper authority. OUTSIDE UNITED STATES—Any ambassador, minister, secretary of legation, consul, charge d' affaires, consular agent, or any

other officer of the United States in a foreign country authorized to issue certificates under the seal of the United States. Any officer of a foreign country authorized by its laws, but his certificate must be authenticated by one of the above United States officers' certificate of acknowledgment. PERSONALLY KNOWN, or positively identified is required. WITNESSES—Not required. PRIVATE SEALS—Abolished. WOMEN—Age to convey, when married; or majority age of 18. Separate examination not required. DOWER—Either husband or wife can elect to take dower or homestead. CURTESY—Abolished. HOMESTEAD—Both join in conveyance, survivor continues in possession. POWER OF ATTORNEY—Married woman can convey by power of attorney.

§ **155. Kas.**—ACKNOWLEDGMENTS within this State before some court having a seal, a judge, justice or clerk thereof, or any justice of the peace, notary public, county clerk or register of deeds, a mayor or clerk of an incorporated city. Out of the State, before a court of record, or clerk or officer holding the seal thereof, before a commissioner appointed by the Governor of this State, a notary, justice of the peace, any United States consul resident in any foreign country. If taken before a justice of the peace the certificate of a clerk of a court of record under his hand and court seal must be attached showing the official character of the justice. Proof of execution before acknowledging—If the grantor by death, inability or refusal to attend, and acknowledge, proof of execution may be made by competent testimony, before any court or officer authorized to take acknowledgments. The certificate upon the deed must state the title of the officer, the death, inability or refusal of the grantor, the names of the witnesses by whom proof was made. The witnesses can be subpœnaed by the officer if in the county, by attachment, if necessary. An untruthful certificate subjects the officer to indictment and fine according to damage or value of the property. PERSONALLY KNOWN must be shown in the certificate. WITNESSES not required except to prove a deed. PRIVATE SEALS—Abolished. WOMEN—Age to convey, 18; may convey own property as if unmarried. Separate examination. DOWER and CURTESY—Abolished. Husband and wife share equally. HOMESTEAD—Husband and wife each entitled to; must join in conveying. POWER OF ATTORNEY—Conveyance by must be acknowledged, signed and recorded same as a deed.

§ **156. Ky.**—ACKNOWLEDGMENTS—In the State, before County Court clerk or notary public. Outside, before County Court clerk, his deputy, a notary, mayor, secretary of State, commissioner of deeds for this State or a judge, all under official seal. Foreign, before a minister, consul or sec'y of legation of the U. S., the secretary of foreign affairs, judge of a county superior court, under seal. PERSONALLY known to officer, statutes do not require. WITNESSES—two to a deed not acknowledged. PRIVATE SEALS—Not necessary. WOMEN—Age to convey, 21; may convey by joining with husband. Separate examination and contents explained. She must freely and willingly acknowledge. If in the State, officer need only state that it was acknowledged before him. DOWER and CURTESY—Exists. HOMESTEAD—Conveyed by jointure of husband and wife. POWER

OF ATTORNEY—Married women may so convey; must be acknowledged and signed same as a deed.

§ 157. **La.**—ACKNOWLEDGMENTS taken before clerks of the Supreme Court and their deputies, notaries public. Out of the U. S., before ambassadors, ministers, charge d' affaires, secretaries of legation, consul-generals, consuls, vice-consuls, commercial agents, all under their official seals PERSONALLY known by the officer taking is required. WITNESSES—Two required. PRIVATE SEALS—Abolished. WOMEN—Age to convey, 21; husband's consent required. Separate examination. DOWER AND CURTESY—Survivor has usufruct during life; community system exists. HOMESTEAD allowed so long as occupied; vacating loses it. POWER OF ATTORNEY may be granted with husband's consent.

§ 158. **Me.**—ACKNOWLEDGMENTS before a justice of the peace, or notary public, or woman otherwise eligible under the constitution and appointed for the purpose by the Governor with the consent of council in the State, or any justice of the peace, magistrate or notary public within any of the United States, or before a minister or consul of the United States, or notary public in any foreign country. PERSONALLY known, or identified to officer, should be, statute is silent. WITNESSES not required. PRIVATE SEALS—Scroll required. WOMEN—Age to convey, married woman of any age may convey her own separate property without jointure of husband. Separate examination not required. DOWER and CURTESY—Exist and are conveyed by jointure in the deed. HOMESTEAD—Transferred by jointure. POWER OF ATTORNEY to convey, to be signed, sealed, acknowledged and recorded same as a deed. A deed conveying lands in more than one county lost before recording, or recorded in the wrong county or district and lost, a certified copy from the registry where recorded, may be recorded in any other county or district. A person holding an unrecorded deed or other evidence of title, may be given personal written notice to record it, by anyone having an interest in it; a failure to comply within thirty days permits compulsion by complaint to a justice of the Supreme Court. No conveyance of an estate for more than seven years is effectual against others unless recorded. There can be no estate in lands other than tenancy at will unless in writing. When a grantor refuses to acknowledge his deed, the grantee may leave a copy of it with the register and for forty days it is a record. A notary public or justice of the peace, where grantor or land is, may summon the grantor at a time and place stated, to hear testimony, date of deed, names of parties and witnesses to be mentioned in summons. If the officer is satisfied that the deed was executed he shall so certify in the deed. It may then be recorded. A lost or destroyed deed may be replaced by copy left with the register for ninety days; he may prove it by depositions in perpetuam if parties in interest reside outside the State. a justice of the Supreme Court may order notice by publication.

§ 159. **Md.**—CONVEYANCE—No estate of inheritance or freehold, or any declaration or limitation of use, or any estate above seven years, shall pass or take effect unless the deed conveying the same shall be executed, acknowledged and recorded. No words of inheritance

necessary to create estate in fee simple in a deed. Deeds to be recorded in six months. Deeds to be valid must be acknowledged and recorded. ACKNOWLEDGMENTS IN THE STATE—Within the county or city of the lands, may be taken before a justice of the peace, a judge of the orphans, circuit, superior, common pleas courts of the county, Baltimore City or circuit court. Within the State, before any justice of the peace, his official character being certified to by the clerk of the circuit or superior court, under seal, any circuit, superior, common pleas, Baltimore City or circuit court, where the grantor may reside. A notary, mayor of a corporation, judge of a court of record, each under their official seals. IN OTHER STATES, before a notary public, a judge of any U. S. Court, a judge of any State or territorial court, court having a seal, a commissioner of this State to take acknowledgments. Taken outside the United States, before any minister, consul-general, consul, deputy consul, vice-consul, consular agent, or consular officer of the United States. A notary public, a commissioner of this State to take acknowledgments. Party to state that he acknowledged the deed to be his act. In all cases, and his name to be contained in the acknowledgment. PERSONALLY known or identified to the officer, should be. WITNESSES—One witness to deed. PRIVATE SEALS—Scroll required. WOMEN—Age to convey, married women of any age can convey property. Separate examination of wife not required. DOWER and CURTESY—Exist; conveyed by jointure in deed; married woman may convey her separate property without husband joining. HOMESTEAD—None exists. POWER OF ATTORNEY—Conveyance thus made by acknowledging, signing and recording, same as a deed.

§ **160. Mass.**—ACKNOWLEDGMENTS to be made before a justice of the peace or notary public in this State. If in another State, before a justice of the peace, notary public, magistrate or commissioner appointed by the Governor for that purpose. If in a foreign country, before such justice, notary, magistrate, or commissioner or a minister or consul or consular officer of the U. S. Taken in other States for record or to be used in evidence in this State, may be taken before any officer of that State authorized by its laws and certified to by the Secretary of State under the State seal, or by the clerk of a court of record of the county, stating that the officer was authorized at the time of taking to take, that he is acquainted with his handwriting and believes the signature genuine. The acknowledgment of one grantor is sufficient. PERSONALLY known to officer not required. WITNESSES—None to a deed; proof requires two. PRIVATE SEALS, scroll required. WOMEN—Married women can convey as if single. Separate examination of, not required. DOWER and CURTESY—Exist and are conveyed by jointure. HOMESTEAD—Conveyed by jointure. POWER OF ATTORNEY—Married women may so convey realty when acknowledged, signed and sealed, same as a deed. A deed executed and delivered by the person or by his attorney, shall be sufficient to convey real estate. Conveyance of an estate in fee simple, fee tail, or for life, or a lease for more than seven years from the making, shall not be valid as against any person other than the grantor or lessor and his heirs and devisees and persons having actual notice of it, unless recorded in the county registry. Deeds shall not be recorded unless the cer-

tificate of acknowledgment is indorsed on or attached. Deeds and other instruments recorded in one county where the land lies may be recorded in other counties where it is also situated, from any office copy.

§ **161. Mich.**—Refusal of grantor to acknowledge deed can be evidenced by summoning him before a justice of the peace in the presence of the subscribing witnesses. If the witnesses are dead the deed may be proved by the grantors or witnesses' handwriting before a court of record in this State. In the meantime the deed may be filed for record with the county register of deeds, where the lands are, which shall for the space of 30 days thereafter, in case of proceedings before a justice and in case of proceedings before a court of record, for the space of ten days after the first day of the next term of such court, have the same effect as the recording of the deed, if such deed shall within that time be duly proved and recorded. CONTRACTS for the sale of lands may be acknowledged the same as deeds. Written instruments, excepting bills of exchange, promissory notes and wills, may be proved or acknowledged the same as deeds. Officer taking, to sign his name and title of his office. ACKNOWLEDGMENTS, before whom in this State; any judge, commissioner of a court of record, notary public, justice of the peace or a master in chancery. The officer to certify the same under his hand with the date. In another State, before any officer authorized by that State, to be signed by the officer and certificate attached by his State secretary or clerk of county court under their seals, stating that such officer at the time of taking was duly authorized to take and that they are well acquainted with his handwriting and verily believe the signature affixed to be genuine. This is not necessary if the officer is a notary and certifies under his official seal. If taken without the United States, by any notary, before any minister, commissioner, consul, charge d' affaires or consular agent of the U. S. resident, certified under their seal of office. PERSONALLY known or identified to officer, is required. WITNESSES—Two required. PRIVATE SEALS—Scroll required. WOMEN—Age to convey, 16. Can convey same as if single. Separate examination not required, may convey as if unmarried. DOWER AND CURTESY—Exist, and conveyance made by jointure in the deed. HOMESTEAD—Conveyed by wife joining in the deed. POWER OF ATTORNEY—Property may be conveyed by, when acknowledged and signed jointly and recorded same as a deed.

§ **162. Minn.**—ACKNOWLEDGMENTS—WHO MAY TAKE.—Judges of Supreme, district and probate courts, clerks of same, notaries, justices of the peace, registers of deeds, court commissioners, and county auditors, clerks of federal courts, town and city clerks, village recorders, within their jurisdiction and with their official seals. OTHER STATES—The chief and associate justices of the U. S. Supreme Court, judges of the district courts of the U. S., judges of any court of record of any of the States, clerks of same, notaries, justices of the peace, commissioners appointed by the Governor of this State. All within their jurisdiction. Unless party certifying has an official seal, the certificate must be attached of the clerk of the county court, showing their authority to certify. FOREIGN—May be executed according to the laws of that country and acknowledged before any notary public, United

States minister plenipotentiary, minister extraordinary, minister resident, charge d' affaires, commissioner or consul, or any consular or diplomatic officer or their deputies and vice-representatives, including deputy consuls general, vice-consuls general, and deputy commercial agents appointed to reside therein. The same to be certified thereon by the officer taking, under his hand, and if taken before a notary public under his seal of office. Provided, that any such deed, duly signed and sealed with two witnesses, and acknowledged as aforesaid, shall be deemed good and sufficient. PERSONALLY known or identified to officer is required. WITNESSES—Two required to a deed. PRIVATE SEALS—Scroll required. WOMEN—Age to convey, 15; married women can convey with husband. Separate examination of wife required. DOWER and CURTESY—Abolished. HOMESTEAD can be conveyed by joint deed of husband and wife. POWER OF ATTORNEY, can so convey by jointure, if acknowledged, signed and recorded as by deed.

§ 163. Miss.—ACKNOWLEDGMENTS—Every conveyance of property must be acknowledged or proved by an authorized officer to entitle it to record. In this State, may be taken by any judge of a United States court, any judge of the Supreme or Circuit Court, or any chancellor, or any clerk of a court of record, a notary public under his official seal, any justice of the peace, mayor of any city, town, or village, or member of the board of supervisors, whether the property be in his county or not. If in another State, before the chief justice of the United States or an associate justice, any United States circuit or district judge or any United States judge, any Supreme or Superior Court judge of the State, any justice of the peace of such State or territory whose official character shall be certified under the seal of some court of record in his county, or any commissioner in such State appointed by the Governor of this State to take acknowledgments, any notary or clerk of a court of record having a seal of office. Same shall be as good and effectual as if the certificate of acknowledgment or proof had been made by a competent officer in this State. If in a foreign country, before any court of record, the mayor or chief magistrate of any city, borough, or corporation where the party resides or may be, or any commissioner residing in such country appointed by the Governor, any ambassador, foreign minister, secretary of legation or consul of the United States. The officer's certificate to state that the party, or the party and witnesses were identified before him, that they acknowledged the execution, or that it was proved by the witness, same to be as effectual as if done in this State. PERSONALLY KNOWN, or identified to officer required; also personal appearance necessary. WITNESSES—One required to a deed. PRIVATE SEALS are abolished. WOMEN—Married, can convey property; unmarried 21 years of age can convey; wife to be described as such. Separate examination not required; conveyed as if she were sole. DOWER and CURTESY—Abolished. HOMESTEAD —Conveyed by jointure of husband and wife. POWER OF ATTORNEY—Conveyances may be made by, when signed acknowledged and recorded same as deeds. PROOF—If the grantor and witness be dead or absent, preventing personal attendance, the instrument may be proved by the oath of any one, who on examination before the competent officer can prove the handwriting of the witness; when such

cannot be had, the handwriting of the grantor may be proved; the officer certifying accordingly.

§ 164. **Mo.**—ACKNOWLEDGMENTS—IN THIS STATE, before any court having a seal, a judge or clerk thereof, notary public, justice of the peace of the county where the land is. IN ANY OTHER STATE, before any notary public, any U. S. or State court, having a seal, or the clerk of such courts or any commissioner appointed by the Governor of this State. OUTSIDE THE UNITED STATES, before any court of the country having a seal, mayor or chief officer of any town or city having a seal, any minister or consular officer of the United States or any notary having a seal. Falsely certifying, or aiding in a false acknowledgment, by an officer, shall be deemed forgery in the second degree. PERSONALLY known, to the officer, required or proved by two credible witnesses, who must sign with address. WITNESSES —Not required. PRIVATE SEALS—Not required. WOMEN—Age to convey, 18; can convey their realty. Separate examination not required. DOWER—May convey by joining the husband. CURTESY—Implied by statute of wills. HOMESTEAD—Conveyed by jointure of husband and wife. POWER OF ATTORNEY—Married women may convey by power of attorney, by executing and acknowledging jointly with their husband.

§ 165. **Mont.**—ACKNOWLEDGMENTS—IN THE STATE—May be made anywhere in the State before a justice or clerk of the Supreme Court, or a judge of the District Court, may be made within the officer's place of appointment or election before a clerk of a court of record, a county clerk, a notary public, a justice of the peace. IN ANY OTHER STATE, and within the jurisdiction of the officer, before a justice, judge or clerk of any United States court of record, a justice, judge or clerk of any State court of record, a commissioner appointed by the Governor of this State, a notary public, any other officer authorized by the laws of that State. OUTSIDE THE UNITED STATES—May be made without the United States before a minister, commissioner, or charge d' affaires of the United States resident or accredited to that country; before a United States consul, vice-consul, or consular agent resident in that country, a judge of a court of record, a commissioner appointed by the Governor, a notary public, any deputy allowed these officers by law. Officers must authenticate by affixing their signatures and name of office and their official seals, if they have a seal, otherwise they must show by what authority they are acting. Justices of the peace, acting outside of their county, must have their certificate accompanied by a certificate under the hand and seal of the clerk of their county showing that he was authorized to take and that the clerk is acquainted with his handwriting and believes the signature genuine. PERSONALLY known or identified to the officer is required. WITNESSES—Not required to a deed; one to a proof. PRIVATE SEALS—Abolished. MARRIED WOMEN can convey same as if single. Separate examination not required. DOWER—Widow entitled to. CURTESY—Not allowed. HOMESTEAD conveyed by jointure of husband and wife. POWER OF ATTORNEY, signed and acknowledged, same as a deed. Married women may so convey. Proof of the execution of an instru-

ment not acknowledged may be made by the party executing it or by a subscribing witness or by other witnesses. The subscribing witness must be personally known or identified on oath to the officer. The execution may be established by proof of the handwriting of the party and of the witness when the parties and witnesses are dead or out of the State or their residence is unknown, when the witness conceals himself or cannot be found or the refusal of the witness to testify one hour after his appearance.

§ 166. **Neb.**—ACKNOWLEDGMENTS—Grantor must state it to be "his voluntary act and deed." Taken in this state, before a judge or clerk of any court, a justice of the peace, or a notary public, within their jurisdiction. If in another State, before an officer there authorized, or by a commissioner appointed by the Governor of this State. The officer certifying must use his official seal, otherwise the certificate of a clerk of a court of record, under its seal, or other proper officer must be attached to the instrument showing that the officer taking was at the date such officer, that he is well acquainted with his handwriting, that he believes the signature is genuine, that the instrument is executed and acknowledged according to the laws of the State. IN A FOREIGN COUNTRY it may be executed according to the laws of the country and acknowledged before a notary public, or a United States minister plenipotentiary, minister extraordinary, minister resident, charge d' affaires, commissioner, commercial agent, or consul appointed to reside there. The acknowledgment shall be certified thereon by the officer, and if a notary public his seal shall be affixed to such certificate. PERSONALLY KNOWN or identified to the officer. WITNESSES—One to a deed. PRIVATE SEALS—Abolished. WOMEN—Age to convey, 16. Married women convey as if single. Separate examination not required. Convey as if single. DOWER AND CURTESY exist. Conveyed by jointure. HOMESTEAD—Conveyed by jointure of husband and wife. POWER OF ATTORNEY to convey lands must be proved and acknowledged, signed and recorded same as a deed. FRAUDULENT ACTS of officers shall be punished by a fine not exceeding $500 and imprisonment not exceeding one year, and liable for damages sustained.

§ 167. **Nev.**—ACKNOWLEDGMENTS—Must be certified on instrument and under officer's hand and official seal. Who can take—County recorders, a judge or clerk of a court having a seal, a notary public or justice of the peace, provided, if in another county, the latter shall have attached to his certificate the certificate of the clerk of the District Court of his county showing his official character. In other states, by a judge or clerk of any United States court, or of any State or territorial court having a seal, by a notary public, by any commissioner appointed by the Governor of this State for that purpose, by a justice of the peace if accompanied by a certificate of a clerk of his county court of record having a seal showing the justice's official character and authenticating his signature. If without the United States, by a judge or clerk of a court having a seal, by a notary or any United States minister, consul or commissioner resident. Each officer authorized to take acknowledgments shall keep a record of same in a book for that purpose, entering the date taken, the date of the instrument,

its name and character, names of parties thereto, to be open for inspection. A failure to comply subjects officer to a penalty of from fifty to five hundred dollars and liable on his bond for damages sustained. PERSONALLY known to officer or proved by witness. WITNESSES—None required to a deed. PRIVATE SEALS—Abolished. WOMEN—Age to convey—Marriage permits conveyance at any age. Wife must join husband in conveyance of her separate estate. SEPARATE examination of a married woman is required. DOWER AND CURTESY—Abolished. Community system exists. HOMESTEAD—$5,000. Conveyed by jointure. POWER OF ATTORNEY—Conveyed same as by deed, signed and acknowledged separately.

§ **168. N. H.**—ACKNOWLEDGMENTS—Taken before a justice, notary, commissioner, a minister or consul of the United States in a foreign country. PERSONALLY KNOWN to officer not required. WITNESSES—Two to a deed required. PRIVATE SEALS—Scroll required. WOMEN—Age to convey, 21. If married, age makes no difference. Separate examination not required. DOWER AND CURTESY—Exist. Conveyance by jointure. HOMESTEAD—Conveyance by jointure. POWER OF ATTORNEY—Can so convey same as by deed. No deed of bargain and sale, mortgage, nor conveyance of real property, nor any lease for more than seven years shall be valid against any person but the grantor and his heirs unless attested, acknowledged and recorded. Same with power of attorney for conveyance of real estate. Person interested may have his deed or lease recorded in more than the one original county. Proof of execution of deed may be made by one or more of the subscribing witnessss before any court of record in the State. If not accessible, proof may be made on oath of two witnesses acquainted with the grantor's handwriting. If the grantor or lessor is a resident of this State notice of the time and place of proving the same, signed by a justice, shall be delivered to him or at his abode fourteen days prior to the time of proving. A justice may, upon complaint of an interested party, issue a warrant to compel party having an unrecorded deed to place same on record or commit him to jail until the request is complied with.

§ **169. N. J.**—ACKNOWLEDGMENTS—Officer must make known the contents of the instrument to the party acknowledging and they must certify it as their voluntary act and deed. IN THIS STATE, before the State chancellor, commissioner of deeds, justices of the Supreme Court, a master in chancery, a judge of a Court of Common Pleas, deputy surrogate, the certificate shall be written upon or under the instrument. Same shall be received in evidence in any court of the State. Any Common Pleas judge may take an acknowledgment for land in any county in the State; county clerks, register of deeds. IN ANOTHER STATE, before the chief justice of the U. S. or an associate justice of the U. S. Supreme Court, any U. S. circuit or district judge, any judge or justice of the Supreme or Superior Court, or the chancellor of any State. IN ANY FOREIGN COUNTRY, commissioner of deeds for New Jersey, or master in chancery for this State, any mayor or chief magistrate of any city, duly certified under the city seal, a judge of any Court of Common Pleas, and shall be as effectual as if made before the chancellor of this State, provided, that

when made before a judge of a Court of Common Pleas a certificate under the seal of the State or of the County Court where made shall be attached stating the officer is such. PERSONALLY known or identified by subscribing witnesses to the officer is required. WITNESS—One required to deed. PRIVATE SEAL—Scroll required. WOMEN—Age to convey, 18 years. Separate examination required, and sign, seal and deliver same as her voluntary act and deed freely without fear, threats or compulsion of her husband. DOWER AND CURTESY—Exist and are conveyed by jointure. HOMESTEAD—Transferred by jointure. POWER OF ATTORNEY to convey must be by jointure of husband and wife, acknowledged, signed and recorded as by deed.

§ 170. N. M.—CONVEYANCE—Any person or body politic holding any right or title to real estate in this territory may convey the same, subscribed to by the person transferring or by his legal agent or attorney, ACKNOWLEDGMENTS—IN THIS TERRITORY, taken before any court having a seal, any judge, notary public or clerk of any court having a seal, in the same manner, or by any justice of the peace of the county wherein said real estate is situated. IF IN ANOTHER STATE or territory, before any United States court, or the court of any State or territory having a seal, any judge of a court having a seal, and the genuineness of his signature and official character to be certified to by the court clerk under the court seal, or by any clerk of such courts under the court seal. IF BEYOND THE UNITED STATES, before any court of such country having a seal, or by the magistrate or supreme power of a city having a seal, any clerk of a court of record having a seal, a notary having a seal, any consul or vice-consul of the United States having a seal, any judge of a court of record having a seal, his character and signature to be certified to by some officer having an official seal. All officers outside the United States must have their official characters certified to. PERSONALLY KNOWN to the officer or proved by two reliable witnesses and so stated. WITNESSES—None by deed; three by will. PRIVATE SEALS—Scroll required. WOMEN—A married woman uniting with her husband in the execution shall be described as his wife. In all other respects her acknowledgments shall be taken and certified as if she were sole. No separate examination of a married woman is required. A married woman need not personally appear before the officer. She may sign and convey any conveyance through an attorney, who may be authorized in writing by a power of attorney executed and acknowledged by herself and husband as authorized by law. DOWER AND CURTESY—Do not exist. HOMESTEAD conveyed by jointure of husband and wife. POWER OF ATTORNEY shall be certified and registered, and revoked only in writing and by record. ABSTRACTS under the seal of any title abstract company incorporated and doing business in this territory shall be received in all courts of this territory in evidence. A false certificate by an officer of such company or any person shall, upon conviction, subject to a fine of not more than five hundred dollars or imprisonment in the penitentiary not to exceed three years, or both. Foreigners shall have full power to acquire and hold real estate by deed, will or inheritance when acquired in good faith same as a citizen of the United States. Also to aliens to sell, assign and transfer same.

§ 171. N. Y.—ACKNOWLEDGMENTS of deeds in the State may be made before a justice of the Supreme Court anywhere in the State, before a judge, clerk, deputy clerk, special deputy clerk of a court, a notary, mayor, or recorder of a city, a justice of the peace, surrogate, special surrogate, special county judge or commissioner of deeds, within the district of their appointment. In other States, before a judge of the Supreme Court, of the Circuit Court of Appeals, or of the District Court of the United States, a judge of the Supreme, Superior or Circuit Court of a State, a mayor of a city, a commissioner appointed for that purpose by the Governor of the State, any officer authorized by the laws thereof to take acknowledgments, each acting within their jurisdiction or court. When taken by a commissioner appointed by the Governor for a city or county within the United States, and without this State, the certificate must also state the day on which and the town and county or the city in which it was taken. In foreign countries, before a United States ambassador, minister plenipotentiary, minister extraordinary, minister resident, or charge d' affaires, residing and accredited within the country, a consul-general, vice-consul-general, deputy consul-general, vice-consul or deputy consul, a consular or vice-consular agent, or a consul or commercial or vice-commercial agent of the United States residing in the country, a commissioner appointed by the Governor and acting within his jurisdiction, a person specially authorized for that purpose by a commission under the seal of the Supreme Court issued to a reputable person residing in or going to the country under seal. If the parties be or reside in France, before the United States consul resident at Paris. If in Russia, before United States consul resident at St. Petersburg. If within the Dominion of Canada, it may also be made before any judge of a court of record, or before any officer of such dominion authorized by the laws thereof. If within the United Kingdom of Great Britain and Ireland or the dominion thereunto belonging, it may also be made before the mayor, provost or other chief magistrate of a city or town therein. If the party or parties executing shall be, or reside, in any State or kingdom in Europe or in North or South America, it may be acknowledged before any ambassador, minister plenipotentiary, or minister extraordinary, or any charge d' affaires of the United States, resident and accredited within such state or kingdom, must be under seal. A clerk's certificate authenticating a certificate of acknowledgment taken before a judge or court of record in Canada must specify that there is such a court, that the judge before whom the acknowledgment was taken was, when it was taken, a judge thereof, that such court has a seal, that the officer authenticating is clerk thereof, that he is well acquainted with his handwriting and believes his signature is genuine. An officer authenticating a certificate of acknowledgment or proof must subjoin or attach to the original certificate under his hand, and if he has, pursuant to law, an official seal, under such seal. Except when the original certificate is made by a judge of a court of record in Canada, such certificate of authentication must specify that at the time of taking the acknowledgment or proof the officer taking it was duly authorized to take the same, that the authenticating officer is acquainted with the former's handwriting, or has compared the signature to the original certificate with that deposited in his office, and that he be-

lieves it genuine. If the original certificate is required to be under seal he must also verify that. A certificate of, made within the State, by a commissioner of deeds, justice of the peace, or, except as otherwise provided by law, by a notary public, does not entitle the conveyance to be read in evidence or recorded, except within the county in which the officer resides at the time of making such certificate, unless authenticated by a certificate of the clerk of the same county. This does not apply to a conveyance executed by an agent for the Holland Land Company or of the Pultney estate, lawfully authorized to convey real property. In the following cases a certificate of acknowledgment or proof is not entitled to be read in evidence or recorded unless authenticated by the following officers, respectively: Where the original certificate is made by a commissioner appointed by the Governor by the Secretary of State, where made by a judge of a court of record in Canada by the clerk of the court, where made by the officer of a State of the United States or of the Dominion of Canada authorized by the laws thereof to take the acknowledgment or proof of deeds to he recorded therein by the Secretary of State of the State, or the clerk, register, recorder or prothonotary of the county in which the officer making the original certificate resided, when certificate made, or by the clerk of any court of that county having by law a seal. The officer within State can compel the subscribing witness to attend and testify before him concerning the execution of the conveyance. Refusal to testify forfeits to the person injured one hundred dollars and commitment to prison by the officer, there to remain without bail and without liberties of the jail until he answers under oath. The officer must indorse upon or attach to the instrument a certificate, signed by himself, stating all matters required to be done, known or proved, together with the name and substance of the testimony of each witness examined, and if a subscribing witness, his place of residence. MARRIED WOMEN may acknowledge the same as if unmarried. Age 21. OFFICER MUST know the party acknowledging or have satisfactory evidence that the party making it is the one who executed the instrument. When proof is made by a subscribing witness he must state his residence, that he knows the party. Officer must know the witness to be the subscribing witness. WITNESSES—One to deed required. PRIVATE SEAL—Scroll required. DOWER AND CURTESY—Exist and are conveyed by jointure. HOMESTEAD—Waiver or cancellation of, may be made by notice, acknowledged and recorded as a deed. POWER OF ATTORNEY to convey by married woman does not require husband's concurrence, but she must acknowledge and sign same in a private examination.

§ 172. N. C.—PROOF OR ACKNOWLEDGMENTS—All deeds conveying lands, letters of attorney or other instruments requiring registration must be offered for probate, or a certified copy thereof must be exhibited before the clerk of the Superior Court of any county. When the grantor or maker, or subscribing witness, resides in the county where the land lies, the instrument must be acknowledged or proved on the oath of such subscribing witness before the clerk of the Superior or of the inferior court, or before a notary, justice of the peace of the county, who shall certify thereon, it shall then be admitted to pro-

bate and registration. If the grantor or subscribing witness reside in another county of the State it must be acknowledged by the grantor or proved by the oath of such subscribing witness before a judge of the Supreme or of the Superior Court, or before the clerk of the Superior Court or the inferior court, or a notary, or justice of the peace of the county where the grantor or witness resides. If before a justice of the peace, the clerk of the Superior Court of that county must certify upon it the fact of acknowledgment or proof, and that such justice was, at the time of taking, an acting justice of the county, and the clerk of the Superior Court of the county where the land lies shall order the same, with his certificate attached, to be registered. IF THE GRANTOR OR WITNESS RESIDE in another State it may be taken before a judge, clerk of a court of record, notary public having a seal, mayor of a city having a seal, or justice of the peace of that State. The certificate of the judge, clerk of the court of record must be under the seal of the court, the mayor or notaries under their respective seals. If in proper form the justice's certificate must be certified to by the clerk of his County Court, stating that the justice was at the time of the taking an acting justice of said county of the State,that the signature is in his own proper handwriting. If the certificate is in proper form the clerk shall order it to be recorded. IF THE GRANTOR AND WITNESS RESIDE OUTSIDE THE UNITED STATES it may be personally acknowledged by the grantor or proved on oath of the witness before the chief magistrate of any city in the country where these parties reside, or before any ambassador, minister, consul or commercial agent of the United States, and if certified under the corporate seal of the chief magistrate or of the official seal of any of the others with their certificate affixed the clerk shall order it recorded with his certificate in addition to that of the others. PERSONALLY KNOWN—Personal appearance necessary. Personal knowledge of is not required. WITNESSES required, one or more. PRIVATE SEAL—Scroll required. WOMEN—Age to convey, 21 years. Married women can convey their separate property. Separate examination of married woman is necessary. Also necessary to a chattel mortgage. DOWER AND CURTESY—Exist. Conveyances made by jointure of husband and wife. HOMESTEAD—Conveyed by jointure. POWER OF ATTORNEY—Can so convey. Must be jointly by husband and wife.

§ **173. N. D.**—ACKNOWLEDGMENTS—IN THE STATE, before a justice or clerk of the Supreme Court or notary public. Within the jurisdiction of a judge or clerk of a court of record, mayor of a city, register of deeds, justice of the peace, county auditor, or a United States Circuit or District Court commissioner, or county auditor. Without this State but within the United States and within the officer's jurisdiction, a justice, judge or clerk of any court of record, a notary or any officer so authorized by the laws of his State, a commissioner of deeds appointed by the Governor of this State. Without the United States, before a minister, commissioner or charge d' affaires of the United States resident and accredited in the country, a consul, vice-consul, or consular agent resident in the country, a judge, clerk, register or commissioner of a court of record, a notary public, any officer so authorized by the laws of the country. Officer must authenticate, by using their

seal of office if they have one, their signature and title. An acknowledgment before a justice of the peace to be used outside his county must be accompanied with the certificate of a clerk of the county court of record under his hand and seal of office stating that such justice at the taking was authorized to be the same and that the clerk is acquainted with his handwriting and believes the signature genuine. PERSONALLY known to the officer or proved by witnesses is required. WITNESSES—Not required in deeds. PRIVATE SEALS—Abolished. WOMEN—Age to convey, 18. Convey same as if single. Separate examination not required. DOWER AND CURTESY—Abolished. HOMESTEAD—Conveyed by jointure of husband and wife. POWER OF ATTORNEY. Conveyance so made as by deed.

§ 174. Ohio.—ACKNOWLEDGMENTS—IN THE STATE, before a judge of a court of record or its clerk, county auditor, surveyor or notary, mayor or justice of the peace, certified and signed on document, a commissioner of deeds for Ohio or United States consul. PERSONALLY KNOWN or proved to the officer and personal appearance necessary. WITNESSES—Two required to deeds. PRIVATE SEALS—Abolished, except corporations. WOMEN—Age to convey, 16; may convey as if unmarried. Separate examination not required. DOWER—Exists as to widow and widower, one-third the estate. CURTESY—Abolished. POWER OF ATTORNEY acknowledged same as deed, etc.

§ 175. Okla.—ACKNOWLEDGMENTS must be taken under the officer's seal, except justices of the peace, may be taken in the county before a justice of the peace, notary public, county clerk, or clerk of the District Court. Taken outside the territory, by any notary public, clerk of a court of record, commissioner of deeds appointed by the Governor for this territory. IN A FOREIGN COUNTRY, by any court of record or its clerk, or any United States consul. PERSONALLY known or proved to officer is required. WITNESSES—None required to deeds. PRIVATE SEALS—Dispensed with. WOMEN—Age to convey, 18 years. Wife may convey as if unmarried. Separate examination not required. DOWER AND CURTESY—Abolished. HOMESTEAD—Released by wife joining husband in deed. POWER OF ATTORNEY to convey real estate must be signed, acknowledged and recorded same as a deed. Release of mortgage may be made on the margin of the record by the holder or his agent or it may be made on a separate instrument signed and acknowledged and recorded.

§ 176. Ore.—ACKNOWLEDGMENT—TAKEN IN THIS STATE by a judge of the Supreme Court, county judge, justice of the peace or notary in the State, certified and dated under their hand. In any other State, according to its laws and acknowledged before any judge of a court of record, justice of the peace, notary public, or other authorized officer by the State's laws, or a commissioner appointed by the Governor of this State for the purpose. Unless taken before a commissioner appointed by the Governor of this State for the purpose, or a notary certified under his official seal, or before the clerk of a court of record certified under the seal of the court, it shall have attached a certificate of the clerk or other proper certifying officer of a court of record of the county or district, under the seal of his office, that the person whose name is subscribed to the certificate was at the date such officer, that he

believes the signature genuine, that the deed is executed according to the law of the State. In a foreign country it may be executed to the law of the country and acknowledged before a notary or a United States minister plenipotentiary or extraordinary, minister resident, charge d' affaires, commissioner, or consul, appointed to reside there and certified under his hand. The notary's seal shall be attached to his acknowledgment. TELEGRAPHIC copy of acknowledgment may be admitted to record. PERSONALLY known or identified to officer by subscribing witness required, and personal appearance. WITNESSES—Two required to deed. PRIVATE SEAL—Scroll. WOMEN—Age of, 21. May convey by joining husband, stating she executes it freely and voluntarily, any time after marriage. Out of the State she can execute same as if single her separate property. Separate examination not required. DOWER AND CURTESY—Husband and wife have a life interest in each other's property. Conveyance by jointure. HOMESTEAD—$1,500 as long as occupied. Conveyance jointly. POWER OF ATTORNEY—Can so convey same as by deed if unmarried; if married, by jointure. Either can convey their separate property without jointure.

§ 177. Pa.—ACKNOWLEDGMENTS—All deeds to be acknowledged or proved. IN THE STATE, before one of the judges of the Supreme Court or one of the justices of the Court of Common Pleas of the county where the land lies. Acknowledgments for lands in the State made before the president of the Court of Common Pleas for the County of Philadelphia or the president of the court of Common Pleas in any other county of this State shall be as effectual in law as if made before one of the judges of the Supreme Court. If before any assistant or associate judge of the Courts of Common Pleas it shall be equally effectual. The mayor and recorder of the City of Philadelphia, the master of the rolls and the justices of the peace of the State can take in their county. Aldermen of the City of Philadelphia can take, recorders of deeds in their county or city, under their hand and official seal. IN OTHER STATES, by officers authorized by the State's laws. FOREIGN commissioners in chancery certified under their seals. Certificates and seals of officers outside this State are not required to be proved, accepted as prima facie evidence. The certificate of a justice of the peace or alderman must be verified by the clerk or prothonotary of a court of record, under court seal. MILITARY—A major, or higher officer, can take acknowledgments in the army. PERSONALLY KNOWN or proved to officer is required. WITNESSES—One required to a deed. PRIVATE SEALS—Scroll required. WOMEN—Married, to convey property with husband joining in the deed. Separate examination of married women required. DOWER AND CURTESY—Exist in each other's lands. POWER OF ATTORNEY—Married women can release their own estates by power of attorney, without husband joining, when duly acknowledged and recorded.

§ 178. R. I.—ACKNOWLEDGMENTS—Within the State, to be before any State senator, judge, justice of the peace, mayor, notary public, town clerk, or recorder of deeds. Other States, before any judge, or justice of a court of record or other court, justice of the peace, mayor or notary of the State, District of Columbia, or territory, in which it is

made, or before a commissioner of deeds appointed by the Governor of this State, provided, that if proved in the manner prescribed by the laws of the State, etc., where executed, it shall be deemed to be legally executed, and shall have the same effect as if executed as above described. Acknowledgments taken without the United States may be before any United States ambassador, minister, charge d' affaires, consul-general, vice-consul-general, consul, vice-consul, consular agent, or commercial agent, or before any commissioner appointed by the Governor of this State in the country where the acknowledgment is taken, provided that such acknowledgment may also be made within or without the limits of this State by any person actually engaged in the military or naval service of the United States, before any colonel, lieutenant-colonel, or major in the army, or any officer in the navy not below the grade and rank of lieutenant-commander. PERSONALLY KNOWN and personally to appear (or proved) to officer, is required. WITNESSES—None to deeds. PRIVATE SEALS—Abolished. WOMEN—Married, may convey same as if single. Separate examination, no; to be free act and deed. May convey directly to or receive from her husband. DOWER AND CURTESY—Exist, and are conveyed by jointure. POWER OF ATTORNEY may be made by acknowledging and signing same as by deed.

§ 179. S. C.—ACKNOWLEDGMENTS—A deed to be entitled to record in this State must be proved by the affidavit of a subscribing witness before an officer in this State competent to administer an oath, a commissioner appointed by dedimus of the County Common Pleas Court clerk, a commissioner of deeds of this State, clerk of a court of record under his official seal, a notary under his official seal accompanied by the certificate of his official character, by a clerk of a court of record of the county where affidavit is made, or before a consul, vice-consul or consular agent of the United States. If the witness be dead or not accessible the instrument may be proved on the handwriting of the parties. WITNESSES—Two required, in the presence of whom the release is to be made and signed. PRIVATE SEALS—Scroll required. WOMEN—Any married woman may convey. Separate examination required that she freely and voluntarily without compulsion conveys. DOWER—Wife may renounce by separate instrument, husband to join in the deed. CURTESY—Abolished. HOMESTEAD—$1,000 allowed; conveyed by jointure. POWER OF ATTORNEY—Married women may so convey their separate estates.

§ 180. S. D.—ACKNOWLEDGMENTS taken—In the State, before a justice or clerk of the Supreme Court or notary anywhere, before a judge or clerk of a court of record, mayor of a city, register of deeds, justice of the peace, United States Circuit or District Court commissioner, county clerk, county auditor, within their jurisdiction. Out of the State, before a justice, judge or clerk of any court of record of the United States, a justice, judge or clerk of any court of record of any State, a notary, or any officer so authorized by the State where the same is being taken, a commissioner of deeds appointed by the Governor of this State. Can be taken without the United States, before a minister, commissioner, or charge d' affaires of the United States, resident or accredited to the country where same is taken, a consul, vice-

consul, consular agent of United States therein resident, a judge of a court of record, a notary public, their deputy if they are authorized to have such. ACKNOWLEDGMENT of party or corporation must be made to the instrument before it can be recorded. PARTY MUST BE PERSONALLY KNOWN to the officer, or identity proved on oath or affirmation of a credible witness known to the officer. Officer must affix his name, office and seal to the instrument. WITNESSES—None required to deeds. PRIVATE SEALS—Aholished. WOMEN—Married, convey as if single. Age to convey, 18. Separate examination not required. DOWER AND CURTESY—Abolished. HOMESTEAD—Conveyance jointly. POWER OF ATTORNEY to convey lands acknowledged and recorded, same as by deed, is valid.

§ 181. Tenn.—ACKNOWLEDGMENTS—If within the State, before the county clerk or his legal deputy, or a notary public. In another State, before a commissioner for this State, a notary public. In a foreign country, before a commissioner for this State, a notary public, a United States minister, consul, or ambassador. If made before a notary, commissioner, consul, minister or ambassador he shall certify under his seal of office. If made before a judge, he shall make the certificate and his court clerk shall certify it under his seal of office; if there be no seal, then under his private seal, stating the official character of the judge, or it may be certified by the governor. If made before a court of record a copy of the entry on the record shall be certified by the clerk under his seal of office; if there be no seal, then under his private seal and the judge, chief justice or presiding magistrate shall certify to the character of the clerk. If before a clerk of a court of record of another State, and certified by him under his seal of office, the judge, chief justice or presiding magistrate of the court shall certify to the official character of the clerk. PERSONALLY KNOWN or identified to the officer and personal appearance required. Unless wife is sick then commission can take. WITNESSES—None, if acknowledged; otherwise, two. PRIVATE SEALS—Abolished. WOMEN—Age to convey, 21. Can convey her separate estate without husband's consent. Separate examination of, required. DOWER AND CURTESY—Exist. HOMESTEAD—Conveyed by jointure. POWER OF ATTORNEY can convey by same as by deed.

§ 182. Texas.—CONVEYANCES must be in writing, subscribed to and delivered by the party or his authorized agent. ACKNOWLEDGMENTS or proofs of instruments in writing may be taken in this State, before a clerk of the District Court, a judge or clerk of the County Court, a notary public. In any other State, before a clerk of a court of record having a seal, a commissioner appointed by the Governor of this State, a notary public. In foreign countries, before a minister, commissioner, or charge d' affaires, of the United States resident, a consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States resident, a notary public. Grantor must appear in person before the officer and state that he executed the same for the consideration and purposes therein stated. The officer shall make a certificate, sign and seal it with his seal of office. MUST BE KNOWN TO THE OFFICER, or their identity sufficiently proven on the oath or affirmation of a credible witness, which

shall be noted on his certificate. WITNESSES—Two required unless acknowledged before an officer and certified to by him. PRIVATE SEALS —Abolished, except of corporations. WOMEN—Age to convey, 21, or marriage, husband to join in conveying her separate estate. MARRIED WOMAN shall have the instrument shown and explained to her by the officer, be examined separate and apart from her husband, and acknowledge the same to be her act and deed, willingly signed, that she does not wish to retract it. DOWER—Is none; community system. CURTESY—Is none; have community system. HOMESTEAD—Wife to join in its conveyance, signing and acknowledging separately. POWER OF ATTORNEY—To be recorded. A WILL conveying land in this State, probated according to the laws of any of the United States or territories, a copy thereof and its probate, attested by the clerk of the court where probated, with the seal of the court attached, and a certificate of the judge or magistrate of such court, that the attestation is in due form, may be filed and recorded in the county register of deeds where the real estate is situated, as deeds and conveyances are, without further proof or authentication, provided the same may be contested any time within four years, as the original will might be.

§ 183. **Utah.**—CONVEYANCES are by deed, signed by the grantor, if of age, or his lawful agent. ACKNOWLEDGMENTS in the State must be taken before some judge or clerk of a court having a seal, a notary public, or county recorder, or justice of the peace where the conveyance is executed or to be recorded. If in any other State or territory, by a judge or clerk of a court having a seal, or by a notary public or commissioner appointed by the Governor of this State. If in a foreign country, by some judge or clerk of a court of the country having a seal, or any notary, United States minister, commissioner or consul resident. The officer's authorized deputy may take. The judge or clerk of court shall attach the court seal. The officer who has a seal of office shall attach his seal. A justice of the peace under his hand. PERSONALLY KNOWN—The certificate to state the fact of acknowledgment, that the person making it was personally known to the officer, or was proved such by oath or affirmation of a credible witness whose name shall be inserted in the certificate. PRIVATE SEALS are abolished. WITNESSES—One required to a deed. WOMEN—Age to convey, 18. Married women may convey their separate property when acknowledged or proved and certified to, without further proof. Separate examination of wife not required. DOWER AND CURTESY—Abolished. HOMESTEAD—Conveyed by jointure. POWER OF ATTORNEY to convey property must be acknowledged or proved, certified, and recorded. The revocation must also be recorded. A conveyance legally acknowledged or proved and certified may be be read in evidence without further proof.

§ 184. **Vt.**—ACKNOWLEDGMENTS—Who may take in the State—Town clerks, justices of the peace, notary public, master in chancery, county clerk, judge or register of probate. The notary's acknowledgment shall be valid without his official seal being affixed to his signature. Out of the State—If certified according to the laws of the State, province or kingdom where taken, shall be valid proof of the same, may be taken and acknowledged before a justice of the peace, magistrate or

notary public within the United States, or in a foreign country, or before a commissioner appointed for that purpose by the Governor of this State, or before a minister, charge d' affaires, consul or vice-consul of the United States in a foreign country. PERSONALLY known, or proved to the officer, and personal appearance, required. WITNESSES—Two required to a deed. PRIVATE SEALS—Scroll required. WOMEN—Age to convey, 18. Husband must join in conveying her estate. SEPARATE EXAMINATION of wife is not required. DOWER AND CURTESY—Exist, but may elect otherwise. HOMESTEAD—Conveyed by jointure. POWER OF ATTORNEY—Can convey by; must be signed, sealed, witnessed, acknowledged, recorded. A grantor or lessor refusing to acknowledge his deed or lease may be cited before a justice of the peace with right of appeal. The deed or lease may be recorded in the meantime and be effectual for sixty days, and if the proceedings for proving are still pending the record may stand until six days after the termination of the suit. Vendor shall within six months after request record his title, or liable to be cited before a justice and may be committed for refusal and liable in an action at law for damages. Where the grantor or lessor dies or leaves the State without acknowledging his deed, the execution may be proved by the testimony of a subscribing witness before a judge of the Supreme or County Court, and if all the witnesses are dead or out of the State, it may be proved before such courts on the handwriting of the grantor and of a subscribing witness, or adducing other evidence to the satisfaction of the court; such evidence entered on such deed or annexed thereto shall be equivalent to the grantor's or lessor's acknowledgment.

§ 185. Va.—ACKNOWLEDGMENTS—May be taken by a clerk of the court, a justice, commissioner in chancery of a court of record, or a notary within the United States, or a commissioner appointed by the Governor within the United States, clerk of any court out of this State within the United States, or under official seal; any minister plenipotentiary, charge d' affaires, consul-general, consul, vice-consul, of commercial agent appointed by the government of the United States to any foreign country, or the proper officer of any court of such officer, the mayor or other chief magistrate of any city, town, or corporation therein. Notaries public or other officers who are stockholders in a corporation can take its acknowledgments, provided they are not otherwise interested. Acknowledgments taken outside the State by a notary must be certified as to his official character by any court of record, the mayor, or chief magistrate of any county, city, town or borough, or under the great seal of the State, kingdom, etc., where the notary resides. PERSONALLY KNOWN, or identified to officer, is required. WITNESSES—Two to a deed. PRIVATE SEAL—Scroll required. WOMEN—Can convey separate estate. Separate examination of wife not required. DOWER AND CURTESY—Exist, and are conveyed by jointure. HOMESTEAD—Conveyed by jointure. POWER OF ATTORNEY—May convey by power of attorney, husband to join wife if outside the State, same as by deed, acknowledged, signed in presence of two witnesses, and recorded.

§ 186. Wash.—ACKNOWLEDGMENTS—In this State—May be taken before a judge of the Supreme Court, the clerk, deputy clerk,

judge of the Superior Court, clerk or deputy thereof, judge of the Probate Court, a justice of the peace, county auditor or deputy, a notary public. In any other State—Same form as prescribed in this State, and before any one there authorized, or any commissioner appointed by the Governor of this State for such purpose. Unless it be taken before a commissioner or by the clerk of the court of record or by a notary public or other officer having a seal of office, it shall have attached a certificate of the clerk of the court of record, under the seal of said court of said county or district, or a certificate of any other proper certifying officer of the county or district that the person was such officer, that he is authorized and that he believes the signature genuine. In foreign countries—Before any minister plenipotentiary, secretary of legation, charge d' affaires, consul-general, consul, vice-consul or commercial agent of the United States, or before the proper officer of any court of the country, or a mayor or chief magistrate of any city, town or municipal corporation. The person taking shall certify by writing on, or annexing to, the instrument, under his official seal, in substance that the instrument was acknowledged by the persons whose names are signed thereto as grantors before him as such officer with the date of such. Such certificate shall be prima facie evidence of the facts stated. Same shall be admitted to record in this State. Certified copies by the county auditor shall be received in evidence. INDIAN conveyances shall be by deed, acknowledged before a judge of a court of record. The judge shall explain to the grantor the contents and the effect and so certify in the acknowledgment, shall duly examine, and approve same before record. PERSONALLY KNOWN or identified to the officer and personal appearance required. WITNESSES—Two required to a deed. PRIVATE SEALS—Abolished. WOMEN—Age to convey, when married. Can convey their own separate property same as the husband. Separate examination not required. DOWER AND CURTESY—Abolished. Community system prevails. HOMESTEAD—Conveyed by jointure. POWER OF ATTORNEY—Conveyance by, to be acknowledged, signed and recorded, same as a deed. Either husband or wife can so convey their separate property. A document bearing a seal, sent by telegraph, the same may be expressed by the letters L. S. or by the word "Seal," and if it bears a stamp, it shall be sufficient to express "Stamp."

§ 186a. W. Va.—DEEDS, CONTRACTS, powers of attorney or other writings to be admitted to record, shall be acknowledged by the grantor or proved by two witnesses. In the United States—Before the county clerk, or upon the certificate of acknowledgment of a justice, notary, recorder, prothonotary or clerk of any court within the United States, or a commissioner appointed by the Governor of this State, written or annexed to the same. In a foreign country—Before and under the hand and official seal of any minister plenipotentiary, charge d' affaires, consul-general, consul, deputy consul, vice-consul, consular agent, vice-consular agent, commercial agent or vice-commercial agent, appointed by the government of the United States to such country, or of any proper officer of any court of such country, the mayor, or chief magistrate of any city, town or corporation therein. PERSONALLY KNOWN—The grantor's writing to be acknowledged or proved by two witnesses before a notary; same stated in the certificate of acknowl-

edgment. WITNESSES—None to deed if acknowledged; two if not. PRIVATE SEALS—Scroll required. WOMEN—Age to convey, 21. Separate examination not required. DOWER AND CURTESY—Exist. Conveyance by jointure of husband and wife. HOMESTEAD—$1,000 in value. POWER OF ATTORNEY—Convey by, same as by deed.

§ 187. **Wis.**—ACKNOWLEDGMENTS—Conveyance of land is by deed, signed, sealed and acknowledged. Who can take, in the State—Judges of courts of record, clerk of, court commissioner, county clerk, register of deeds, notary, justice of the peace, commissioners of the United States federal and district courts in the State, police justices. Outside this State—Any officer so authorized by the laws of that State. Signed and sealed. Certificate of Secretary of State or clerk of the county court of record, under their official seals, to be attached, stating that the officer taking was at the time so authorized. May be executed according to the laws of the State and acknowledged before any judge or clerk of a court of record, notary public, justice of the peace, master in chancery, or other officer so authorized by the State, or before a commissioner appointed by the Governor of this State. In a military post, by its commanding officer. Acknowledgments, unless taken by a commissioner, a clerk of a court of record, with its seal attached, a notary with his seal attached, or the commanding officer of a military post, shall have attached, the certificate of the clerk, or other proper certifying officer of a court of record of the county or district, under his seal of office, stating that the person subscribing to the certificate of acknowledgment was such officer at the date thereof, that he believes the signature genuine and acknowledged according to the laws of the State. The commissioner, clerk of court, notary or commanding officer, shall state if it is executed according to the laws of the State. Outside the United States—Any officer authorized by the laws of this State, any United States minister resident, charge d' affaires, commissioner or consul, vice-consul or consular agent appointed, under their hand and seal of office. Notaries' certificate to state that it was acknowledged according to the laws of the country. PERSONALLY KNOWN to and personal appearance before the officer required or proved. WITNESSES—Two to a deed required. PRIVATE SEALS—The word "Seal" or initials "L. S." is sufficient. MARRIED WOMAN, of full age (18), may convey her lands jointly or separately from her husband, same as if she were unmarried. No separate examination necessary. Insane wife's dower released upon petition of husband to the court, within twenty to sixty days. DOWER—Conveyed by wife as if unmarried, jointly or separately from husband. CURTESY—Exists. HOMESTEAD—Conveyance wife must join. POWER OF ATTORNEY—So conveyed when acknowledged, signed and recorded same as a deed.

§ 188. **Wyo.**—CONVEYANCE of land may be by deed signed by the grantor if of age, or by his agent or lawful attorney, acknowledged or proved and recorded. ACKNOWLEDGMENTS—Taken in the State—Before any judge, clerk of a court of record, or a court commissioner appointed under or by authority of the laws of the United States, county clerk, justice of the peace, or notary, the officer shall certify with the date under his hand and seal of office if he have one.

Outside the State—By any officer authorized by the State or country under his official seal, if he have none his certificate must be authenticated by the clerk of a court of record or a county clerk having a seal, certifying that he is authorized to take, that his signature is genuine. Notaries public and justices of the peace and commissioner of deeds for Wyoming shall add the date their commission expires. PERSONALLY KNOWN to officer required. WITNESSES—One to a deed. PRIVATE SEALS—Abolished, except those of corporations. WOMEN—Age to convey, 21 years. Can convey separate estate. Her separate examination required, to sign and acknowledge, freely and voluntarily. She shall be fully apprised of the contents and her rights and the effect of her signing. DOWER—Yes, wife releases by joining the husband. HOMESTEAD—Wife to join in releasing it, and apprised of her rights. POWER OF ATTORNEY—Can so convey; same manner as by deed.

§ **189. CANADA.**—ACKNOWLEDGMENTS—Taken In the province—before register or deputy, magistrate, justice of the peace, judge or register of a court having a seal, or notary. Other British provinces—Judge of a court, clerk or register having a seal, notary, magistrate having a seal, any person so commissioned by the Lieutenant-Governor. Outside the British dominions—British ambassador, charge d' affaires, minister, consul, consular agent resident, judge of a court having a seal, a notary, certified as such by a British ambassador, charge d' affaires, minister, consul or consul agent, or the Governor of the State, etc. Describe property clearly. WITNESSES—One to a deed, two to a will. SEALS—Scroll seal to a deed.

CHAPTER III.

AFFIDAVITS, OATHS AND AFFIRMATIONS.

§ 190. 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] To make a valid oath, for the falsity of which perjury will lie, there must be in some form, in the presence of an officer authorized to administer it, an unequivocal and present act, by which the affiant consciously takes upon himself the obligations of an oath.[2] The delivery of an affidavit to an officer, signed, is not such an act.

§ 192.—An affirmation in judicial form sufficient.—A requirement of an "oath" shall be deemed complied with by making affirmation in judicial form.[3]

§ 193. A jurat.—That part of an affidavit where the officer certifies that the same was "sworn" before him.[4]

§ 194. Perjured oath—U. S. statutes quoted.—Every person who, after taking an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed.[5] Every person who procures another to commit any perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed.[6] The officer

[1] Bouvier.
[2] O'Reilly v. People, 86 N. Y., 154.
[3] U. S. Rev. Statutes 1878, Sec. 1.
[4] Bouvier.
[5] U. S. Rev. Statutes, Sec. 5392.
[6] U. S. Rev. Statutes, Sec. 5393.

who administers an oath must have legal authority or the person taking it before him, however false, cannot be convicted of perjury.[7]

§ 195.—Oath of State and other officers, with form. —Every member of a State legislature, and every executive and judicial officer of a State, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to-wit: "I, A B, do solemnly swear that I will support the Constitution of the United States."[8] Such oath may be administered by any person who, by the law of the State, is authorized to administer the oath of office; and the person so administering such oath shall cause a record or certificate thereof to be made in the same manner as, by the law of the State, he is directed to record or certify the oath of office.[9]

§ 196. Oath to adverse claimant of U. S. mineral lands. — An adverse claimant to mineral lands, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before any notary public of such State or Territory. Applicants for mineral patents may make oath or affidavit required for proof of citizenship before the same.[10]

§ 197. Oaths in U. S. government claims.—A notary public is authorized to administer oaths in claims against the government for back pay, pensions or bounty cases.[11]

§ 198. Oaths to applicants for U. S. pensions.—A notary public is authorized to administer and certify any oath or affirmation relating to any pension or application therefor. In doing so, he must authenticate his act by his seal of office.[12]

§ 199. Oaths in Illinois.—Judges of courts, justices, masters in chancery, police magistrates and notaries public are authorized by statute to administer oaths.[13]

§ 200. Oaths under U. S. laws. — 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

[7] Van Duzen v. People, 78 Ill., 645.
[8] U. S. Rev. Stat. 1878, Sec. 1836.
[9] U. S. Rev. Stat. 1878, Sec. 1837.
[10] U. S. Rev. Stat. Sup., p. 338.
[11] U. S. Rev. Stat. Supp., p. 762.
[12] U. S. Rev. Stat. Supp., 2, p. 50.
[13] Starr & Curtis' Anno. Statutes 1896, p. 2824.

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.[14]

§ **201. Oaths administered by U. S. government employes.**—No officer, clerk, or employe of any executive department who is also a notary public or other officer authorized to administer oaths, can charge or receive any fee or compensation for administering oaths of office to employes of such department required to be taken on appointment or promotion therein.[15]

§ **202. Oath of U. S. government officers.**—Every person elected or appointed to any office of honor or profit, either in the civil, military, or naval service, excepting the President and the persons embraced by the section following, shall, before entering upon the duties of such office, and before being entitled to any part of the salary or other emoluments thereof, take and subscribe the following oath: "I, A B, do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought, nor accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, 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 obligation 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."[16]

§ **203. Oath of U. S. government officer, formerly a participant in the rebellion, and authority to administer same.**—Whenever any person who is not rendered ineligible to office by the provisions of the fourteenth amendment to the Constitution is elected or appointed to any office of honor or trust

[14] U. S. Rev. Stat. 1878, Sec. 1778.
[15] May 13, 1884; U. S. Rev. Stat. Supp., V. 1, p. 791.
[16] U. S. Rev. Stat. 1878, Sec. 1756.

under the Government of the United States, and is not able, on account of his participation in the late rebellion, to take the oath prescribed in the preceding section, he shall, before entering upon the duties of his office, take and subscribe in lieu of that oath the following oath: "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 obligation 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."[17]

The oath of office required by either of the two preceding sections may be taken before any officer who is authorized by the laws of the United States, or by the local municipal law, to administer oaths, in the State, Territory, or district where such oath may be administered.[18]

The oath of office taken by any person pursuant to the requirements of section seventeen hundred and fifty-six, or of section seventeen hundred and fifty-seven, shall be delivered in by him to be preserved among the files of the House of Congress, department, or court to which the office in respect to which the oath is made may appertain.[19]

§ **204. Oaths to national bank officers.** — The oath or affirmation required by section fifty-two hundred and eleven of the Revised Statutes, verifying the returns made by national banks to the Comptroller of the Currency, when taken before a notary public properly authorized and commissioned by the State in which such notary resides and the bank is located, or any other officer having an official seal, authorized in such State to administer oaths, shall be a sufficient verification as contemplated by said section fifty-two hundred and eleven;

Provided, That the officer administering the oath is not an officer of the bank.[20]

§ **205. Oaths required of all witnesses.**—It is an established rule that all witnesses that are examined upon a trial, civil or criminal, must give their evidence under the sanction of an oath, or some affirmation substituted in lieu thereof. If any person called as a witness refuses or is unwilling to be sworn from alleged conscientious motives, he will be allowed to make solemn religious

[17] U. S. Rev. Stat. 1878, Sec. 1757.
[18] U. S. Rev. Stat. 1878, Sec. 1758.
[19] U. S. Rev. Stat. 1878, Sec. 1759.
[20] Feb'y 26, 1881; U. S. Rev. Stat. Supp., V. 1, p. 318.

affirmation, involving like appeal to God in the truth of his testimony, in mode which he shall declare to be binding on his conscience. All witnesses are to be sworn according to the peculiar ceremonies of their religion, or in such manner as they may deem binding on their own consciences; and if the witness be not of the Christian religion, the court will inquire as to the form in which an oath is administered in his own country or among those of his own faith, and will impose it in that form.[21]

§ **206. An affidavit.** — Is simply a declaration, on oath, in writing, sworn to by a party before some person who has authority under the law to administer oaths. It does not depend on the fact whether it is entitled in any cause or in any particular way. Without any caption whatever, it is nevertheless an affidavit.[22]

A declaration or statement in writing, sworn to or affirmed before some officer having authority to administer an oath or affirmation. The oath or affirmation is essential, but signing has been held unnecessary, though required as matter of common practice. It is distinguished from a deposition in being ex parte.[23]

Officer's certificate to an affidavit must show evidence of authority to make his certificate prima facie evidence of the fact.[24]

The civil code of New York requires that, when an affidavit is taken in another State to be used in New York, there must be a certificate that such officer was authorized by the laws of his State to take and certify acknowledgments and proofs of deeds to be recorded in his State. A certificate taken in another State reciting that the officer is a notary public and as such is duly authorized by the laws of such State to take, does not comply with the code of New York.[25]

An affidavit annexed to a chattel mortgage which was taken in Pennsylvania before a notary public whose jurat failed to state that he was a notary public of that State as required by statute: Held, that it did have annexed an affidavit within the meaning of the law and was not void as to creditors.[26]

The courts of Alabama cannot take judicial knowledge of the appointment and term of office of notaries public in other States and countries. An affidavit of a notary of Tennessee having no

[21] Bradner's Evidence, pp. 67 and 69.
[22] Harris v. Lester, 80 Ill., 307.
[23] Kinney's Law Dictionary and Glossary, p. 32.
[24] Smith v. Lyons, 80 Ill., 600.
[25] Stanton v. U. S. Pipe Line Co., 25 Civ. Proc. Reports, 180.
[26] Magowan v. Baird, 53 N. J. Eq., 656.

notarial seal attached nor any evidence of authority is insufficient.[27]

§ 207. **Who may administer oaths.**—Notaries public are authorized to administer oaths generally.[28] By the Illinois statute, a notary can administer oaths in all cases, and proof of his official character is not required, except in a county other than where the suit may be pending, as courts take judicial cognizance of all who are authorized to administer oaths within their county.[29]

The power to administer oaths is not one of the incidents of the office of notary public. Under the general Law Merchant, where the power is annexed to the office, it is so by virtue of positive enactment; its existence cannot be presumed in the absence of all proof or ground for presumption.[30]

The officer's certificate must show evidence of authority, to make it prima facie evidence of the fact.[31]

The characters "N. P." clearly indicate the office of notary public. In attachment cases the affidavit may be made before any officer authorized by the laws of this State to administer oaths. If in the county, a seal is not required, but it is required for outside the county or State.[32]

An attorney may administer an oath to his client on an affidavit to be filed in the suit.[33]

However improper and unprofessional it may be for attorneys in a case pending, or about to begin, to administer an oath to an affidavit, sworn to by his client in such suit, there is nothing in the law that forbids it.[34] Courts generally discountenance it.[35]

Where the record does not disclose that the acting attorney and the notary signing the affidavit are one and the same, the identity of the two men should not be inferred from the identity of names.[36]

A notary who is superintendent of the special assessment department of a city is not disqualified from administering an oath to any person.[37] It may be to a fellow commissioner, for filing and use in the proceeding.[38]

[27] Ala. Nat. B'k v. Chattanooga D. & S. Co., 106 Ala., 663; Chandler v. Hanna, 73 Ala., 390; Bradley v. Northern B'k, 60 Ala., 252.

[28] Edwards v. McKay, 73 Ill., 570.

[29] Stout v. Slatterly, 12 Ill., 162; Rowley v. Berrien, 12 Ill., 200; Dyer v. Flint, 21 Ill., 80.

[30] Keefer v. Wood, 36 Ill., 406.

[31] Smith v. Lyons, 80 Ill., 600.

[32] Rowley v. Berrien, 12 Ill., 198.

[33] Evans v. Schriver Laundry Co., 57 Ill. App., 150.

[34] Evans v. Schriver L. Co., 57 Ill. App., 150.

[35] Link v. Litchfield, 141 Ill., 469; Hollenbeck v. Detrick, 162 Ill., 392.

[36] Bradley v. Claudon, 45 Ill. App., 326.

[37] McChesney v. City of Chicago, 159 Ill., 223.

[38] Peck v. People, 153 Ill., 454.

A court of equity has power to direct that commissioners appointed under the provisions of a decree to appraise real estate and set off homestead may take the oath for the performance of their duties before any officer empowered by law to administer oaths generally, and notaries public are thus empowered.[39]

§ **208. Oaths of inferior officers.**—The Constitution expressly leaves it in the discretion of the legislature to exempt "inferior officers" from taking the prescribed oath of office. Township treasurers, school trustees, treasurers and directors, are inferior officers.[40]

§ **209. Authority.**—An affidavit, to have authority, must be sworn to before an officer.[40]

§ **210. Sufficiency of.**—Looseness in the form of a verification of papers required to be verified, ought not to be encouraged. It is a universal rule in all courts that any irregularity in a jurat may, unless expressly waived, be objected to in any stage of a cause.[41]

An affidavit to a claim for a mechanic's lien, stating that the amount claimed was due and payable from a date named in an exhibit, which was stated to be a just and true statement of the account due the petitioner, is a sufficient verification.[42]

A certificate stating that the notice "has been published five times in, etc.," is insufficient. The statute provides that the notice shall be published at least "five successive days."[43]

§ **211. Information and belief.**—A verification of a creditor's bill, wherein the affiant states on his oath and says that "he has read the foregoing bill of complaint, and knows the contents thereof, and the same are true, except as to those matters therein stated upon information and belief; and as to those matters he believes it to be true." This is not a sufficient verification, and amounts to no more than a statement.[44] He must swear peremptorially to the fact.[45]

§ **212. Publication.**—Where the certificate of publication of

[39] Dillman v. Will Co. N. B'k, 138 Ill., 282; id., 139 Ill., 269; id., 36 Ill. App., 272.

[40] School Directors v. People, 79 Ill., 511.

[40] McDermaid v. Russell, 41 Ill., 489.

[41] Heffron v. Rice, 40 Ill. App., 244; Brabrook T. Co. v. Belding Bros., 40 Ill. App., 326.

[42] Moore v. Parish, 163 Ill., 93.

[43] Evans v. People ex rel., 139 Ill., 552; Toberg v. City of Chicago, 164 Ill., 572.

[44] Brabrook T. Co. v. Belding Bros., 40 Ill. App., 326.

[45] Heffron v. Rice, 40 Ill. App., 244.

the delinquent tax list literally follows the statute no venue need be attached either to the certificate or the oath.[46]

§ **213. Venue.**—If the State and county are given in the venue of the affidavit, this is ample evidence of the place where the oath was administered. Unless authorized by statute, an officer can perform no official act outside of and beyond the territorial limits in which he is authorized and required to act.[47]

§ **214. Official character.**—A certificate of acknowledgment of a deed or certificate of a notary, or other officer, stating in its body the officer's official character, it is useless and unnecessary to again certify it by full designation following the signature.[48]

§ **215. Oaths.**—An oath taken with the uplifted hand, and swearing by the ever-living God, is effectual. If any objection, it should be made before, not after, the verdict.[49] Oaths are to be administered to all persons according to their own opinions, and as it most affects their consciences. Oaths taken by an uplifted hand only, are valid.[50] All persons who believe in the existence of a God and a future state, are on this account good witnesses.[51] One having no religion, believing in no God, and not accountable here or hereafter, cannot become a witness.[52]

§ **216. Officer's certificate of authority.**—A notary public of another State must certify that he has power to administer oaths; it cannot be presumed.[53] If no authority is shown, it will be treated as a nullity. When a seal is used certificate is not required.[54] Affidavits sworn to before notaries public in Canada, which give no certificate of their authority to administer oaths in the dominion of Canada, are void.[55] The officer who administers an oath must have legal and competent authority, or the person taking it before him, however false, cannot be convicted of perjury.[56]

STATUTORY REQUIREMENTS.

§ **217. Ala.**—AFFIDAVITS without the State may be taken by commissioner, judge or clerk of a federal court, judge of any court of record, or notary public, under their hands and official seal. OATHS WITHOUT THE STATE may be taken by notaries and officers authorized to take acknowledgments.

[46] Bass v. People, 159 Ill., 207.
[47] Van Duzen v. People, 78 Ill., 645.
[48] Heffernan v. Harvey, 41 W. Va., 766.
[49] McKinney v. People, 2 Gilm., 540.
[50] Gill v. Caldwell, Breese, 53.
[51] Noble v. People, Breese, 54.
[52] C. M. T. R. R. Co. v. Rockafellow, 17 Ill., 541.
[53] Keefer v. Mason, 36 Ill., 406; Smith v. Lyons, 80 Ill., 600.
[54] Harding v. Curtis, 45 Ill., 252.
[55] Ferris v. Commercial Nat. B'k, 158 Ill., 237.
[56] Van Duzen v. People, 78 Ill., 64.

§ 218. **Ariz.**—AFFIDAVIT may be taken in this State by—clerk of the District Court or notary, within their counties. Out of the State by any clerk of a court of record having a seal, any notary, or any commissioner of deeds appointed under the laws of this State. Out of the United States by a notary, minister, commissioner, charge d' affaires of the United States, resident in and accredited to the country, consul-general, consul, vice-consul, commercial agent,. deputy consul, consular agent of the United States resident in the country.

§ 219. **Ark.**—AFFIDAVITS taken in this State by—a judge of the court, justice of the peace, notary, or clerk of the court. Out of this State by a commissioner appointed by the Governor of this State to take depositions, before a judge of court, mayor, justice of the peace, notary, whose certificate shall be proof of the time and manner of its being made.

§ 220. **Cal.**—AFFIDAVITS may be taken in the State or outside by those authorized to take acknowledgments. OATHS—Form may be varied to suit the witness' religious belief.

§ 221. **Colo.**—AFFIDAVITS, taken in the State, by judges, county clerks, justices and clerks of court, justices of the peace, notaries, within their district. Out of the State, by—a notary, clerk of a court of record, under their official seals, commissioners of deeds.

§ 222. **Conn.**—OATHS AND AFFIDAVITS—Who may administer—Clerk of the Senate, clerks of the House of Representatives, chairman of committees of the General Assembly, or its branches, during session, the Governor, commissioner of school fund, judges and clerks of any court, justices of the peace, commissioners of the Superior Court, county commissioners, notaries, town clerks, commissioners to take acknowledgments appointed by the Governor, commissioners of other States in it, also register of births when noting same. County Superior Court clerk will certify to the notaries' certificate. Party may affirm if objecting to oath, using the words, "Solemnly and sincerely affirm and declare," and instead of "So help you God," the words "Upon the pains and penalties of perjury" shall be used.

§ 223. **Del.**—AFFIDAVITS AND OATHS—WHO CAN TAKE—The chancellor, any judge, notary public, justice of the peace. Persons residing outside the State may make oath or affidavits for use in this State before the same officers authorized by this State to take acknowledgments or to probate accounts. Usual form. Swearing upon the holy evangels of Almighty God, by laying the right hand upon the book and kissing it, or with the uplifted hand and swearing by the ever-living God, the searcher of all hearts, that, etc., as I shall answer to God at the great day. Anyone opposed to swearing may affirm.

§ 224. **D. C.**—AFFIDAVITS AND OATHS may be administered by a chancellor, any judge, justice of the peace, or notary public.

§ 225. **Fla.**—OATHS can be administered in this State by—judges and clerks of the Supreme and Circuit Courts, judges of probate, justices of the peace, and notaries public. In other States by—any judge or clerk of a Supreme, Circuit or Chancery Court, or a notary public, or

commissioner of deeds. In foreign countries by—any judge of a court of last resort, a notary public, a minister, consul-general, charge d' affaires, or consul of the United States resident in that country. All to be authenticated by their signature and official seal. An affirmation may be substituted for an oath. False affidavit to defraud insurer—Any master or officer of a ship making or causing to be made a false affidavit or protest, or if any owner or other person concerned in such ship, vessel or goods procures a false affidavit or protest, he shall be imprisoned not exceeding ten years or by fine not exceeding $5,000.

§ 226. **Ga.**—AFFIDAVIT—All answers, pleas or defenses in any court of this State, which have to be filed on oath, shall be held to be sufficiently verified when the same are sworn to before any notary public, justice of the peace, judge of a court of law, or chancellor, commissioner, or master of any court of equity of the State or county where the oath is made, or before any other officer of such State or county who is authorized by the laws thereof to administer oaths, and it shall have the same force and effect as if it had been made before an officer of this State authorized to administer the same. The official attestation of the officer shall be prima facie evidence of his official character and that he was so authorized. A petition or answer, or other proceeding, required to be verified by a petitioner or defendant residing beyond the limits of the State, an affidavit made before any commissioner of this State, or any commissioner, or master, or chancellor of a court of equity, or judge of any court of the State where made, authorized to administer an oath, shall be sufficient verification.

§ 227. **Idaho.**—AFFIDAVITS—In the State may be taken before a judge or clerk of any court, justice of the peace, or notary public. Out of the State, to be used therein, before the judge or clerk of a court of record, or any notary. In a foreign country—An ambassador, minister, consul or consular agent of the United States, or a court of record having a seal. A judge or court outside this State must have their certificate authenticated by the clerk of the court.

§ 228. **Ill.**—WHO MAY ADMINISTER OATHS—All courts now established, or that may hereafter be established, and each judge, justice, master in chancery, and clerk thereof, and all justices of the peace, police magistrates and notaries public shall have power to administer oaths and affirmations to witnesses and others concerning anything commenced or depending before them respectively. (Starr & Curtis' Anno. Statutes, 1896, p. 2824.)

WHO MAY ADMINISTER TO OFFICERS, ETC.—DEPOSITIONS—All courts, the judges, justices, masters in chancery, and the clerks thereof, the Secretary of State, justices of the peace, police magistrates, and notaries public shall have power in their respective districts, circuits, counties or jurisdictions, to administer all oaths of office and all other oaths authorized or required of any officer or other person, and to take affidavits and depositions concerning any matter or thing, process or proceeding commenced, or to be commenced, or depending in any court, or before any justice of peace, or on any occasion wherein any affidavit or deposition is authorized or required by law to be taken. (Starr & Curtis' Anno. Statutes, 1896, p. 2824.)

FORM OF OATH—Whenever any person shall be required to take an oath before he enters upon the disharge of any office, place of business, or on any other lawful occasion, it shall be lawful for any person empowered to administer the oath to administer it in the following form, to-wit: The person swearing shall, with his hand uplifted, swear by the ever-living God, and shall not be compelled to lay the hand on or kiss the gospels. (Starr & Curtis' Anno. Statutes, 1896, p. 2825.)

AFFIRMATION, ETC.—Whenever any person, required to take or subscribe an oath, as aforesaid, and in all cases where an oath is upon any lawful occasion to be administered, and such person shall have conscientious scruples against taking an oath, he shall be admitted, instead of taking an oath, to make his solemn affirmation or declaration in the following form, to wit: You do solemnly, sincerely and truly declare and affirm. Which solemn affirmation or declaration shall be equally valid as if such person had taken an oath in the usual form; and every person guilty of falsely and corruptly declaring, as aforesaid, shall incur and suffer the like pains and penalties as are, or shall be, inflicted on persons convicted of wilful and corrupt perjury. (Starr & Curtis' Anno. Statutes, 1896, p. 2825.)

PERJURY—All oaths, affirmations, affidavits and depositions administered or taken as provided in this act shall subject any person who shall so swear or affirm wilfully and falsely, in matter material to any issue or point in question, to the like pains and penalties as are inflicted by law on persons convicted of wilful and corrupt perjury. (Starr & Curtis' Statutes of Illinois, 1896, Ed., p. 2825.)

OATHS OUT OF STATE.—When any oath authorized or required by law to be made is made out of the State, it may be administered by any officer authorized by the laws of the State in which it is so administered, and if such officer have a seal, his certificate under his official seal shall be received as prima facie evidence without further proof of his authority to administer oaths. (Starr & Curtis' Anno. Statutes, 1896, p. 2825.)

§ 229. **Ind.**—WHO MAY ADMINISTER OATH—Clerks of Circuit Courts, judges of the Superior Court. Affidavits taken in another State to be certified to by the clerk of the Circuit, District or Common Pleas County Court, where the officer taking has jurisdiction, clerk's certificate to state under his hand and court seal that the officer taking is by the laws of said State duly empowered to administer oaths, affirmations and take affidavits. FALSELY ATTESTING—A notary public or other officer authorized to administer oaths who certifies that any person was sworn or affirmed before him to any affidavit or other instrument of writing when in fact such person was not so sworn or affirmed shall be imprisoned in the State prison not more than three years nor less than one year, and fined not more than one thousand dollars nor less than ten dollars. Same with acknowledgments, etc., they shall be imprisoned in the State prison from one to three years and fined from ten to one thousand dollars. Officer to explain the contents of the instrument to the party executing it before certifying to the acknowledgment under penalty of a fine of from five to five hundred dollars and imprisonment of from ten days to six months.

§ 230. **Iowa.**—AFFIDAVIT may be made within or without this State before any person authorized to administer oaths. Out of the State—A judge or clerk of a court of record, a notary, or a commissioner of deeds appointed by the Governor of this State are credible. A person desirous of obtaining the affidavit of another who is not willing to make it may apply to an officer competent to take depositions and if the officer is satisfied that the object is legal and proper he shall issue a subpœna to bring the witness before him, and if he fails to make a full affidavit within his knowledge as required the officer may take his deposition by question and answer in writing, which may be used instead of the affidavit. NOTICE—The officer may require notice to be given to any party interested and allow him to be present to cross-examine the witness. OATHS—WHO AUTHORIZED TO TAKE—Judges of the Supreme Court, judges of the District and Circuit Courts, clerks and deputy clerks of the same courts, county auditors and deputies, sheriffs and deputies where authorized by law to select commissioners and appraisers, or impanel jurors for the view of appraisement of property, or are directed as an official duty to have property appraised or take the answers of garnishees, justices of the peace and notaries within each of their counties, the Governor, Secretary, Auditor and Treasurer of State, when pertaining to their official duties. Affirmation can be made when person is opposed to swearing.

§ 231. **Kas.**—OATHS—Administered by justices of the peace in their counties, notaries public, judges of courts in their jurisdictions, mayors of cities and towns, clerks of courts of record, county clerks and registers of deeds. HOW ADMINISTERED—By laying the right hand on the Holy Bible, or by the uplifted hand. FORM—You do solemnly swear, etc. So help you God. Or, you do solemnly, sincerely and truly declare and affirm, etc., and this you do under the pains and penalties of perjury. FALSIFYING subjects the party to the pains and penalties of perjury. AN AFFIRMATION can be taken where the party is conscientiously opposed to an oath. AFFIDAVITS may be made in and out of the State by any one authorized to take depositions and in the same way.

§ 232. **Ky.**—AFFIDAVITS AND OATHS administered by notaries must be signed and officially sealed and show date of expiration of their commission. OATHS include affirmations. The official oath of any officer may be administered by any judge, notary, clerk of court, or justice of the peace, within his district or county. Out of the State—Judge of a court, justice of the peace, notary, and mayor of a city.

§ 233. **La.**—AFFIDAVITS AND OATHS may be taken in the State by judges, justices of the peace, clerks of courts and notaries. Out of the State, for use in the State, a Louisiana commissioner or any one authorized by the laws of the State where taken to administer oaths. If other than a Louisiana commissioner authority must be certified by a Louisiana commissioner.

§ 234. **Maine.**—OATHS, AFFIDAVITS and affirmations, taken by a notary when authorized by his State or country, a commissioner of deeds for this State, under their signature and official seal. FORM—Swear or affirm under the pains and penalties of perjury.

§ 235. **Md.**—OATHS taken in this State—When suit is brought on a bond, deed, note, or other instrument in writing, oath to must be made before a judge or justice of this State, or a commissioner of this State, or a judge or justice of another State or country, whose authority must appear and be certified by clerks of courts. Out of the State, before a Maryland commissioner, a judge of a court of record, a notary who must authenticate with his seal. MORTGAGES TO BE VALID, except as between the parties, must have endorsed thereon an oath or affirmation of the mortgagee that the consideration in said mortgage is true and bona fide as set forth. It may be made any time before recording. AFFIDAVIT—The affidavit may be made by one of several mortgagees. It may be made by any agent, signing as agent, or by an officer of a corporation.

§ 236. **Mass.**—OATH AND AFFIDAVITS and affirmations made in the State before a justice of the peace or notary. Out of the State, a Massachusetts commissioner or a notary. Certification not required.

§ 237. **Mich.**—OATHS AND AFFIDAVITS may be taken before any justice, judge or clerk of a court of record, Circuit Court, commissioner, notary, justice of the peace, register, or master in chancery, or commissioner appointed by the court. MODE of, by holding up the right hand, unless the party can show a more solemn form. No witness incompetent on account of his religious views. Parties may affirm.

§ 238. **Minn.**—AFFIDAVITS AND OATHS taken by judges of the Supreme, District and Probate Courts of this State, judge of the Court of Common Pleas of Ramsey County, the clerks of said courts, county commissioners, registers of deeds, justices of the peace, within their jurisdictions, all legislative committees, commissioners, referees, and committees appointed by any of said courts for matters coming before them, county auditors in their county under their seal of office, but not their deputies, clerks of federal courts, town and city clerks and village recorders. Usual mode with hand uplifted. Notaries can take in their county. Their certificate is prima facie evidence without any other authentication either in or outside of the State. The word "affirm" may be substituted, and "under the pains and penalties of perjury" instead of "so help me God."

§ 239. **Miss.**—AFFIDAVITS AND OATHS—By a judge of a court of record, clerk of such court, master in chancery, member of the board of supervisors, justice of the peace, notary public, mayor, or police justice of a city, town or village, and any officer of any State, or of the United States, authorized by law to administer. An affirmation has the same effect.

§ 240. **Mo.**—OATHS—Taken by every court and judge, justice and clerk, justice of the peace, and notaries. To be administered free of charge in cities of over 100,000 inhabitants, by the mayor, comptroller, auditor, register, collector, recorder of deeds, recorder of voters, president of the board of assessors and their deputies when in connection with the business of their offices. Parties may affirm. FORM—"You do solemnly declare and affirm, etc., under the pains and penalties of perjury." The officer shall adopt the mode most binding on the con-

science of persons to be sworn, according to the peculiar ceremonies of their religion.

§ 241. **Mont.**—AN AFFIDAVIT may be taken in this State before any judge or clerk of any court, or any justice of the peace, county clerk or notary public. In any other State before a commissioner appointed by the Governor of this State to take affidavits and depositions in that State or before a notary public, any judge or clerk of a court of record having a seal. In a foreign country before an ambassador, minister, consul, vice-consul, or consular agent of the United States, or before any judge of a court of record having a seal. If taken before a judge of a court in another State or foreign country, the genuineness of the signature, existence of the court and the fact that such judge is a member thereof must be certified by the clerk of the court under its seal. Oaths may be administered by any court, judge, or court clerk, justice, notary and officers authorized to take testimony. Officers are authorized to employ interpreters to issue subpœnas to punish for contempt.

§ 242. **Neb.**—OATHS AND AFFIDAVITS may be administered by judges of the Supreme and District Courts and their clerks within their districts, by probate judges, justices of the peace and notaries public, within their counties. Party may affirm. May be made in and out of this State before any person authorized to take depositions and must be authenticated in the same way. The officer shall certify that it was sworn to before him and signed in his presence.

§ 243. **Nev.**—AN AFFIDAVIT in this State may be taken before any judge or clerk of any court, or any justice of the peace, or notary public. In another State, before a commissioner appointed by the Governor of this State, any notary public, or before a judge of any court having a seal. In a foreign country, before a United States ambassador, minister, or consul, or before any judge of a court of record having a seal. When taken before a judge the clerk must certify to the court's existence and the judge as being a member under the court seal.

§ 244. **N. H.**—OATH—Means also affirmations. Party affirming to state "This I do under the pains and penalties of perjury."

§ 245. **N. J.**—OATHS, AFFIDAVITS, ETC.—Who may take—Notaries public without the use of their seal of office, commissioners of deeds, the chancellor or any judge of a court of record, master in chancery, justice of the peace, mayor, recorder or alderman of a city or borough, Supreme Court commissioner, city clerk, clerk or surrogate of any county court of record, or township clerks. In other States and countries—Any notary public or officer authorized by the State or country, or authorized by this State to take acknowledgments, and a recital that he is such officer in the jurat under his signature and seal of office, provided other certificates, when required, be annexed. False swearing subjects to penalty for perjury. May affirm or declare, leaving off "So help me God."

§ 246. **N. M.**—OATHS AND AFFIDAVITS—Secretary of the territory and all commissioned acting notaries, justices of the peace, within the counties of their commission are empowered to administer oaths and

affirmations where magistrates and other officers within the territory may do so. FORM PRESCRIBED—The person swearing shall, with his right hand uplifted, follow the words required, beginning "I do solemnly swear" and closing "so help me God." If the party is conscientiously opposed to swearing he may affirm, with the right hand uplifted, as follows, "You do solemnly, sincerely and truly declare and affirm," and close with "and this I do under the pains and penalties of perjury."

§ 247. **N. Y** —OATHS AND AFFIDAVITS—May be taken in the State before—a judge, clerk, deputy clerk, special deputy clerk of a court, notary public, surrogate, special surrogate, county clerk, deputy county clerk, special deputy county clerk, commissioner of deeds. within their district, and when certified by the officer, may be used in any court or officer in the State. Outside the State by—an officer authorized by his State to take acknowledgments, his certificate to be accompanied by the certificate of his authority by the officer of his State so authorized. Party may affirm instead of swearing, as follows, "You do solemnly, sincerely and truly declare and affirm." Officer may use the mode most binding on the conscience. The witness must be examined first as to his mental capacity to take oath. False swearing in any form is perjury.

§ 248. **N. C.**—AFFIDAVITS—Who may take—Clerks of the Supreme and Superior Courts, notaries under their seals, justices of the peace, judge or court of the State. Clerks to certify and if for out of the county, court seal is to be attached. Outside the State notaries can take verifications of pleadings but not ordinary affidavits. Affidavits cannot be used outside the State unless certified.

§ 249. **N. D.** -OATHS AND AFFIDAVITS—Who to administer—Judges of the Supreme, District and County Courts, clerks of the Supreme and District Courts, county auditors and registers of deeds, county commissioners, justices of the peace, notaries within their counties, city clerk and auditors, township clerks and village recorders within their respective limits, sheriffs and their deputies in their counties, and other officers in cases lawfully provided for. Persons may affirm when opposed to swearing, subject to penalty for perjury. Any person who makes or administers an oath illegally is guilty of a misdemeanor. Anyone outside the State, authorized by his State, can take.

§ 250. **Ohio.**—AFFIDAVIT may be taken in or out of the State before any person authorized to take depositions, and must be signed by the party who makes it. Certified to by the officer and signed by him officially. FORM—The most binding on the person's conscience. MILITARY—The colonel, lieutenant-colonel, major or adjutant of any regiment or battalion raised in this State in the service of the State or United States may administer oaths when necessary to the men in their command.

§ 251. **Okla.**—AFFIDAVITS—May be made in and out of this territory before any person authorized to take depositions, and must be authenticated in the same way.

§ 252. **Ore.**—OATHS may be administered by every court, justice of the peace, notary public and commissioner of deeds. If taken out-

side the State must be verified. FORM—Party raises his hand, officer saying, "You do solemnly swear that the evidence you shall give in the issue now pending between ——— and ——— shall be the truth, the whole truth, and nothing but the truth, so help you God." Any form more solemnly binding on the witness may be used, according to his religious belief. He may affirm if opposed to an oath.

§ 253. **Pa.**—OATHS AND AFFIRMATIONS—Notaries can administer. Outside the State—Commissioners or anyone authorized by his State. The latter must be certified by the clerk or prothonotary of the court under his hand and seal. FORM—Laying the hand upon the book and kissing it, or by raising the hand and repeating the usual words. False swearing is perjury, and subjects the party to a penalty.

§ 254. **R. I.**—OATHS may be administered anywhere in the State by the governor, lieutenant-governor, secretary of State, attorney-general, assistant attorney-general, general treasurer, justices of the Supreme Court, Speaker of the House of Representatives, commissioners appointed by other States to take acknowledgments of deeds and depositions within this State, notaries public, the railroad commissioner, the insurance commissioner, and the commissioners of shell fisheries. AFFIDAVITS—Notaries can take.

§ 255. **S. C.**—OATHS—Who may take—In the State, notaries, trial justice, judge or clerk of court. Outside the State, anyone authorized to probate a deed.

§ 256. **S. D.**—AFFIDAVIT may be taken in or out of this State by any person authorized to administer oaths, viz.: Each justice of the Supreme Court, clerks of the Supreme and District Courts and their deputies, county clerks and their deputies, county commissioners, judges of Probate Courts, justices of the peace, notaries, commissioners of deeds appointed by the Governor of this State. Each within their jurisdiction.

§ 257. **Tenn.**—OATH—Who may take—In the State—any judge, justice of the peace, notary, or court clerk. Outside—a judge, justice of the peace, clerk of the court to certify their certificates under the court seal, a Tennessee commissioner, a notary, under their official seal. In a foreign country—by officers authorized to take acknowledgments, authenticated by the clerk of the court under its seal. The party may make solemn affirmation in the words of the oath. May be sworn according to their religion. Party must lay his hand upon the New Testament and solemnly swear upon the Holy Evangelists of Almighty God to speak the truth, the whole truth, and nothing but the truth, and kiss the book in confirmation. Party may be sworn with the right hand uplifted, to-wit: I (or you) do solemnly appeal to God as a witness of the truth, and avenger of falsehood, as I shall answer for the same at the great day of judgment, when the secrets of all hearts shall be known that, etc. (as case may be).

§ 258. **Texas.**—OATHS AND AFFIDAVITS—Who may take in this State—Any judge or clerk of a court of record, justice of the peace, or notary public. Any other officers authorized by law. Affidavits may be made in other States before—any clerk of a court of record having a seal, any notary or commissioner of deeds appointed under the laws of this State. May be made by an agent or attorney at the commencement

or during a suit. Must be in writing, signed by the party making it. If in foreign countries before—any notary, any United States minister, commissioner or charge d' affaires, any consul general, consul, vice-consul, commercial agent, vice-commercial agent, deputy or consular agent of the United States resident in such country, or any other officers authorized by law. In the mode most binding on the individual taking, subject to the pains and penalties of perjury.

§ 259. **Utah.**—AFFIDAVIT—In this State may be taken before—any judge or clerk of any court, or any justice of the peace, or notary public. In another State before—a commissioner appointed by the Governor of this State in that State, or a notary, or any judge or clerk of a court of record having a seal. In a foreign country before—an ambassador, minister, consul, vice-consul, or consular agent of the United States, or any judge of a court of record having a seal. If taken before a judge of another State or foreign country, the genuineness of the signature of the judge, the existence of the court and the fact that such judge is a member thereof, must be certified by the clerk of the court under seal thereof. OATHS—Who may take—Every court, judge or clerk or deputy clerk of court, justice, or notary, Secretary of State, and every officer or person authorized to take testimony in any action, or to decide upon evidence in their own counties.

§ 260. **Vt.**—OATHS AND AFFIDAVITS—May be administered by county clerks, justices of the peace, judges and registers of probate, notaries and masters in chancery, unless otherwise provided by law. A notary need not affix his official seal to his certificate. County clerks may theirs under the seal of the court. Town clerks, where the instrument is to be used in their office. Party may affirm. Where no other provision is made by law, oaths of office may be made by any judge, justice, notary public, master in chancery, or the presiding officer, secretary or clerk of either house of the General Assembly, clerks and registers of courts, committees of the General Assembly, referees, auditors, commissioners, special masters and committees appointed by a court of law or chancery may administer oaths necesary in matters coming before them.

§ 261. **Va.**—OATHS AND AFFIDAVITS may be administered by a justice and certified by him unless otherwise provided, or by a notary, a commissioner in chancery, a commissioner appointed by the Governor, a court, or clerk of a court; or, in case of a survey directed by a court, by or before the surveyor. May be made before any officer of another State or country so authorized, and shall be deemed duly authenticated if subscribed by such officer, and there be annexed a certificate of the clerk or other officer of a court of record of such State or country under an official seal verifying the genuineness of the signature of the officer and his authority. A certificate of the person administering shall be given so it may be recorded. Parties may affirm.

§ 262. **Wash.**—OATHS AND AFFIRMATIONS—Who may take—Every court, judge, clerk of a court, justice of the peace, or notary public. FORM—Party raising the right hand, officer saying "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 other than a

witness, "You do solemnly swear you will true answers make to such questions as you may be asked." Officer may adopt the peculiar mode of witness if more effectual and binding. Party may be sworn according to the peculiar ceremony of his religion. Party may affirm if opposed to oath.

§ 263. **W. Va.**—OATHS AND AFFIDAVITS may be taken by a justice of the peace in his county, a county commissioner, notary, a commissioner appointed by the Governor, a court or its clerk, a surveyor appointed by the court, any officer of another State so authorized, subscribed to by him and the certificate annexed under the official court seal, verifying the genuineness of the signature and his authority. Any judge of this State may take an affidavit stating that the witness or party resides out of the State or is out of it, shall be prima facie evidence of the fact, same with publisher's affidavit as to publication. Affirmation is equivalent to an oath. Oaths administered shall be certified to by the officer. The certificate of the oath of a notary and all other county, district and municipal officers shall be delivered to and recorded by the clerk of the County Court or the clerk of the court exercising its judicial powers, unless taken in open court.

§ 264. **Wis.**—OATH, AFFIRMATION AND AFFIDAVIT—Who may administer besides those to jurors and witnesses on trial, viz.: Any judge, court commissioner, clerk of a court of record, notary, town clerk, justice of the peace, county clerk, within their jurisdiction, also committee authorized to examine witnesses, police justices. FORM—Any usual one, or according to the peculiar mode of the witness' religious views. Party may affirm.

§ 265. **Wyo.**—OATHS may be administered by the chief justice and justices of the Supreme Court, the judges of the District Courts, the judge of the Circuit Court of the United States, including the State of Wyoming, the judge of the District Court of the United States for the District of Wyoming, the clerks of the Supreme and District Courts of this State, and the clerks of the Circuit and District Courts of the United States for Wyoming, and their deputies, court commissioners appointed by or under the authority of the laws of the United States or the laws of this State, county clerks and their deputies, clerks of any city, town or village, county commissioners, county superintendents of schools, justices of the peace and notaries within their respective counties. Parties may be sworn in any form they deem binding on their conscience. AFFIDAVITS may be made in or out of this State before any person authorized to take depositions and must be authenticated in the same way. Parties may affirm, subject to the pains and penalties of perjury. FORM—With the right hand uplifted swear, concluding with "So help me God."

§ 266. **Canada.**—AFFIDAVITS AND OATHS—Notaries and commissioners of deeds can take under official seal. An affirmation answers.

CHAPTER IV.

DEPOSITIONS.

§ **267. A deposition** is testimony taken down in writing, under oath or affirmation, before a judicial officer, in answer to interrogatories and cross-interrogatories, and usually subscribed by the witness.

Usual manner of taking: The party desiring the testimony makes affidavit to the court where the suit is in progress, or is to be tried, stating the cause, the name and residence of the witnesses whose testimony is desired, and the names of the adverse parties, or their attorney, and their place of abode. Also a list of interrogations to be put to the witness. The statement is also made as to why the witness cannot be present at the trial, which is usually age, infirmity, sickness, about leaving the county or State, resident of another county or State, &c. If the court or judge to whom the application is made is satisfied that the deposition is necessary, a commission to take issues under his hand and the seal of the court by the court clerk. Reasonable notice (usually determined by the court, but sometimes by statute,) is given to the adverse party, of the time and place of the taking, name or names of the witnesses, or their attorney of record, and their residences if known. A list of interrogations to be put, which list may be added to by the adverse party or his attorney in the nature of cross-interrogatories. On the return of which the court issues the commission enclosing same, with full instructions and a list of the interrogatories and cross-interrogatories, if any, sending same to the commissioner, selected either by the parties themselves or by the court.

Manner of taking: At the appointed day, place and hour, the commissioner calls the court to order, swears the witness to tell the truth, the whole truth, and nothing but the truth. The prepared interrogatories are then answered by the witness, writing same under each question, in the presence of the commissioner, or by some one appointed by him in his presence. The statute reg-

ulates the presence of the parties to the case, either in person or by attorney. Usually where the testimony is taken by written interrogatories, the parties or their attorneys are absent. After the deposition is taken it is read to or by the witness, errors corrected, and then signed by him. The commissioner then adds his certificate, stating in it that the party deposing was duly sworn by him before taking, that the interrogatories were answered and subscribed to in his presence. Signed by the commissioner.

The deposition and all papers connected with the taking are then enclosed in an envelope, sealed, the title of the case and the commissioner's name endorsed on the back over the seal, directed to the court issuing the commission, or if the parties have so agreed to the party who instituted the taking. Otherwise they are mailed or delivered in person to the clerk of the court, who notes the time of their receipt and party delivering on the envelope, and places the same on file for use when called for by the court, or the parties.

The same deposition is often allowed to be used in other cases of a similar nature between the parties, the papers always remaining on file with the clerk or court in the meantime.

It is the testimony of a witness reduced to writing, in due form of law, by virtue of a commission or other authority of a competent tribunal, or according to the provisions of some statute law, to be used on the trial of some question of fact in a court of justice.[1]

It is a written declaration under oath, made upon notice to the adverse party.

Where a commissioner, in describing the commission, misdescribes the name of the clerk who issued it, it in no way detracts from such authority.[2]

When the caption of the deposition properly gives the names of the parties a subsequent error in the name is not a fatal error.[3]

§ **268 A witness** is one who testifies to what he knows. One who testifies under oath to something which he knows at first hand.[4]

The evidence of an interested witness must be objected to either when the deposition was taken, if the other party was present, or on motion before trial.[5]

Where the party appears before the officer taking the depositions

[1] Bouvier.
[2] Kendall v. Limberg, 69 Ill., 355.
[3] Kendall v. Limberg, 69 Ill., 355.
[4] Bouvier.
[5] Lockwood v. Mills, 39 Ill., 602.

and cross-examines the witnesses, when it was stipulated that the witnesses should be examined before that officer; all formalities touching the dedimus are waived.[6]

The notice to take the depositions of certain named witnesses "and others," is sufficient to authorize the taking of the deposition of an additional witness not specifically named in the notice.

If the depositions show on their face that the testimony of the witnesses, who were non-residents, was material, and therefore necessary, it is not to the extent of invalidating the depositions, that the fact should have been made to appear on the face of the notice.[7]

Where a person is examined before a court or officer, and his deposition is reduced to writing and signed by the affiant, such deposition is the best evidence of the witness' statement; and no statement made by him and not contained therein is part thereof.[8]

If the certificate of an officer, taking depositions in chancery, states that the witnesses were sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions are signed, it is sufficient, although the certificate does not state when the oath was taken, nor that the depositions were signed by the deponents.[9]

§ **269. Interrogatories.**—A motion to suppress a deposition taken upon written interrogatories should be sustained, where subsequent to the giving of notice of the intention to take the same, the opposite party gave notice of his election to take it upon oral interrogatories.[10]

Under the Florida Statutes the interrogations put to the adverse party is, like a bill of discovery in equity, in aid of an action at law, and limited to the support of the case or defense of the party propounding and cannot extend to the whole case.[11]

An affidavit of the materiality of the testimony is unnecessary where a general order has been granted by the judge, the defendant propounds, cross interrogatories, and the defendant's generalties are vague.[12]

§ **270. A subpœna.**—Subpœna under a penalty. A writ commanding the attendance or appearance of a witness or party in court, or before a judicial officer, under a penalty in case of disobedience.[13]

[6] Rockford Wholesale Grocery Co. v. Stevenson, 65 Ill. App., 609.

[7] Independent Dryer Co. v. Livermore Foundry Co., 60 Ill. App., 390.

[8] Bradner's Evidence, p. 137.

[9] Ballance v. Underhill, 3 Scam. 453.

[10] Lewis v. Fish, 40 Ill. App., 372.

[11] Jacksonville T. & K. W. R. Co. v. Penn. Land, T. & Mfg. Co., 27 Fla., 1.

[12] Bradford v. Cooper, 1 La. Ann., 325.

[13] Burrill Law Dict'y.

A superior court cannot punish a person for contempt in refusing to answer a subpœna issued by a notary public, before whom he was to appear and make deposition upon notice.[14]

§ **271. Refusal to appear.**—The statutes of Illinois empower notaries and other officers authorized to take depositions in any cause pending in courts of law or equity in the State, or by virtue of a commission issued out of any court of record in any other State, Territory or country, to subpœna and compel the attendance of witnesses. On the refusal of witness to comply, the officer shall report in writing the facts to the Circuit Court of such county, from which attachment shall issue against such witness, returnable forthwith before such court. If it appear to the court the refusal was without excuse, fine and imprisonment shall be imposed, or fine or imprisonment, as in cases of contempt.[15]

The Supreme Court of Illinois decided that when a person refuses to appear before a notary and depose in obedience to a subpœna it may be truly said he acted in contempt of the notary. The party owed, by reason of the subpœna, no duty to the Circuit Court or its judge; his failure to obey placed him in the position of all willful violators of the law. That which is not an obstruction to the exercise of the functions of the court cannot be punishable as a contempt summarily and without trial by jury. The statute authorizing a circuit judge to proceed without a jury is unconstitutional, void and not law. Respect to courts cannot be compelled.[16]

In Nebraska it was held: A notary public in the exercise of judicial functions given by law is a court and has power to commit for contempt under the constitution.[17]

The United States Supreme Court, in a later decision, decided that one of the functions of a court is to compel a party to perform a duty which the law requires at his hands. The defendant is no more entitled to a jury than is a defendant in a proceeding by mandamus to compel him, as an officer, to perform a ministerial duty. In a judicial sense there is no such thing as contempt of a subordinate administrative body. No question of contempt can arise until the issue of law is determined adversely to the defendant and he refuses to obey the final order of court. In matters of contempt a jury is not required by "due process of law." From the very nature of their institution, and that their lawful judgments may be

[14] Lezinsky v. Superior Court, 72 Cal., 510.

[15] Starr & Curtis' Anno. Ill. Statutes 1896, p. 1857.

[16] Storey v. People, 79 Ill., 45; Puterbaugh v. Smith, 131 Ill., 199.

[17] Dogge v. State, 21 Neb., 272.

respected and enforced, courts possess power to punish for contempt. The power is recognized and enforced by statute authorizing them to punish contempts of their authority when manifested by disobedience of their lawful writs, processes, order, rules, decrees or commands. A judgment of the court determining the issue will be a legitimate exertion of judicial power extended by the constitution.[18]

A person can be regarded as in contempt for failure to obey an order of court only where the failure is intentional.[19]

He cannot be adjudged in contempt and deprived of his property and imprisoned without notice and without an appearance; there is no jurisdiction, and an order assuming to fine, and for non-payment imprison under such circumstances is void.[20]

The purpose of the law is to secure a fearless and impartial administration of justice and to guard against abuse of legal authority. Inferior courts acting in excess of jurisdiction are liable in damages to the party injured. The act is coram non judice and void; and the attempt to enforce sentence or conviction is a trespass. It is only when in the proper exercise of judicial functions that the power to sentence for contempt can be exercised.[21]

§ 272. Taking for U. S. Courts.—Depositions may be taken before a notary public in any civil cause depending in a United States, District, or Circuit Court, 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. Any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify in court.[22]

Every person deposing shall be cautioned and sworn to testify the whole truth, and carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or by himself in the magistrate's presence, and by no other person, and shall, after it has been reduced to writing, be subscribed by the deponent.[23]

In addition to the mode of taking the depositions of witnesses in

[18] Interstate Commerce Com. v. Bronson, 154 U. S., 447.

[19] Dines v. People, 39 Ill. App., 505.

[20] Smith v. Tenney, 62 Ill. App., 571.

[21] Piper v. Pearson, 68 Mass., 120.

[22] U. S. Rev. Stat. 1878, Sec. 863.

[23] U. S. Rev. Statutes 1878, Sec. 864.

causes pending at law or equity in the District and 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.[24]

Every deposition taken shall be retained by the magistrate taking it until he delivers it with his own hand into the court for which it is taken; or it shall, together with a certificate of the reasons as aforesaid of taking it and of the notice, if any, given to the adverse party, be by him sealed up and directed to such court, and remain under his seal until opened in court.[25]

§ **273. Who can take.**—Where the statutes so provide, depositions may be taken before any disinterested person as commissioner. The person may be designated by name or office.[26]

He is not required to certify anything in respect to his commission. The commission shows an authority to take.[27]

No certificate of his official character is required.[28]

It is sufficient evidence of the person's identity when after taking and returning the deposition he certifies that he did it pursuant to the commission.[29]

The Michigan Statutes empowers any court of record to appoint special commissioners before whom depositions may be taken. It is questionable whether a common order, entered by consent of parties and without the knowledge of the court, can be regarded as an appointment. A notary being an attorney of the Supreme Court may perform the duties of Circuit Court commissioner when that officer is disqualified.[30]

A general order to take depositions when officially signed by the judge, clothes with authority and is sufficient.[31]

Consuls of the United States are not required to be commissioned in order to take depositions.[32] A county judge or court commissioner may take the deposition of witnesses residing within his county.[33] Also a notary public.[34] They may be taken before any disinterested person as commissioner. Who may be designated by the name of the office which he holds as well as by his proper

[24] U. S. Rev. Stat. Supp., 2, p. 4; enacted March 9, 1892; U. S. Rep., 113, p. 713.

[25] U. S. Rev. Stat., 1878, Sec. 865.

[26] Brown v. Luehrs, 79 Ill., 575.

[27] Kendall v. Limberg, 69 Ill., 355.

[28] Kendall v. Limberg, 69 Ill., 355.

[29] Brown v. Luehrs, 79 Ill., 575.

[30] Crone v. Angell, 14 Mich., 340.

[31] Bradford v. Cooper, 1 La. Ann., 325.

[32] Simmons v. Walters, 55 Wis., 675; 2 Rev. Stat. of U. S., 2nd Ed., 1750; Herman v. Herman, 4 Wash. C. C., 555.

[33] Whereatt v. Ellis, 65 Wis., 639.

[34] T. W. & W. Ry. Co. v. Baddeley, 54 Ill., 19.

name.[35] The party suing out the dedimus is not required to give the name of the commissioner.[36] Consent of court is not necessary.[37]

§ 274. A notary taking outside of his State.—A notary public taking depositions in one State, to be used in a suit pending in another, can in no sense be regarded as an instrument or agency of the court wherein such suit is pending. Neither the notary, nor any of the parties appearing before him are answerable to the court for anything said or done while there, the whole matter being outside its jurisdiction. In taking the depositions, the notary performs purely ministerial functions. He can decide no questions nor determine any matter affecting the rights of the parties to the suit, nor is he connected with any court or other tribunal having the power to do so.[38] It is not necessary to attach to his certificate any certificate of a clerk or other certifying officer as to official character.[39] If taken in another State on a day recognized as a legal holiday it is not contrary to statutes.[40]

§ 275. Notice of deposition.—The party who gives notice that he will sue out a dedimus to take the testimony upon written interrogatories, after receiving notice that the party to whom the notice was given has elected to take the deposition upon oral interrogatories, should reply with a notice of the time and place where the deposition will be taken, as the party desiring the testimony, he should give notice of the time and place.[41]

Under the Louisiana code, notice of the time and place of taking is unnecessary when the defendant crosses the interrogatories.[42]

Ten days' notice must be given before suing out a dedimus.[43]

Under the West Virginia code the publication of notice extends to four consecutive weeks, and is complete on the fourth issue of the paper containing it; it is sufficient if reasonable time elapses between the date of last publication and the taking.[44]

The residences of the witnesses may be stated in the notice and not in the caption of the interrogatories.[45]

§ 276. How deposition is taken.—When the examination

[35] Brown v. Luehrs, 79 Ill., 575.
[36] Cole v. Choteau, 18 Ill., 439.
[37] Sprule v. Samuels, 4 Scam., 135; Doyle v. Wiley, 15 Ill., 576.
[38] Greer v. Young, 120 Ill., 184.
[39] Hayes v. Frey, 54 Wis., 503; Sleep v. Heymann, 57 Wis., 495.
[40] Green, etc., v. Walker, 73 Wis., 548.
[41] Lewis v. Fish, 40 Ill. App., 372.
[42] Bradford v. Cooper, 1 La. Ann., 325.
[43] Corgan v. Anderson, 30 Ill., 95.
[44] Miller v. McMechen, 33 W. Va., 197.
[45] Semmens v. Walters, 55 Wis., 675.

is to be upon oral interrogatories the party desiring the testimony must begin the interrogation; his questions are in chief, and his adversary has the right to cross-examine.[46] The Illinois Statute does not contemplate the issuing of two commissions, one to take the testimony upon written, and the other upon oral interrogatories.[47]

Defects and irregularities in taking and in the examination of witnesses will be disregarded if they are merely formal and do not affect the rights of the parties.[48]

The right to take and use a deposition is a statutory privilege and can be exercised and enforced only in the manner and to the extent provided for by statute.[49]

§ 277. Compliance with statutes.—The statute must be substantially complied with.[50] Where the statutes require that the officer's certificate shall show "that the witness was first sworn to testify the truth, the whole truth, and nothing but the truth," it is insufficient to state that the witnesses were sworn "to testify the whole truth of their knowledge touching the matter in controversy."[51]

§ 278. Caption and form.—The Illinois Statute has fixed no fine for either the caption or certificate. If they are taken and certified in substantial conformity with the requirements of the statute they will not be suppressed on merely technical objections.[52]

§ 279. Objections.—General objections at the trial are confined to substance.[53] Objections to the form, or incompetency of witnesses, must be made before final hearing.[54] Objection for lack of a stamp must be taken by a motion to suppress, before trial.[55] Objections to interrogatories should be made before trial.[56] An objection that the name of the witness was not in the notice must be taken before trial.[57]

Slight but misleading inaccuracy in name ascribed to the de-

[46] Lewis v. Fish, 40 Ill. App., 372.
[47] Lewis v. Fish, 40 Ill. App., 372.
[48] Semmens v. Walters, 55 Wis., 675; Hewlett v. Wood, 67 N. Y., 394; Forrest v. Kissam, 7 Hill, 463; Rust v. Eakler, 41 N. Y., 488.
[49] Lezinsky v. Superior Court, 72 Cal., 510.
[50] Corgan v. Andersen, 30 Ill., 45.
[51] West. Union Tel. Co. v. Collins, 45 Kas., 88.
[52] Behrensmeyer v. Kreitz, 135 Ill., 608.
[53] Thomas v. Dunaway, 30 Ill., 373.
[54] Moshier v. Knox College, 32 Ill., 155.
[55] Lockwood v. Mills, 39 Ill., 602.
[56] Missouri Pac. R. Co. v. Ivey, 71 Tex., 409; Jacksonville T. & K. W. R. Co. v. Peninsular L. T. & Mfg. Co., 27 Fla., 1; Cin., I., St. L. & C. R. Co. v. Howard, 124 Ind., 280.
[57] Rockford, etc., R. Co. v. McKinley, 64 Ill., 338.

fendant corporation in the deposition is not grounds for excluding the deposition.[56]

A misdescription in interrogatory of promissory note, as bearing twelve per cent. interest instead of ten, is not such variance as will exclude the answer.[59] After a deposition has been read without objection upon one trial it cannot afterwards be objected to on account of any defect existing at the time it was used.[60] Opponent's deposition cannot be suppressed for want of full answers of witnesses to opponent's questions. The objections should come from the party injured.[61]

If there is no appearance on the other side and no cross-interrogatories it is doubtful whether the opposite party can complain that the last interrogatory was not answered. The rule is that it should be answered, as unless it is, it is impossible to say that the witness has told the whole truth, but where it is apparent that the witness could not testify further without contradiction to the specific interrogatories, the omission is harmless.[62]

§ **280. Interpreters.**—In Illinois interpreters may be sworn truly to interpret, when necessary.[63]

§ **281. Return of the deposition.**—A deposition opened by the clerk of the court, in pursuance of an order of the court, and marked "filed," has no reason to be suppressed.[64]

A deposition may be returned to the commissioner for proper signature.[65]

Where a non-suit has been entered conditional to the plaintiffs being ready for trial at a certain subsequent date, the suit must be regarded as pending until its final termination, and depositions taken in the meantime may be read in evidence.[66]

§ **282. Fees.**—The same fees will be allowed State officers taking depositions for Federal Courts as are allowed United States commissioners and clerks.[67]

There is no statute in Illinois regulating the fees of commissioners employed here to take depositions in suits pending in other States.[68]

[56] Merchants Despatch Trans. Co. v. Leysor, 89 Ill., 43.
[59] Stowell v. Moore, 89 Ill., 563.
[60] Brackitt v. Nikirk, 20 Ill. App., 525.
[61] Cole v. Chotean, 18 Ill., 439.
[62] Semmens v. Walters, 55 Wis., 675.
[63] Starr & Curtis' Anno. Statutes 1896, p. 1860.
[64] Sullivan v. Eddy, 164 Ill., 391.
[65] Semmens v. Walters, 55 Wis., 675; 2 Waits Pr., 707; Keeler v. Vanderpool, 1 Code R. (U. S.), 289; Creamer v. Jackson, 4 Abb. Pr., 413.
[66] Brown v. Foss, 16 Me., 257.
[67] Jerman v. Stewart Gwynne & Co., 12 Fed. Rep., 271.
[68] Fairchild v. Mich. C. R. Co., 8 App., 591.

STATUTORY REQUIREMENTS.

§ 283. **Ala.**—DEPOSITIONS—Taken by commissioner. (One or more) written interrogatories to be filed with the clerk of the court. NOTICE of ten days to be given adverse party. Commissioner subpœnas witnesses. One hundred dollars' penalty for failure to appear. Commissioner to reduce the answers of witness to writing, having sworn him to speak the truth, the whole truth and nothing but the truth. Commissioner's certificate of the manner, place and personal knowledge of the witnesses' identity, that the witness has no interest in the result, is presumptive evidence of the fact stated by him. The deposition to be sent to the clerk of the Court, and may be read in evidence unless previously objected to. The testimony of a non-resident witness may be taken conditionally and perpetuated. It may be received in evidence.

§ 284. **Ariz.**—DEPOSITIONS—May be taken; where the witness is a female, is aged, infirm, sick, on official duty, or unable to attend Court. Residing out of the Territory or county or fifty miles from trial, has or is about to leave the Territory or county, or when party desires to perpetuate testimony. Either party may apply for commission to take by giving five days' notice to opposite party, with interrogations attached to notice, and name of witness, with residence and place of taking. WHO CAN TAKE, a judge or clerk, justice or notary of the county. Either party may attend the examination and interrogate, but cannot in such case object to questions at the trial unless they did so at the examination. The court judge, etc., may shorten time of notice. MANNER OF TAKING—If in the Territory the commission to be addressed to any clerk of the District Court or any notary of the proper county. If without the Territory, in the United States, to any clerk of a court of record having a seal, any notary or commissioner of deeds for this Territory. If without the United States, to any notary, United States minister, commissioner, or charge d'affaires, or any consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States resident in the country. The officer shall summon witness, and fine and imprison for failure to appear and testify. The answers to questions shall be written, sworn and subscribed to by witness, certified by the officer, sealed up with other papers, write his name across the seal, indorse names of parties to the suit and the witnesses, direct same to the clerk of the court or justice where the commission issued or, if no commission, where case is pending. May be returned by mail or personally.

§ 285. **Ark.**—DEPOSITION TAKEN IN THE STATE before any judge or clerk of a court of record, justice of the peace, mayor, notary. OUT OF THE STATE—Before a commissioner appointed by the Governor of this State, judge of court, justice of the peace, mayor, notary, or any person empowered by a commission directed to him by the consent of the parties on order of Court. The clerk of any court of record in the county must certify under his seal that such officer was an acting judge or justice of the peace, duly commissioned at the time. Depositions taken out of the State, sealed and directed as here pro-

vided may be delivered to the party taking the same, his agent or attorney. NOTICE—Reasonable notice to be given adverse party. To subpœna the witnesses, may issue warrant of arrest for contempt, if witness fails to appear. Officer to decide all objections to questions, noting such as are in doubt. Power to prevent insulting or too lengthy, questions. Statement of witness must be written in the presence of the officer taking it. Certificate of officer to state the time and place of taking. That the witness was sworn before he gave his testimony, that the testimony was written, read to and subscribed by him in the officer's presence. Must state by whom testimony was written, which of the parties in person or by agent or attorney, was present. When the deposition is completed it is to be sealed by the officer and directed to the clerk of the Court where suit is pending.

§ 286. **Cal.** —Who may take. IN THE STATE—A judge or any officer authorized to administer oaths, upon serving five days' notice to the adverse party. Out of this State, by a commission issued from the Court, under Court seal. It may be directed to any person agreed upon by the parties, or, if they do not agree, to any judge, justice of the peace or commissioner selected by the Court or judge issuing it. Taken out of the State, if commission is issued by a justice of the peace it must have attached to it the certificate, under seal, of the county clerk stating that the party issuing it is acting as a justice of the peace. Outside the United States—A minister, ambassador, consul, vice-consul or consular agent of the United States in such country, or any person agreed upon by the parties, can be taken by a commission appointed by the Court under its seal. Five days' notice to either party or to a person agreed upon by the parties. Discretion allowed as to deposition of party testifying. Parties may agree upon commission and as to the interrogatories, and mode of taking. Oath to be administered to witness. Deposition to be certified to the Court. It must be inclosed in a sealed envelope, directed to the clerk of the court or to the person agreed upon and forwarded by mail or usual conveyance. The judge authorizing the commission may issue subpœna for other witnesses.

§ 287. **Col.** —WHO MAY TAKE IN THE STATE—All Courts, judges, justice and clerk thereof, justices of the peace, notaries, within their district and under their official seals. Out of the State, commissioner of deeds, notary. FORM—None specially, follow form of the State ordering the dedimus. NOTICE—Depends on residence.

§ 288. **Conn.** —MAY BE TAKEN IN THE STATE BY—A judge or clerk of any court, justice of the peace, notary, commissioner of the Superior Court. Out of the State—By a notary, commissioner appointed by the Governor, or any magistrate having power to administer oaths. Out of the United States By—Any foreign minister, secretary of the legation, consul or vice-consul of the United States resident in that country. His official character can be proved by the Secretary of the United States. Court may issue commission to any person in the military or naval service of the United States who may administer oaths, etc. Judges of the Superior Court, Court of Common Pleas, or District Court, when not in session, may issue a commission to take depositions of persons out of this State, notice being given to adverse

party. Commissioners appointed by the laws of any other State or Government to take testimony in this State, may apply to the judge of any court of record, justice of the peace, notary or commissioner of the Superior Court, for a subpœna or capias to compel the appearance of any witness. Upon the refusal of the witness to comply, the officer issuing may commit them to prison. Subpœnas may be issued by any judge or clerk of any court, justice of the peace, notary or commissioner of the Superior Court, upon request, for the appearance of any witness before him, to give his deposition in a civil action, when such party is going to sea or out of the State, is 60 years of age or lives more than twenty miles from the place of trial, and may take his deposition on refusal to appear, the magistrate may issue a capias. If the witness refuse to depose, the magistrate may commit him to prison till he comply. Returned to Court unsealed or with seal broken, shall be rejected by the Court. If the adverse party appears on notice and the party giving such notice fails to appear at the time and place stated, then costs shall be allowed to the adverse party. The returned deposition remains in the custody of the clerk of the court. Reasonable notice must be given to the adverse party, his agent or attorney, or left at his place of abode. Witnesses—Cautioned to speak the truth, carefully examined, subscribe to their deposition, make oath before the authority taking, the authority shall attest the same and certify that the adverse party or his agent was present (if so), or that he was notified, and shall also certify the reason of taking the deposition, seal it up, direct it to the Court where it is to be used, and deliver it, if desired, to the party at whose request it was taken. PERPETUATING TESTIMONY—Party desiring it may petition in writing any judge of the Superior Court, stating reasons, subject matter, name of witness and persons interested. If no reason for the contrary the judge shall arrange for such. Persons taking depositions may adjourn from time to time, giving notice to parties present. Depositions so taken must be sealed up and directed to the clerk of the County Superior Court where some of the petitioners reside; if non-residents of the State, then where some of the respondents reside, and he shall open and file them.

§ 289. Del.—If it appear by affidavit necessary, the justice may make a rule that the deposition be taken before a commissioner named by him, unless otherwise agreed; the party applying shall file in writing all the questions to be put to the witness, giving at least four days' notice to the adverse party, who may file other questions. The justice shall forward a copy of the rule and questions to the commissioner. Deposition to be written, signed by the witness, certified by the commissioner and sealed up and sent to the justice. The witness must first be sworn by the commissioner, to answer the questions truly; neither party shall be present and no questions to be put but those sent by the justice.

§ 290. D. C.—A commission to take the testimony of a witness in the District of Columbia, to be used in a State or foreign court, issued from such court or a notice given according to its rules, and such commission is produced to a justice of the Supreme Court of the district,

on due proof that the testimony is material, a summons shall issue to the witness to appear before the commissioners named, to testify at the time and place specified. A satisfactory affidavit to the Supreme Court of the District, or to a commissioner appointed by the Court will entitle the taking of the deposition of a witness in the District, before the court or commissioner when it is material, and when no commission or notice to take has been given; and that, according to the practice of the Court where suit is pending, the deposition, without the presence or consent of both parties, will be received; on the trial the officer shall issue a summons for the witness to appear before him and testify. Testimony to be taken down in writing by the officer, to be certified to and transmitted to the Court where the sult is pending. A refusal or neglect to obey the summons or to testify subjects the party to the usual penalties. Any defendant in a criminal case, either after preliminary examination, indictment, or information, may examine witnesses on commission. If more than one hundred miles from Washington, he may select as commissioner the clerk or judge of any court of record, any notary public, or any United States consul. If the clerk or judge is selected then the name of the Court, State and county must appear. If without the United States, the name of the State, town or city in which the notary or consul resides. Five days' notice must be given of the time when the commission will issue. Name of witness and the interrogatories. It may be served and returned by same persons.

§ 291. **Fla.**—The party desiring the deposition must prepare written interrogatories, deliver a copy to the adverse party or his attorney a reasonable time before applying for a commission, stating reasons for taking, date of application, name of commissioner, and file same with the Court. If the adverse party has no attorney and does not reside in the State, notice to be given by advertisement in a newspaper printed in applicant's county once a week for four consecutive weeks. On proof of the advertisement to the clerk or the Court a commission will issue. The adverse party may file cross-interrogatories and name of commissioner, serving a duplicate on the applicant. The applicant can serve notice of redirect interrogatories, with notice of time of application for a commission upon all the interrogatories. At the time mentioned the clerk or Court shall issue commission, and names of the commissioners selected by each of the parties, attaching the interrogatories filed by each and delivering same to the applicant. The commission shall make oath before a notary or judicial officer where the testimony is taken, that he is neither kin, attorney, nor agent of either party, nor interested in the result; that he will well and faithfully perform the duties of commissioner. Oath to be in writing, and returned with the commission. The commissioner shall swear each witness before taking the deposition. The parties or their attorneys may be present, and after the interrogatories may propound others germane to the subject, which shall be written down by the commissioner and become a part of the deposition. The commissioners shall enclose all the interrogatories, answers and commission, seal and write their names across the seals of the envelope, that the Court may recognize it as applicable to some particular cause. The usual initials of office

and Christian names of the commissioners and others shall be sufficient. It may be returned by mail or person. The person returning it or taking it from the post office, other than the clerk, must make oath that he received it from the commissioner (or the postmaster, etc.); that it has been in his possession ever since, and has not been opened or altered.

§ **292. Ga.**—A witness may be examined on interrogatories, by commission, at the instance of either party, in any civil cause pending in this State when the witness resides out of the county; when age, condition of health or business prevents attending at Court, or when about to remove from the county or leave home beyond the term of Court, or where he is the only material witness. Female witnesses are not obliged to attend Court. The party desiring it must prepare written interrogatories, with witness' name and residence, and serve a copy, with notice of filing, on the adverse party or his attorney. At the expiration of ten days a commission shall issue. If the adverse party is beyond the jurisdiction of the Court, or cannot be found, and has no attorney, a ten days' notice at the court house door will suffice. Notice must be served on each adverse party. The commission will issue a blank allowing the party to select his commissioners, but the adverse party shall be allowed to select two. The commissioner shall be disinterested, having no relationship or interest to the parties. His compensation not exceeding two dollars per day, as cost in the suit. Neither party nor representative to be present. On refusal of witness to appear or answer, an affidavit presented to a judge of the Superior Court, or the ordinary, shall cause an order to issue to arrest and bring him before such judge or ordinary; after hearing his excuses he shall order the witness lodged in jail until he answers. This provision extends to commissions sent from the courts of other States in the United States. No witness shall be required to go out of the county, nor more than ten miles from his residence; he shall have court witness fees. Witnesses may write their answers in the presence of the commissioners. It shall be certified by the commissioners and returned with the commission. The answers to be made under oath, signed by the witness and attested by the commissioners, and place of execution shown. All papers, etc., to be sealed in an envelope, with the names of the commissioners written across the seal and directed to the officer of the Court. It can be sent by mail or express, by the party himself or by some private hand. The postmaster or express company receiving, must certify to the fact. The postmaster or express agent delivering, must certify to its reception by due course of mail or express, or the party delivering it by hand must make affidavit of the fact and of its freedom from alteration. The postmaster at the office to which it is directed shall immediately upon its receipt indorse upon it the fact of its reception by due course of mail, and at once deliver it to the clerk or presiding judge or justice. The clerk or judge receiving shall indorse thereon from whom received and the time; it shall be filed away unbroken and may be opened any time by written consent of counsel for both sides. A party failing to return or wilfully abstracting the commission shall be attached for contempt and otherwise dealt with until same is returned. The adverse party or his

attorney may, in writing, waive the commission and the answers of the witness may be taken in virtue of such agreement. The person taking shall administer the usual oath to the witness under the penalties of perjury in this State. Exceptions must be in writing and notice given the opposite party before the case is submitted to the jury; provided, the same has been in the clerk's office for twenty-four hours. Depositions read on the first trial shall not be subject to formal exceptions in subsequent trials. In counties having a population of twenty thousand and upwards, either party may, without an order or commission, take the deposition of a witness, resident of the county or not, on giving adverse party five days' notice of time, place, and names of witnesses. To be taken before any commissioner appointed by the judge of the county Superior Court. The commissioner to summon witnesses and compel attendance. HIS FEES TO WIT: Examining each witness, $2.00; certifying and returning testimony for plaintiff or defendant in each case, 50 cents; issuing subpœna, 25 cents. PERPETUATION OF TESTIMONY—Superior Courts may entertain, where the facts cannot be made immediately the subject of investigation at law, and the common law proceedings under the code as available or as completely available as a proceeding in equity.

§ 293. Idaho.—BEFORE WHOM TAKEN—Any judge, justice of the peace, notary, mayor or recorder of a city, clerk of a court of record or commissioner appointed by the Court, must be a disinterested party. Within the United States, no commission is necessary. Outside the United States, the clerk shall, upon request of the party, issue a commission to the officer or commissioner designated. No order of Court or affidavit necessary. If the commission contains the name of the officer, his attestation, officially certifying the same is sufficient. If his name is not specified and he have no official seal, then his certificate shall be authenticated by the certificate and official seal of the clerk or prothonotary of any court of record of his county. Notice must be given the adverse party, his agent or attorney, stating the oause, Court, time, place, and names of witnesses, allowing one day for each twenty miles party may have to travel. If the party nor his attorney reside in the State, notice may be filed in the clerk's office and published three weeks successively in the county where suit is pending and a copy mailed to the party or his attorney. May be taken by either party in vacation or term time, after service of summons, without order of Court. The Court may fix the time. A witness is not obliged to attend outside his county. Officer can summon and compel attendance by reporting to any Probate or District Court of the county, and on refusal then to comply the Court will deal as for contempt. The deponent shall be sworn by the officer to testify to the truth, the whole truth, and nothing hut the truth. The party producing him to first examine, then the adverse party, and then the officer or parties afterwards if they see cause. The deposition to be written down by the officer, or the deponent, or some disinterested person, in the presence and under the direction of the officer. After being read to or by the deponent, he shall subscribe to it. The officer shall annex his certificate and state that the deponent was sworn according to law; by whom the deposition was written; that it was

written in the presence and under the direction of the officer; whether the adverse party was present; time and place of taking and the hours between. The officer shall sign and attest the certificate, seal with his official seal, if he have one. The officer shall seal it up and direct it to the clerk of the Court, indorsing on the envelope the names of the parties and the witnesses deposed. Must be filed in Court one day before trial. Objections must be made before trial. It may be used in a second trial or in any other action between the parties for the same cause, if it has remained during the time on file in the Court. DEPOSITIONS TAKEN FOR PERPETUATING TESTIMONY may, at any time, be published by order of the Court in the office of the clerk where filed and entered upon record, on the motion of any one interested, at the cost of the party.

§ 294. **Ill.**—WHO MAY TAKE THEM—When the testimony of any witness residing or being within the State shall be necessary in any suit in chancery in this State, the party wishing to use the same may cause the deposition of such witness to be taken before any judge, justice of the peace, clerk of a court, master in chancery or notary public, without a commission or filing interrogations for such purpose, on giving to the adverse party or his attorney ten days' notice of the time and place of taking the same, and one day in addition thereto (Sundays inclusive) for every fifty miles' travel from the place of holding the Court to the place where such deposition is to be taken. If the party entitled to notice and his attorney resides in the county where the deposition is to be taken, five days' notice shall be sufficient.[69]

RESIDENT WITNESS—It shall be lawful, upon satisfactory affidavit being filed, to take the depositions of witnesses residing in this State, to be read in suits at law, in like manner and upon like notice as is above provided, in all cases where the witness resides in a different county from that in which the Court is held, is about to depart from the State, is in custody on legal process, or is unable to attend such Court on account of advanced age, sickness or other bodily infirmity.[70]

NON-RESIDENT WITNESS—When the testimony of any witness residing within this State more than one hundred miles from the place of holding the Court, or not residing in this State, or who is engaged in the military or naval service of this State or the United States, and is out of this State, shall be necessary in any civil cause pending in any court of law or equity in this State, it shall be lawful for the party wishing to use the same, on giving to the adverse party, or his attorney, ten days' previous notice, together with a copy of the interrogatories intended to be put to such witness, to sue out from the proper clerk's office a dedimus potestatum or commission, under the seal of the Court, directed to any competent and disinterested person, as commissioner, or to any judge, master in chancery, notary public, or justice of the peace of the county or city in which such witness may reside, or in case it is to take the testimony of a person engaged in such military service, "to any commis-

[69] S. & C., 1896, p. 1850.

[70] S. & C., 1896, p. 1852.

sioned officer in the military or naval service of this State or the United States," authorizing and requiring him to cause such witness to come before him, at such time and place as he may designate and appoint, and faithfully to take his deposition upon all such interrogatories as may be inclosed with or attached to such commission, both on the part of the plaintiff and defendant, and none others, and to certify the same, when thus taken, together with the said commission and interrogatories, into the Court in which such cause shall be pending, with the least possible delay.[71]

NOTICE TO NON-RESIDENT PARTY, ETC., BY MAIL OR PUBLICATION.—When the deposition of any witness is desired to be taken under the provisions of this act, and the adverse party is not a resident of the county in which the suit is pending, or is in default, and no attorney has appeared for him in such cause, upon filing an affidavit of such fact and stating the place of residence of such adverse party, if known, or that upon diligent inquiry, his place of residence cannot be ascertained, the notice required by this act may be given by sending a copy thereof by mail, postage paid, addressed to such party at his place of residence, if known, or if not known, by posting a copy of such notice at the door of the court house where the suit is pending, or publishing the same in the nearest newspaper, and when interrogatories are required, filing a copy thereof with the clerk of the Court ten days before the time of suing out such commission.[72]

ORAL EXAMINATION—When a party shall desire to take the evidence of a non-resident witness, to be used in any cause pending in this State the party desiring the same, or where notice shall have been given that a commission to take the testimony of a non-resident witness will be applied for, the opposite party, upon giving the other three days' notice in writing of his election so to do, may have a commission directed in the same manner as provided in section 26 of this act, to take such evidence, upon interrogatories to be propounded to the witness orally; upon the taking of which each party may appear before the commission, in person or by attorney, and interrogate the witness. The party desiring such testimony shall give to the other the following notice of the time and place of taking the same, to wit: ten days, and one day in addition thereto (Sundays included) for every one hundred miles' travel from the place of holding the Court to the place where such deposition is to be taken.[73]

ORAL EXAMINATION, COSTS—When a party to a suit shall give the opposite party notice to take a deposition upon oral interrogatories, and shall fail to take the same accordingly, unless such failure be on account of the non-attendance of the witness, not occasioned by the fault of the party giving the notice, or some other unavoidable cause, the party notified, if he shall attend himself or by attorney, agreeably to the notice, shall be entitled to $2.00 per day for each day he may attend under such notice, and to six cents per mile for every mile that he shall necessarily travel in going to and returning from the place designated to take the deposition, to be allowed

[71] S. & C., 1896, p. 1853.
[72] S. & C., 1896, p. 1853.
[73] S. & C., 1896, p. 1853.

by the Court where the suit is pending, and for which execution may issue.[74] HOW TAKEN AND CERTIFIED—Previous to the examination of any witness whose deposition is about to be taken as aforesaid, he or she shall be sworn (or affirmed) by the person or persons authorized to take the same, to testify the truth in relation to the matter in controversy, so far as he or she may be interrogated; whereupon the said commissioner, judge, master in chancery, notary public, justice of the peace, clerk, or other person authorized to take depositions (as the case may be), shall proceed to examine such witness upon all such interrogatories as may be inclosed with or attached to any such commission as aforesaid and which are directed to be put to such witness, or where the testimony is taken upon oral interrogatories, upon all such interrogatories as may be directed to be put by either party litigant; and shall cause such interrogatories, together with the answers of the witness thereto, to be reduced to writing in the order in which they shall be proposed and answered, and signed by such witness; after which, it shall be the duty of the person taking such deposition to annex at the foot thereof a certificate, subscribed by himself, stating that it was sworn to and signed by the deponent, and the time and place when and where taken. And every such deposition, when thus taken and subscribed, and all exhibits produced to the said commissioner, judge, master in chancery, notary public, justice of the peace, or clerk, or other person authorized to take depositions, as aforesaid, or which shall be proved or referred to by any witness, together with the commission and interrogatories, if any, shall be inclosed, sealed up, and directed to the clerk of the Court in which the action shall be pending, with the names of the parties litigant indorsed thereon; provided, that when any deposition shall be taken as aforesaid, by any judge, master in chancery, notary public, or justice of the peace out of this State, or other officer, such return shall be accompanied by a certificate of his official character, under the great seal of the State, or under the seal of the proper court of record of the county or city wherein such deposition shall be taken.[75] UNSEALED, ETC.—INFORMAL—Every deposition that shall be returned to the Court unsealed, or the seal of which shall be broken previous to its reception by the clerk to whom it is directed, shall, if objection be made thereto in proper time, be regarded by the Court as informal and insufficient.[76] OPENING DEPOSITION—PENALTY—It shall not be lawful for any party litigant or the clerk of the Court into which any deposition may be returned, as aforesaid, to break the seal of the same, either in term time or in vacation, unless by written consent of the parties thereto or their attorneys, or by the order of the Court, duly entered of record. And if any such person or clerk shall presume to open any such deposition when taken and returned as aforesaid, without such consent or order of the Court as aforesaid, he shall be considered guilty of a contempt of Court, and may be punished accordingly; provided, that it shall not be considered an offense for the clerk to break open any such deposition as aforesaid, when it is doubtful from the indorse-

[74] S. & C., 1896, p. 1854.
[75] S. & C., 1896, p. 1854.
[76] S. & C., 1896, p. 1855.

ments made thereon whether the same be a deposition or not; but in such case, it shall not be proper for such clerk to permit any person to examine any deposition which may be thus opened by mistake, until the consent of the parties or their attorneys is first had and obtained therefor, as aforesaid, or until the Court shall have entered the order therefor as aforesaid.[77] WRITING—The party, his attorney, or any person who shall in any wise be interested in the event of the suit, shall not be permitted to dictate, write or draw up any deposition which may at any time be taken under this act, or be present during the taking of any deposition by written interrogatories; and every deposition so dictated, written or drawn up, or during the taking of which any such party, his attorney, or any person so interested is present when the same is taken upon written interrogatories as aforesaid, shall be rejected by the Court as informal and insufficient.[78] EVIDENCE—Every examination and deposition which shall be taken, and returned according to the provisions of this act may be read as good and competent evidence in the cause in which it shall be taken, as if such witness had been present and examined by parol in open Court, on the hearing or trial thereof.[79] A FURTHER EXAMINATION—If it shall appear to the satisfaction of the Court that any witness has not given full or proper answers to the interrogatories or cross-interrogatories accompanying the commission to take his testimony, or that a further examination ought to be allowed to either party for the ends of justice, may allow another commission to issue to the same or other commissioner, to further examine the witness in such manner and upon such conditions and notice as the Court shall direct.[80] ATTENDANCE OF WITNESSES—Each and every commissioner, judge, justice of the peace, clerk of court, master in chancery, notary public, or other officer who may at any time be required to take depositions in any cause pending in any of the courts of law or equity in this State, or by virtue of any commission issued out of any court of record in any other State, Territory or country, shall have power and authority to issue subpœnas, if necessary, to compel the attendance of all such witnesses as shall be named in the commission, or by the parties litigant where no commission is necessary, in the same manner as witnesses are directed to be subpœnaed in other cases, and any witness neglecting or refusing to obey any such subpœna, or refusing to testify, or to subscribe his deposition when correctly taken, the commissioner or officer issuing such subpœna shall at once report in writing the facts of such wilful refusal or neglect, accompanying the same with a copy of the commission or other authority received by him, together with a copy of the subpœna and the return of service thereof, and file the same in the office of the clerk of the Circuit Court of such county, and thereupon attachment shall issue out of said Court against such offending witness, returnable forthwith, before the Circuit Court of such county if in term time, or before any judge of said Court if in vacation, who shall hear and determine the matter in a summary way, and it appearing to the Court

[77] S. & C., 1896, p. 1855.
[78] S. & C., 1896, p. 1856.
[79] S. & C., 1896, p. 1856.
[80] S. & C., 1896, p. 1856.

that the neglect or refusal of such witness to appear or testify, or to subscribe such deposition as aforesaid, is wilful, and without lawful excuse, the Court shall punish such witness by fine, and imprisonment in the county jail as the nature of the case may require, as is now, or as may hereafter be lawful for the Court to do in cases of contempt of Court.[81] FEES OF WITNESSES—Every person attending before any commissioner, judge, justice of the peace, clerk or other person authorized to take depositions, as aforesaid, to be examined as aforesaid, shall be entitled to a compensation for his time and attendance and traveling expenses, at the same rate, for the time being, as is or shall be allowed by law to witnesses attending courts of record in this State; and the party requiring such examination shall pay the expense thereof, but may, if sucessful in the suit, be allowed for the same in the taxation of costs.[82] ORAL TESTIMONY—On the trial of every suit in chancery, oral testimony shall be taken when desired by either party.[83] TESTIMONY PERPETUATED—In all cases hereafter where any person shall desire to perpetuate the remembrance of any fact, matter or thing, which may relate to the boundaries or improvements of land—name or former name of water courses—the name or former name of any portion or district of country—regarding the ancient customs, laws or usages of the inhabitants of any part of this country, as far as the same may relate to the future settlement of the land claims, or touching the marriage or pedigree of any person or persons, or any other matter or thing necessary to the security of any estate, real, personal or mixed, or any private right whatever, it shall be lawful for such person, upon filing a petition supported by affidavit in the Circuit Court of the proper county, setting forth, briefly and substantially, his interest, claim or title in or to the subject concerning which he desires to perpetuate evidence, the fact intended to be established, and the names of all other persons interested or supposed to be interested therein, and whether there are any persons interested therein whose names are unknown to the petitioner, and the name of the witness proposed to be examined, to sue out from such court a dedimus potestatem or commission, directed to any competent and disinterested person or commissioner, or to any judge, commissioner of deeds, master in chancery, notary public, clerk of a court, or justice of the peace in the county in which such witness resides, or in which the testimony is to be taken, authorizing him or them to take the deposition of such witness.[84] HOW DOCKETED—Such petition shall be docketed by the clerk as other cases in equity, the petitioner being designated as plaintiff, and the persons stated to be interested, as aforesaid, as defendants—the parties whose names are unknown being designated as "unknown owners." SEVERAL COMMISSIONS MAY ISSUE—Several commissions may be issued, upon the same petition, to different commissioners or officers, either within or without this State, to take the testimony of different witnesses, or witnesses residing in different places, or the same commissioners or officers may proceed from place to place to take the

[81] S. & C., 1896, p. 1857.
[82] S. & C., 1896, p. 1857.
[83] S. & C., 1896, p. 1857.
[84] S. & C., 1896, p. 1858.

same.[85] NOTICE—Before taking the testimony of a witness, the person suing out such commission shall give to each and every person known to be interested in the subject matter of such testimony, or his attorney, or, if a minor, his guardian, or, if he has no guardian, or if his guardian is interested, to such guardian ad litem as shall be appointed by the Court, or to his or her conservator, if he or she has one, two weeks' notice, in writing, of the time and place when and where the testimony will be taken, which notice shall state when and where the petition was filed, the names of the parties and witnesses mentioned in the petition, and a short statement of the subject matter concerning which the testimony is to be taken.[86] NOTICE TO NON-RESIDENTS, ETC.—Notice to non-resident parties, or such as cannot be found so as to be personally served, and to unknown owners, may be given in the same manner as is provided for notifying non-resident parties in suing out a commisison to take testimony in a case pending.[87] COURT NOTICE—When in the opinion of the Court no sufficient provision is made by law for giving notice to parties adversely interested, the Court may order such reasonable notice to be given as it shall deem proper.[88] HOW TAKEN, CERTIFIED, RETURNED AND RECORDED—Every person who may think himself interested in the subject of a deposition about to be taken, may attend, by himself or his attorney, at the time and place of taking such testimony, and may examine and cross-examine such deponent, and all such questions as may be proposed, together with the answers thereto by the witness, shall be reduced to writing in the English language, as near as possible in the exact words of such deponent, which said questions and answers, when reduced to writing as aforesaid, shall be distinctly read over to the witness, and if found to be correct, shall be signed by him in the presence of the commissioner or officer before whom the same is taken, who shall thereupon administer an oath or affirmation to such witness, as to the truth of the deposition so taken as aforesaid, and shall annex at the foot thereof a certificate, subscribed by such commissioner or officer, stating that it was sworn to and signed by the deponent, and the time and place when and where the same was taken; and all such depositions, when thus taken, shall be carefully sealed up and transmitted to the clerk of the Circuit Court of the county from which such dedimus shall have been issued, within thirty days from the time of taking the same; who shall thereupon enter the same at large upon the records in his office, and shall certify on the back of such deposition that the same has been duly recorded, and return it to the person for whose benefit it shall have been taken.[89] USED AS EVIDENCE—All depositions taken under the provisions of the seven preceding sections, or a certified copy of the record thereof, may be used as evidence in any case to which the same may relate, in the same manner and subject to the same conditions and objections as if it had been originally taken in the suit or proceeding in which it is sought to be used; and parties notified as "unknown owners," in the manner hereinbefore provided, shall be bound

[85] S. & C., 1896, p. 1859.
[86] S. & C., 1896, p. 1859.
[87] S. &. C., 1896, p. 1859.
[88] S. & C., 1896, p. 1859.
[89] S. & C., 1896, p. 1859.

to the same extent as other parties.[90] ELECTION CONTEST—Whenever a notice shall have been given of intention to contest an election, either party may proceed to take testimony of any witness before any judge, justice of the peace, clerk of a court, master in chancery, or notary public, on giving to the adverse party or his attorney ten days' notice of the time and place of taking the same, and one day in addition thereto (Sunday inclusive) for every fifty miles' travel from the place of residence of such party to the place where such deposition is to be taken. If the party entitled to notice resides in the county where the deposition is to be taken, five days' notice shall be sufficient.[91] BEFORE JUSTICES OF THE PEACE—Depositions in actions before justices of the peace shall be taken upon like notice and in like manner, as near as may be, as depositions may be taken to be used in courts of record.[92] INJUNCTION SUITS—Depositions in writing to dissolve motion for injunction shall be taken in same manner as other testimony in chancery cases, and may be read in the final hearing of the case.[93] POWER OF OFFICER—The officer before whom depositions are taken shall have power to compel the production of papers, and the attendance of witnesses; and the same proceedings may be had to compel the attendance of witnesses as are provided in the cases of taking depositions to be used in courts of law and equity.[94] SENT TO THE SECRETARY OF STATE—A copy of the notice to take depositions, with proof of the service thereof, with the deposition, shall be sealed up and transmitted by mail or otherwise to the Secretary of State, with an indorsement thereon showing the names of the contesting parties, the office contested, and the nature of the papers.[95]

§ 295. Ind.—Commission to take only necessary when outside the United States. No order of Court necessary; the clerk can issue it. When the commission contains the name of the officer, his attestation is sufficient, but if not containing the name and the party has no official seal, then the certificate must be authenticated by the certificate and official seal of the clerk or prothonotary of any court of record where the officer exercises his duties. Must be filed with the Court at least one day before trial. Taken anywhere, before any judge, justice of the peace, notary, mayor or city recorder, clerk of a court of record or commissioner appointed by the Court. Must be disinterested person. Reasonable notice to be given the adverse party of the cause, court, time, place and names of the witnesses. Officer can compel the attendance of witnesses by reporting fact to the Superior or Circuit Court of the county. Deponent to be first sworn to testify the truth, the whole truth and nothing but the truth. He shall then be examined by the party producing him, then by the adverse party and by the officer or parties if they desire. The deposition to be written by the officer or the deponent or some disinterested person, in the presence and under the direction of the officer, read to or by the deponent and subscribed by him. Officer to annex his certificate, stating that the deponent was sworn according to law, who wrote the deposition,

[90] S. & C., 1896, p. 1860.
[91] S. & C., 1896, p. 1663.
[92] S. & C., 1896, p. 2427.
[93] S. & C., 1896, p. 2153, Secs. 19 and 20.
[94] S. & C., 1896, p. 1663.
[95] S. & C., 1896, p. 1663.

if in the presence of the officer, whether the adverse party were present, time, place and the hour of taking. Officer shall sign and attest the certificate, and seal it if he have an official seal. The same to be then sealed up in an envelope, direct it to the clerk of the Court where the cause is pending, indorse on the envelope the names of the parties and the witnesses whose depositions are inclosed.

§ 296. Ia.—May be taken before any person authorized to administer oaths, or by commissioners on interrogatories. If the action is by equitable proceedings and to be tried on written evidence, then, either party may take the deposition. Who may act—The clerk or judge of any court of record or any commissioner of deeds appointed by the Governor of this State to act in another State, any notary, consul or consular agent of the United States, within their jurisdiction. Reasonable notice to be given the adverse party as to name of witness, time, place, when and where taken. Cannot take on election day or the Fourth day of July. Party desiring deposition may select the commissioners or the parties may agree, or the Court may appoint any other individual. Notice—When served on the attorney, ten days; on the party, five days, allowance for travel of one day for each thirty miles. No party is required to take depositions when the Court is in actual session. Notice to be accompanied with the interrogatories to be asked. Who to Serve Notice—The clerk of the Court where the case is pending. If in an inferior court, the clerk of the Circuit Court. Cross-Interrogatories—At or before the time the adverse party may file cross-interrogatories. If not filed, the clerk shall file the following: 1. Are you directly or indirectly interested in this action? and if interested, explain the interest you have. 2. Are all the statements in the foregoing answers made from your personal knowledge? and if not, do your answers show what are made from your personal knowledge, and what are from information, and the source of that information? if not, now show what is from information, and give its source. 3. State everything you know concerning the subject of this action favorable to either party. Notice, or notice and interrogatories, may be served by the same persons on the same persons, in the same manner, and may be returned, and the return shall be authenticated in the same way, as should be an original notice in the same cause when served other than by publication. It may be served on the attorney of the adverse party personally. Deposition Commission Form—Issues in the name of the Court and under its seal. It must be signed by the clerk and need contain nothing but the authority conferred upon the commissioner, instructions to guide him, and a statement of the cause and court in which the testimony is to be used, and a copy of the interrogatories on each side appended. How Taken—Person taking must cause the interrogatories propounded to be written out, the answers immediately underneath; as near the language of the witness as practicable, if parties require it. Must be read, sworn and subscribed to by the witness. Exhibits made by the witness must be appended to the deposition. Officer to certify that it was subscribed and sworn to by the deponent at the time and place mentioned. The deposition, commission, etc., to be sealed up and returned to the clerk of the Court by mail unless otherwise agreed by

the parties. Neither party to be present, unless both are present, or their attorneys, when taken upon interrogatories. The certificate shall state such fact. The title of the cause to be on the outside of the envelopment. When by the laws of any other State or country testimony may be taken in this State to be used therein, the persons authorized to take such depositions have power to issue subpœnas and compel obedience thereto, to administer oaths, and to do any other act of a court which is necessary for the accomplishment of their purpose. Any sheriff or constable shall serve their subpœnas and make return. If a party to a suit in his own right, on being subpœnaed, fail to appear and testify, the other party may have a continuance. At the cost of the delinquent. If the party shows that he could not have a full personal knowledge of the transaction, the Court may order his pleading to be taken as true, but subject to reconsideration during the term of the Court. A deposition to be taken before a judge or justice of the peace merely by name of office must contain an authentication by the clerk of the Court under his seal of office, the fact that the person who took the deposition is really such officer. Taken in shorthand, the writer shall be sworn to take correctly and truly, and make correct extension into long hand, typewriting or print, the extension to be certified by the person taking and shall be received as the deposition. The shorthand notes shall be read to the witness, who shall sign, and file them with the extension. A defendant may examine witnesses in civil and criminal cases, conditionally or on commission.

§ 297. **Kas.**—May be used only when the witness is not a resident of the county, when age, infirmity or imprisonment prevents, or when the oral testimony of the witness is not required. Either party may take, after service upon the defendant. Before whom—In this State before a judge or clerk of a court of record, county clerk, justice of the peace, notary public, mayor, chief magistrate of any city or town corporate, before a master commissioner, or any person empowered by special commission. Authority must be derived from the State, if for use in the State. Out of the State, for use in the State, may be taken before by a judge, justice or chancellor of any court of record, a justice of the peace, notary, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the Governor of this State, or any person authorized by special commission from this State. Officer taking must not be related or interested. Any court of record in this State or any judge thereof can grant a commission. Person must be named, Court seal attached, written interrogatories prepared, unless parties agree otherwise. Written notice to be given the adverse party (unless a special commission) allowing time for travel and one day's preparation, exclusive of Sunday. The action, name of Court, time, and place to be specified. Adjournment from day to day, if stated in the notice. Notice of taking may be given by publication in the county newspaper three consecutive weeks, when the adverse party is absent or a non-resident of the State. If there is no county paper, then the one circulating there generally. It must contain all that is required in a written notice and proved in the usual way. If taken by officers having an official seal, it must be authenticated therewith

and their signature. Officers having no official seal who reside out of this State shall sign and certify to the deposition and in addition have their act and qualification certified to by the official certificate and seal of any secretary or officer of the territory having the great seal thereof, or of the clerk or prothonotary of any court having a seal. If the deposition is taken in this State by any officer having no seal or within or without the State by a special commissioner, the officer's official signature is sufficient. The deposition to be written in the officer's presence either by the witness, a disinterested person, or by the officer, and subscribed to by the witness. It must be sealed up and indorsed on the outside with the title of the cause, the name of the officer and by him addressed and transmitted to the clerk of the Court of the action, there to remain sealed until opened by order of the Court. It may be read in any stage of the action, or other action in the same matter. The officer taking must certify on the deposition that the witness was first sworn to tell the truth, the whole truth and nothing but the truth, by whom the deposition was reduced to writing, that it was written and subscribed in the officer's presence, that it was taken at the time and place specified in the notice. The filing of the deposition must be at least one day before the trial. Fees for taking in this State—Swearing each witness, 10c; each subpœna, attachment, order or commitment, 50c; Deposition, per 100 words, and certificate, 15c; deposition can be held for fees. The fees of the sheriff and witnesses shall be added to the cost of taking. Witness fees, per day, $1.50; witness fees before a justice of the peace, per day, 75c, and per mile travel, 5c.

§ 298. **Ky.**—Notaries not authorized to take. Commissioners of deeds may take or may be taken on commission.

§ 299. **La.**—In the State—The commissions to take may be issued to a justice of the peace or any person authorized to administer oaths. The interrogatories to be served on the adverse party three days previous to forwarding them. When interrogatories have been annexed to the commission and communicated to the adverse party or his counsel, notice of time and place is unnecessary. COMMISSIONERS OUT OF COURT—The clerks of the parish and district courts of the State (save New Orleans parish) are constituted commissioners to take depositions. A party to a suit pending, desiring depositions, shall apply to the clerk of the court, who will proceed to take the testimony in writing, either himself or through some disinterested person in his presence, after giving, at least, two days' notice to the adverse party, or their attorneys of the time and place; if the party or his counsel reside out of the parish, ten days' notice. The deposition shall be sworn to and signed by the witness, certified to by the clerk, under the seal of the court, and filed in the records of the suit. Should objections be made to the taking of any party, the clerk to take down the question and its answer and the objection made and by whom, on which the court will decide. The clerks of the court are empowered to compel attendance of witnesses, by subpœna or attachment, in the name of the court. In the parish of Orleans notaries public and clerks of district courts are appointed commissioners, with all powers granted to the clerks of courts outside, they

may proceed to take, on twenty-four hours' notice to the adverse party or his counsel, of the time and place. When taken, the depositions to be enclosed in an envelope and delivered to the clerk of the court where the suit is pending. Justices of the peace in this State can compel the attendance of witnesses before commissioners of other States taking depositions here. A party desiring the testimony of witness in another State, to apply to any judge having jurisdiction of the cause, and not in open court, and it shall be sufficient simply to swear to its materiality. Service of three days' notice to be given the adverse party. Commission may issue any time thereafter. When the commission is returned, the party to use it must, after filing it in the clerk's office, file a notice or take a rule to serve on the adverse party or his counsel, to show cause why the same should not be used as testimony. The adverse party is bound to urge his objections to any irregularities before trial. If the witness resides out of the parish, in or out of the State, he shall file his answers to the interrogatories within the period fixed by court, on the motion of the party interrogating. Notice of order fixing delay, with copy of interrogatories, to be served on the attorney representing the party interrogated; provided that when such party resides out of the parish his answers shall be taken by commission. Fees for constable or sheriff—Subpœnas, 50c; attachments, $1.00; for commissioners, notice and copy, 25c; each subpœna or attachment and copy, 25c; writing deposition, per 100 words, 20c; affixing seal, 25c; swearing witness, 20c.

§ 300. **Me.**—Allowed when deponent is aged, infirm, sick or unable to attend, or resident out of, or is absent from the State, or bound to sea, going out of the State, or more than sixty miles from place of trial, or is a judge of the Supreme, Superior or Probate Court and prevented by official duty. When deponent resides in another town from the trial, or was resident of same town, but subsequently removed or died. When deponent confined in prison until after trial. May be taken before a justice of the peace, notary public, or a commission, when the same are disinterested parties. On application to a justice of the peace, or notary public, he may issue a summons to any deponent, except the adverse party, to appear at a designated time and place to give his deposition and shall issue notice to the adverse party to be present. The deposition may then and there be taken by him or any other justice or notary, but the deposition of the adverse party may be taken by commission. Notice to adverse party shall be served on him or his attorney, by reading it in his presence and hearing or by giving it to him or leaving at his place or last abode an attested copy. Service may be made by officer or other person and proved on his affidavit. No attorney is recognized unless his name is indorsed upon the writ, or the summons left with defendant, or he has appeared for the party in the cause, or given notice in writing that he is attorney for the adverse party. Notice by the justice or notary to one or more of the plaintiffs or defendants is sufficient. The adverse party to be allowed one day for each twenty miles' travel, Sunday excepted. Verbal notice is sufficient, and when taken out of the State and not under a commission the adverse party shall have

due notice. A witness may be compelled to attend and depose, but not to travel more than thirty miles. Deponent to be first sworn to tell the truth, the whole truth, and nothing but the truth. Then examined by the party producing him, verbally or by written interrogatories, and then by the adverse party, by the justice and parties, if they see cause. Deposition to be written by the officer, or the deponent or some disinterested person, in the presence and under the direction of the officer; it shall be read to or by the deponent and subscribed to by him. If deception is used in taking, the deposition may be rejected. The officer, after the taking, shall certify and annex to the deposition: that the witness was sworn and when; by whom the deposition was written, and in his presence and under his direction; whether the adverse party was notified and attended; the cause and names of parties; the trial court, time and place of cause for taking. The officer shall deliver the deposition to the court, or shall close and seal it up and direct it to the court or referees. A deposition shall not be used at trial if it can be shown by adverse party that the cause for no longer exists. OBJECTIONS to the competency of a deponent or to questions or answers may be made when the deposition is produced, but if taken on written interrogatories the objection shall be made before it is answered. Depositions may be used in a second suit in the same cause. The court may admit or reject depositions taken out of the State. Justices of the Supreme Court may issue commissions to take, outside the State for use in suits in the State.

Depositions in perpetuam may be taken when requested in writing under oath, briefly stating title, interest, claim, names of parties interested and witnesses desired; present same to a judge or register of probate, notary, clerk of the Supreme Court, or justice of the peace and quorum, with request to take the deposition; he shall then give notice of time and place of taking to all persons, the same as in other depositions. May be used in civil suits for petitions for partition of land, libels for divorce, prosecutions for maintenance of bastard children, petitions for review, trials before probate courts, arbitrators, referees and county commissioners; in cases of contested senatorial or representative elections depositions or affidavits may be taken in applications for pensions, bounties or arrears of pay under any United States law. The governor may appoint, with the advice and consent of the council, upon the written recommendation of any judge of the Supreme Court, competent stenographers of either sex, as commissioners to take depositions in all cases and disclosures of trustees. They shall take the oath of office, act throughout the State, hold office four years, pay $5.00 for their commission, have the same powers in taking depositions of trustees as justices of the peace. Depositions may be taken stenographically with consent of the parties to the suit, the notes to be transcribed in full, by questions and answers read to the deponent, and signed by him, unless reading is waived by him, no changes to be made, unless in the presence of the counsel who attested the taking. All facts to be stated in the commissioner's certificate as to reading, changing, etc. Same fees allowed them, as to justices of the peace, with twenty cents per page addi-

tional for transcripts. Fees for Stenographic Commissioners: Travel, per mile one way, and not over 10 miles one way, 12c; taking transcripts, per page, 20c; subpœnas, 10c; taking affidavit or deposition of a trustee, 20c; writing the same with caption and notifying the parties and witnesses, per page, 12c.

§ 301. **Md.**—Courts of law and any of the judges, in recess, upon written application filed, may direct their clerk, or the register of wills, to issue a commission for taking the deposition of the witness outside the State, who cannot be brought into court. Same to be admitted as evidence. The deposition may be taken by either party, on giving the opposite party five days' notice of time and place, and the name of the commissioner, notary public, or justice of the peace, before whom taken. The same duly certified by the officer may be received as evidence in any court. The county circuit courts or their judges shall appoint not more than three commissioners of their county, and each of the civil courts of Baltimore City shall appoint two commissioners to take depositions on notice to opposite parties as the courts prescribe. The commissioners to take oath before a judge or justice of the peace for faithfulness, executing in office, a certificate to be recorded with the court appointing.

Testimony produced to be taken before the same examiner unless the court otherwise direct. Each party allowed to finish their testimony before the adverse party begins. At the conclusion, the examiner shall interrogate the witness thus: "Do you know, or can you state, any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer. The examiner shall write down the answer. The testimony to be written down in the language of the witness and read over to him, to be signed by him in the presence of the parties or their solicitors. If the witness refuse to sign, then the examiner shall sign and state the reason. The examiner may state any special matters to the court. Objectionable questions to be noted. The depositions and all papers to put together, certified and signed by the examiner and enclosed, the title of the cause written on the outside and filed with the clerk of the court.

Depositions de benne esse or for perpetuation of testimony shall be made in the same way, and recorded in twelve months, if no objections are made. Depositions in Chancery—No commissions will issue to take testimony unless beyond the limits of the State, county or city for which the court has jurisdiction. The court may order testimony to be taken before a justice of the peace, or, if the parties consent the commission to take may issue to one commissioner. Witnesses to be allowed seventy-five cents per day and itinerant charges Commissioner's clerk allowed two dollars and fifty cents per day.

§ 302. **Mass.**—Depositions may be taken in this State when the witness lives more than thirty miles from the place of trial, or is about to go out of the State, or is sick, infirm or aged. Application to be made to a justice of the peace who shall issue notice to the adverse party or his attorney or agent to appear before him or any other

justice of the peace at the time and place appointed for taking. If there are several plaintiffs, defendants or parties on either side, a notice served on either of them shall be sufficient.

Taken out of the State in any other manner, if taken before a notary or other person authorized, may be admitted at the discretion of the court but not unless the adverse party had sufficient notice.

May be taken in this State for use in other States or governments under the same conditions before a justice of the peace of this State, or before commissioners appointed by such State or government.

Depositions to perpetuate testimony may be taken in like manner.

May be taken out of the State before a commission issued to one or more competent persons by the court trying the case, or before a commissioner appointed by the governor for that purpose, in or outside the United States, subject to the same conditions and objections as if taken in this State. Same to be taken on written interrogatories exhibited to the adverse party or his attorney, and cross-interrogatories to be filed by him, if he desires.

Notice to be served by delivering an attested copy not less than twenty-four hours before the appointed time, allowing one day for every twenty miles of travel, excluding Sundays. May be verbal by the justice or if waived by the party in writing.

The deponent to be sworn to the truth, the whole truth and nothing but the truth. The justice to examine, and the parties if they desire. Testimony to be in writing. The party producing the deponent shall first examine either upon verbal or written interrogatories, then the adverse party, after which either party may propose further interrogatories. The deposition to be written by the justice or by the deponent, or by some disinterested person in the presence and under the direction of the justice. It shall be read by or to the deponent and subscribed to by him. The justice shall annex to the deposition a certificate of the time and manner of taking it, the person at whose request it was taken, the cause or suit, the reason for, and whether the adverse party attended, if not, why, and statement of notice, if any, sent. The deposition to be delivered by the justice to the court, arbitrators, referees or parties before whom the cause is pending, or enclosed and sealed by him and directed to them, and shall remain sealed until opened by them.

§ 303. **Mich.**—Taken in this State. Before any judge of a United States Court or State Court, or any foreign court; any commissioner of a Circuit Court in Michigan, or of the United States or any State, or any commissioner for Michigan, or any consul, consular officer, justice of the peace, notary authorized by this State or any State or of the United States, or any foreign country to administer oaths not of counsel or attorney of either party nor interested in the cause. The seal of such court or official or a certificate under the seal of any court of record shows authority. Reasonable notice to be given the adverse party, stating names of witnesses, time and place of taking and name of party before whom taken. Any person may be compelled to appear and depose. Deposition may be taken under commission issued by the judge of the court. Written interrogatories may be attached. Courts

of record have power to compel the attendance of witnesses and the production of books. Witness to be sworn. Can also be examined orally. Testimony can be written stenographically transcribed under the direction of the officer. Must be signed by the witness and certified to by the officer. Signatures of witnesses may be waived by agreement of parties. When deposition taken, officer must indorse. Deposition to be enclosed and indorsed by the official stating the deposition was taken and sealed up by him and how sent, also the title of court and cause, and signed. To be sent by mail or otherwise to the court where the cause is pending.

Fees for taking, certifying, sealing, and forwarding, $2.00. For each 100 words, 10c. Copies furnished, per 100 words, 3c. Each party to pay for their own examinations. Witnesses in a court of record, per day, $1.00. Witnesses before a board or officer, per day, 75c. Traveling, 10c per mile from witnesses' residences.

§ **304. Minn.**—In this State—Any person qualified to take acknowledgments may take. Notice to agent or attorney of the adverse party is sufficient. Served on one of the parties is sufficient; twenty-four hours' notice required. Witness to be sworn to the truth, and examined by the parties or the justice, either verbally or by written interrogatories. Party producing the deponent shall first examine. Deposition to be written by the justice or the deponent, or some disinterested person, in the presence of the justice, to be read and subscribed to by the deponent. Justice to annex his certificate. The deposition to be returned by mail to the court where the cause is pending. If the party giving notice fails to appear and the adverse party does appear, the court shall allow the adverse party such sum as he shall deem proper for attorney's fees and traveling expenses.

If taken out of this State when an issue has been joined in an action and a non-resident witness is material, and an eight-day notice has been served upon the adverse party before application. Second—when in an action in a court of record the time of answering the complainant has expired and the defendant has not answered or demurred to the complaint, and it appears upon application of the plaintiff that the testimony of a non-resident witness is necessary to establish facts stated in the complaint and to enable the court to render judgment.

Any officer authorized to administer oaths in that State may take. Written notice being served upon the adverse party. Time being allowed for travel and preparation. Officer shall designate time and place. Witnesses to be sworn and the testimony written by the officer. Proceedings may be adjourned from day to day. Either party may appear in person or by attorney and take part. The officer to read to the witness his testimony when completed and after qualifying it the witness to sign it. The officer then to annex the notice for taking it (or the order) and his certificate under his hand and official seal (if he have one) stating his office and that by virtue thereof he was authorized to administer an oath that the witness was sworn before testifying to tell the truth and nothing but the truth relative to the cause specified in the order.

To perpetuate testimony—Party desiring shall make a brief statement in writing of his title, claim and interests, parties in interest, their residence, etc. Name of witness, same to be delivered to the judge of a court of record, who will give notice and take.

§ 305. **Miss.**—In the State, may be taken in civil causes in the Circuit Court; when the witness is about to leave the State, is aged, sick or unable to attend the court. When it shall depend on the testimony of a single witness. When the witness shall be a judge of the Supreme or Circuit Court, or chancellor, or any officer of the State or United States and on account of duties is unable to attend court. When a clerk, a court, a sheriff, or justice of the peace shall be required beyond the limits of his county residence. A female, a resident of the State more than sixty miles from the place of trial. The deposition may be taken of a witness in a civil cause before a justice of the peace, when the witness resides in a different county from the justice and under the same circumstances as the Circuit Courts. Affidavit shall be made by the party desiring the deposition, that the witness is material, the reasons for taking, same to be attached to the deposition. May be taken before any officer authorized to administer oaths, on ten days' notice to the adverse party or his attorney of time and place of taking. In cases of emergency, expressed in the notice, shorter time shall be sufficient.

If out of the State, party desiring the taking, shall file interrogatories with the court clerk, or justice of the peace in cases before them, serve adverse party or his attorney notice ten days before issuing the commission. The adverse party may file cross-interrogatories; the clerk or justice shall then issue a commission, annex the interrogatories and cross, as filed; the witness shall be examined by the commissioner, and may be cross-examined by the adverse party, the party desiring the deposition may examine in rebuttal. If the adverse party resides out of the State or his residence is unknown and he have no agent or attorney resident, the papers for taking may be filed with the clerk or justice. A commission may be directed to one or more in the alternative, by name, or to any judge of a court of record, justice of the peace, mayor or chief magistrate of a city or town, commissioner appointed by the governor of this State, or to any one authorized to administer oaths where the deposition is taken. Witnesses to be sworn, the commissioner to examine impartially on the interrogatories, etc. If within the State the officer may swear the witness and examine verbally or in writing as put by the parties, testimony to be fairly written down by the officer, the witness or a disinterested person in the officer's presence, and subscribed to by the witness; same with all papers and the officer's certificate, to be sealed up and directed to the clerk of the court or the justice, and transmitted in a safe, convenient manner. The clerk or justice shall open same, indorse on the time of their receipt and opening, and deposit them among the papers in the cause. The examination may be adjourned from day to day on giving notice to the parties. Depositions to perpetuate testimony may be taken in same manner through the chancery court. Deposition Fees—Administering oath and certificate, 50c; writing or copying deposition, per 100 words, 10c.

§ 306. **Mo.**—When the witness resides out of the State the party desiring may sue out of the court or its clerk, a commission to take the deposition. If before a justice of the peace, party may sue out of a county court of record.

Before whom taken in the State—A judge, justice of the peace, notary public, or clerk of any court having a seal, in vacation of court, mayor, or chief officer of a city or town having an official seal. If outside the State, before an officer authorized by the laws of this State, or some consul or commercial or representative of the United States, having a seal, or mayor or chief officer of any city, town or borough, having a seal of office, some judge, justice of the peace, or other judicial officer, or by a notary public where the witness resides.

May be taken by an officer outside this State authorized by this State, without any commission or order of court. Notice to be given adverse party or his attorney of record when residents in this State. If non-residents by posting notice in the office of the justice or of the clerk of the court where suit is pending. Service of notice may be by delivery to him, or by leaving a copy at his abode with some member of his family above fifteen years of age, or at his office, with his clerk, or to any local agent, if a corporation. May be by sheriff, constable, marshal or any competent witness, who shall make affidavit of service. Three days' notice and one day additional for each fifty miles' travel, for the first three hundred miles and beyond that one day for each one hundred miles, to be given. The party commissioned to be named in the commission. Interrogatories to be attached to the commission, drawn and signed by the parties or their counsel under the direction of the judge or court.

Depositions to perpetuate testimony may be taken in the same manner. Fees—Taking deposition, administering oath and certificate, 50c; writing or copying deposition, per 100 words, 10c; taking acknowledgments, 25c.

§ 307. **Mont.**—In the State, either party can apply for, before a judge or officer authorized to administer oaths. Five days' notice to be given the adverse party and one day for each 25 miles' travel. Either party may attend. The deposition to be read over and signed by the witness, certified to by the officer, enclosed, sealed and directed and delivered to the court or parties agreed on.

If out of the State, may be taken any time after issue of summons or the defendant's appearance. If a special proceeding, any time after a question of fact has arisen. In the State, it may be taken as above, when the witness is a party in the action, or an officer or member of a corporation which is a party in the action, or a person whose interest the action will benefit. When the witness resides out of the county, or about to leave the country, or is infirm. When the testimony is required upon a motion, or any case where the oral testimony is not required. When the witness is the only one who can establish facts material to the issue; provided the deposition will not be used if his presence can be procured.

May be taken out of the State upon commission issued from the court, under its seal, upon an order of the court, or its judge, on the application of either party, upon five days' notice to the other. If within

the United States, it may be directed to any person agreed upon by the parties, or to any judge, justice of the peace, or commissioner selected by the court or judge. If to any foreign country, it may be directed to a minister, ambassador, consul, vice consul, or consular agent of the United States in such country, or to any person agreed upon by the parties. Interrogatories may be prepared by the parties or officer granting the order for the commission, a day fixed in the order may be annexed to the commission; or, when the parties agree the examination may be without written interrogatories. The commission must authorize to administer an oath to the witness before interrogating, to certify the deposition to enclose and direct same to the court or person agreed upon, and forward it.

To perpetuate testimony, applicant to petition a judge of the District Court on oath, and give the adverse parties' names. The names of witnesses, and any other necessary matter. The judge will make an order, naming the officer to take, prescribing notice. If out of the State the examination to be by question and answer and by commission, interrogatories to be settled as in other depositions. When complete, read and returned as in other depositions.

§ 308. **Neb.**—May be used only when witness is not a resident of the county; when witness is infirm, aged, imprisoned, dead or unable to attend court; when the testimony is required upon a motion, or any case where oral testimony is not required. Either party may commence taking testimony at any time after service upon the defendant.

Who may take—In this State a judge or clerk of the Supreme or District Court, a probate judge, justice of the peace, notary, mayor, or chief magistrate of any city or town incorporated, master commissioner, special commission. Officer's authority must be derived within the State. Who may take out of the State—A judge, or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, State commissioner of deeds, or a special commission. Officer taking must be disinterested, no relative or attorney. Any court of record of this State, or its judge can commission to take in or out of the State. The person commissioned must be named therein, the seal of the court attached and it must be taken upon written interrogatories unless otherwise agreed. Written notice to be given the adverse party, or his attorney, specifying the action, time and place (unless taken under a special commission) sufficient time allowed by the usual route of travel and one day for preparation, exclusive of Sundays and day of service, if the notice so states, adjournment may be had from day to day. Notice to state the names of witnesses. If taken out of the State or fifty miles distant from the place of trial, the adverse party may serve cross-interrogatories within forty-eight hours to the party taking, who shall transmit them to the officer. When the adverse party is absent or a non-resident and has no agent or attorney, he may be notified by publishing three consecutive weeks in a paper of such county of general circulation, notice to continue same as if written. The deposition to be written in the presence of the officer, subscribed to by the witness; when complete, to be sealed up, title of cause, name of officer indorsed thereon, addressed and transmitted to the clerk of the court. Officer taking shall certify that the witness was

first sworn to tell the truth, the whole truth and nothing but the truth. That the taking was reduced to writing by (naming party) that it was written and subscribed to by the officer certifying. That it was taken at the time and place specified in the notice. It must be filed in court, at least one day before trial. Fees allowed in the State—Swearing each witness, 5c; each subpœna, attachment or commitment, 50c; each 100 words in deposition and certificate, 10c. Officer may retain deposition until his fees are paid, also if so directed by the persons entitled, he may retain for sheriff and witness fees until paid.

§ 309. **Nev.**—May be taken any time after service of the summons or appearance. In special proceedings, after a question of fact has arisen. When the witness; is a party, or a person for whose benefit the action is prosecuted or defended; resides out of the county, is about to leave the county, to be absent when required; is infirm, or resides fifty miles from the trial.

May be taken before any judge, clerk of a court, justice of the peace or notary in this State; notice to be given the adverse party of time, place, and a copy of an affidavit showing the case is one mentioned as above. Forty days after the service of summons by publication and any time thereafter, when the defendant has not appeared, and his residence is unknown, notice may be served upon the clerk of the court where the action is pending, at least five days, and in addition one day for every 25 miles the party served shall have to travel, unless for cause shown the judge, by order, prescribe a shorter time. Either party may attend and properly question. When completed it shall be read to the witness, corrected and subscribed to by him, certified to by the officer, enclosed, sealed and directed to the clerk of the court or to such person as the parties may agree to in writing, and delivered by mail or personally.

Out of the State shall be taken upon a commission issued from the court, under its seal, on the application of either party, upon five days' previous notice to the other, to a person agreed upon by the parties. If they do not agree, then to any judge or justice of the peace selected by the officer, or to a commissioner appointed by the governor to take affidavits and depositions in other States. The interrogatories to be agreed upon by the parties or if they disagree, by the officer granting the order, time and place may be annexed to the commission. The commission shall authorize the commissioner to administer an oath to the witness and then take the deposition, to certify it to the court, sealed and directed to its clerk or other parties as agreed, to be forwarded by mail or in person.

Depositions to perpetuate testimony, may be done in the same manner, by application to the district judge, by petition on oath.

§ 310. **N. H.**—Any justice or notary may issue writs for witnesses to appear before himself or other justices or notary to give lawful depositions. A person may be summoned to testify or give deposition, by reading to him the writ and tendering the fees for travel to and from the place desired and for one day's attendance. If the party fail to appear, to testify, or depose; without reasonable excuse, subject to liability to the party injured, for damages sustained thereby. Every court, justice or notary before whom summoned may bring such party

by attachment, and fine him, not exceeding ten dollars if imposed by a justice or notary or police court, and not exceeding fifty dollars, if imposed by any other court, and add costs. Depositions shall be sealed up by the officer directed to the court or justice where they are to be used.

The party instituting shall give written notice to adverse party, signed by a justice or notary, of the day, hour and place of taking, to be left at his abode if residents of the State, and within twenty miles of the place of taking, or of the party taking, a reasonable time before. If the adverse party resides out of the State or twenty miles from the place or from the party requesting the taking, notice may be given his agent or attorney. No person shall be deemed an agent or attorney unless he has indorsed the writ or has appeared as such or given notice in writing. No person shall write the testimony who would be disqualified to act as juror at the trial, except exemption as a juror. Witness to subscribe to the deposition and make oath to the truth of same. The magistrate shall certify it, with time and place of taking, stating whether the adverse party was present or was notified or did not object. A copy of the notice sent to the adverse party, with the return or affidavit of officer leaving it, shall be annexed to the deposition. When the adverse party fails to attend, deposition to be filed within ten days after taking with the clerk of the court where case is pending.

Deposition to perpetuate may be taken before a court of record, or before two justices, one of whom shall be of the quorum. If relating to the destruction or loss of any public files or records, they shall be taken by the Supreme Court or by a commissioner appointed by the court.

§ **311. N. J.**—May be taken in this State when the witness is aged, infirm, sick, or is about to go out of the State; may be taken de bene esse before a justice of the Supreme Court, or judge of the Common Pleas Court, Supreme Court commissioner, master in chancery. The officer taking to give the adverse party immediate notice or at such short day as the case requires. Witness may be compelled to appear and testify and be allowed compensation. Witness to be first sworn to the truth. The testimony to be in writing, subscribed to by the witness in the presence of the officer taking it, and with certificate of reasons for taking, and the notice to be delivered by the officer with his own hand to the judge or clerk of the court, or it may be sealed up, directed and transmitted by mail or private messenger) who shall open and file it as a record.

Of witnesses out of the State. The judge of any court where cause is pending or during vacation, on affidavit, to issue a commission under the seal of the court, to such person or persons as the court or judge may think fit, to examine de bene esse the witness on oath or affirmation. Names of witnesses to be in the commission, the interrogatories to be drawn and signed by the parties or their attorneys, with the court or judge's approval, each being allowed to insert such questions as deemed proper, the same to be annexed to the commission.

The deposition may be taken by commission or upon notice of any party to a suit, residing out of this State.

Depositions out of this State may be taken de bene esse before any judge of any supreme, circuit, district or common pleas court or before

a commissioner of deeds for this State where witness resides, or before a special commissioner appointed by the court; provided notice be given adverse party or his attorney, that they may be present, time being allowed for travel (one day for every fifty miles) in all cases, ten days, exclusive of Sundays, or if in a foreign country or a Pacific Ocean State the court shall direct the time or any judge thereof in chambers. The officer taking shall take oath to fairly and impartially take the testimony before a party authorized to take oaths in his State or country.

§ 312. N. M.—May be taken to be used in any court of this territory when the witness is sick or absent from the territory, or it is impossible to be present. It may be taken before any judge or justice of the peace in the territory, and when taken shall be enclosed and sealed by the same judge or justice before whom taken, and by him delivered to the court, or the court clerk, where the case is tried. The party desiring the taking shall first notify the adverse party three days before if he resides less than eight leagues from the place of taking and one day in addition for each eight leagues that the adverse party may reside away. Notice may be served by the sheriff, constable, or by himself, or by anyone for him. The notice shall state the time and place.

It may be taken on commission. Either party may apply to court, serve five days' notice on adverse party, allow one day for each twenty miles of travel, stating the day he will make application. Either party may take out the commission. The clerk may appoint either a district judge, chief judge of the county, a commissioner of deeds, notary or two justices of the peace.

Depositions may be taken to perpetuate testimony.

§ 312a. N. Y.—Depositions taken in this State for use in this State may be taken before the judge of the court or a referee on filing an affidavit with the court showing necessity. Time allowed for service, five to twenty days. Taken out of the State for use in this State, by a commission of one or more persons, or a chancellor, or judge of a court of record, mayor or chief magistrate of a city, a justice of the peace. Officer must have no interest in the parties or the case. Witness to be sworn to the truth, etc. The examination must be reduced to writing by a disinterested party. Officer must subscribe his name to each half sheet, enclose same in an envelope with all papers and exhibits and the commission, also his certificate, seal up same under his official seal, direct it to the clerk of the court, and immediately mail it, postage prepaid unless otherwise directed in his commission. All exhibits and papers to be signed by the parties presenting them, and also by the officer.

§ 313. N. C.—Any party in a civil action or special proceedings may take the deposition of persons whose evidence he may desire, without any special order, unless the witness is outside the United States. Written notice must be served on the adverse party or his attorney. If adverse party resides within ten miles of the place of the taking, three days' notice. Allow one day more for each additional twenty miles, unless it is to be taken within ten miles of a railway in running order, when one day only shall be given for every hundred miles of railway to the place of taking. If beyond the State, ten days' notice.

to be given, when the party whose deposition is to be taken resides within ten miles of a railway connecting with a line of railway within twenty miles of the place where the person notified resides. In other cases when there are no railways, twenty days' notice.

Objection to the reading of the deposition, on account of insufficient notice, must be proved. Depositions shall be taken on commission, issuing from the court and under its seal, by one or more commissioners not of kin to either party, appointed by the clerk, subscribed to and sealed up by the officers and returned to the court, the clerk to open and pass upon them, first giving the parties or their attorneys not less than one day's notice. When passed upon by the clerk, without appeal, or by the judge upon appeal from the clerk's order, shall be deemed legal evidence, if the witness is competent. Commissioners can compel attendance to testify under penalty. Sheriff to serve the subpœna and make return. The witness to be first sworn. If the witness be summoned on five days' time and fail to appear before a commissioner acting under authority from courts of another State he shall forfeit and pay to the party at whose instance he was summoned fifty dollars, and on the trial for such penalty the summons and return shall be prima facie evidence to entitle the plaintiff to judgment. If the defaulting witness was to appear before a commission issued by a court of this State the fine shall be forty dollars, but execution shall not issue until the same be ordered by the court giving witness time to show cause.

§ 314. **N. Dak.**—Who may take in the State—A judge or clerk of the Supreme or District Court, a justice of the peace, notary public, United States Circuit or District Court commissioner or any specially empowered commission.

Out of the State, 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 corporate, a commissioner appointed by the Governor of this State, or any specially empowered commission by any court of this State. Officer taking must not be a relative or interested. Any court of record, or its judge, of this State can grant a commission within or without the State, upon the application of either party, upon five days' notice to the other. It must be issued to a person or persons therein named by the clerk under the seal of the court; must be taken upon written interrogatories, direct and cross, as attached to the commission by the clerk. Unless the parties agree to the interrogatories the court or judge to settle it upon five days' notice. The officer taking shall certify under his signature that the witness was first sworn to testify the truth, the whole truth and nothing but the truth, was reduced to writing by (naming him), was written and subscribed to in the presence of the officer, and was taken at the time and place specified in the notice. When offered in court it must be shown to the satisfaction of the court why the witness cannot be present. The deposition to be filed in court at least one day before trial. When taken must be sealed up, the title of the cause endorsed on the back, with the name of the officer, and addressed to the clerk of the court, there to remain under seal until opened by order of the court or at the request of a party to the action, or his attorney. A

deposition is deemed the evidence of the party reading it, and may be read at any stage of the proceeding. The deposition must be authenticated by the seal of office of the party taking it; if they have no official seal then it must be authenticated by some state officer having a seal, together with the officer's certificate. If taken by a special commissioner his signature is sufficient.

§ 315. **Ohio.**—The deposition of a witness may be used only when he is not a resident or is absent from the county where the proceeding is pending. When he is dead, or from age, infirmity or imprisonment is unable to attend court. When the testimony is required upon a motion, or where the oral examination of the witness is not required. Either party may commence taking testimony by deposition at any time after service upon the defendant. Testimony taken in an action on the order of a court, by a referee, master commissioner, or special master commissioner, subscribed by the witness and reported to the court by the officer may be used as a deposition taken in the case. When the testimony is required in an action pending without this State. Depositions may be taken in this State before a judge or clerk of the Supreme, Circuit or Common Pleas Court, or a probate judge, justice of the peace, notary public, mayor, master commissioner, official stenographer of any court in the State, or any person empowered by special commission; but depositions taken in this State to be used therein must be taken by an officer or person whose authority is derived within the State, and if to be used out of the State they may be taken before a commissioner or officer who derives his authority from the State, district or territory in which they are to be used. They may be taken out of the State before any judge, justice, or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any municipal corporation, a commissioner appointed by the Governor of this State to take depositions, or any person authorized by a special commission from this State. The officer must not be a relative or attorney of either party, or interested. Any court of record of this State, or judge thereof, may grant a commission to take depositions within or without the State. It must be issued by the clerk and under the seal of the court. Persons to whom granted must be named. It must be taken on written interrogatories, unless parties otherwise agree. Written notice to be given adverse party, his agent or attorney, unless taken under special commission, action to be specified, the name of the court where used, time and place of taking, and if the deposition of a party to the suit be taken, it shall not be used in his own behalf unless so specified in the notice. The deposition to be used only against such parties as are served with notice in one of the modes prescribed, sufficient time to be allowed the adverse party, exclusive of Sundays, the day of service, and one day for preparation, to travel by the usual routes and conveyances; the examination may adjourn from day to day, if so stated in the notice. If the adverse party is absent or a non-resident of the State, and has no agent or attorney of record therein he may be notified by publication for three consecutive weeks in the county newspaper where the action is pending; if no paper is printed there, then in one of general circulation in the county, printed in the State, the publication to contain all that is required in a written notice and proved by affidavit. The deposition

to be written in the presence of the officer before whom taken, either by the officer, the witness, or some disinterested person, and subscribed by the witness.

It shall be sealed in an envelope indorsed with the title of the cause, the name of the officer taking it and by him addressed and transmitted to the clerk of the court, there to remain unopened, until so ordered by the court, or at the request of a party to the action or his attorney.

Depositions may be admitted as evidence in a civil action pending before a justice of the peace, mayor or other judicial officer of a municipal corporation, or before arbitrators, a referee or a master. A deposition may be read in any stage of the action or in any other action upon the same matter between the same parties subject to exceptions mentioned. If taken by a judicial or other officer having a seal of office, whether resident in the State or elsewhere, shall be admitted in evidence upon the certificate and signature ot such officer, under the seal of the court of which he is an officer, or his official seal. No other authentication is required. If the officer has no official seal and the deposition was not taken in this State, it shall be certified and signed by the officer and further authenticated, either by parol proof in court, or by the certificate and seal of the secretary or other officer of State who is the custodian of the great seal of the State, or the certificate and official seal of the clerk or prothonotary of any court of the State where taken, attesting that such officer was, at the time of taking, authorized to take. If the deposition is taken in this State by an officer not having a seal, or within or without the State under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commission before whom taken; and when a deposition is not certified according to law, the fact neglected to be certified may be shown by parol proof. The officer's certificate shall show: that the witness was first sworn to tell the truth, the whole truth and nothing but the truth; that the deposition was reduced to writing by some proper person, naming him, that the deposition was written and subscribed in the presence of the officers certifying thereto, that the deposition was taken at the time and place specified in the notice. But if the deposition be taken out of the State, by an officer authorized, the certificate may be in the foregoing form, or in the form authorized by the laws of the place where taken; and in the latter case the certificate shall be deemed prima facie, as made in accordance with the laws of the place where made. Notaries public have power to compel the attendance of witnesses and to punish for contempt when taking depositions. Exceptions to depositions shall be in writing and specify the grounds of objections, and be filed with the papers in the cause. No exceptions other than for incompetency or irrelevancy shall be regarded unless made and filed before the commencement of the trial; the court shall decide these before trial. Errors of the court in its decisions upon exceptions are waived unless excepted to. The deposition must be filed in court at least one day before the trial. Fees for taking depositions in this State: Swearing each witness, 4c.; each subpœna attachment or commitment, 50c.; each one hundred words in the deposition and certificate, 10c. The officer shall retain the depositions until

paid for; he shall also tax the costs of sheriff or other officers serving process and fees of witnesses; he may if directed by a person entitled thereto, retain the depositions until his fees are paid.

§ 316. **Okla.**—May be used when the witness does not reside in the county or is absent. When attendance is prevented from age, infirmity, imprisonment or death. When testimony is required upon a motion, or in any case where the oral testimony is not required. Either party may commence taking testimony after service of notice.

Who may take in the territory, a judge or clerk of a court of record, a county clerk, justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, or a master commissioner or special commissioner. Authority must be derived within the territory.

Out of the Territory, a judge, justice or chancellor, of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor to take depositions, or any person authorized by a special commission from this territory. The officer must not be interested in the case nor related to either party. Any court of record of the territory or any judge thereof can grant a commission to take. The commission, name of the officer who takes, and must be under the seal of the court. Deposition must be upon written interrogatories, unless parties agree otherwise. Unless by special commission, written notice to be given the adverse party, specifying action, court, time and place, allowing time for travel and one day for preparation, exclusive of Sunday. May adjourn from day to day, if notice so states. When adverse party is absent, or a non-resident, three consecutive weeks' publication in a county paper is required. The deposition must be written in the presence of the officer, either by him, the witness or a disinterested person, signed by the witness, sealed up, and endorsed with the title of the case, name of the officer, certified to by him, addressed and transmitted to the clerk of the court, and remain under seal until opened by order of court. The officer's certificate must state the above facts and that the witness was first sworn to the truth, the whole truth and nothing but the truth; it must be filed in court one day before trial.

Fees allowed: Swearing each witness, 10c.; each subpœna, attachment or order of commitment, 50c.; each 100 words, including certificate, 15c. Deposition may be retained until fees are paid.

§ 317. **Ore.**—May be taken in or out of the State in an action at law, any time after the service of summons or the appearance of the defendant, and in special proceedings any time after a question of fact has arisen. In this State, when, the witness' residence is such that he is not obliged to attend on a subpœna, is a party to the action, is about to leave the county and go more than twenty miles from place of trial, is infirm, when the testimony is required upon a motion, or where the oral examination is not required.

Without the State, may be taken upon commission issued by the court, or without a commission by the commission appointed by the governor of this State to take depositions in other States or countries.

The commission may be issued by the clerk of the court, or by a justice of the peace in a cause in his court, on the application of either party, upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or if they do not agree, to a judge, justice of the peace, notary public, or clerk of a court, selected by the officer issuing it. Interrogatories, direct and cross, as the parties may prepare, or the clerk or justice, may be annexed to the commission, or if the parties agree, without written interrogatories. Commission shall authorize the commissioner to administer an oath to the witness, to take deposition as per interrogatories, or in respect to the question in dispute, to certify to the court in a sealed envelope directed to the clerk or justice issuing same, or other person designated, and forwarded to him by mail, or other channel. In any other State it may be taken before a commissioner, appointed by the governor of this State for that purpose, upon giving the adverse party eight days' notice of the time and place, name of the commissioner and the witness. If the distance of the place of examination, from the place where the testimony is to be used, does not exceed fifty miles, and one additional day for every additional twenty-five miles. Either party may attend, and examine the witnesses upon oral interrogatories, but if either party by written notice to the other, within three days from the service of the original notice, require it, it shall be taken on written interrogatories to be settled, if not agreed upon, by the same officer and in the same manner as in case of deposition upon commission and in such case the deposition shall be taken, certified, and directed by the commissioner in the same manner as a deposition upon commission.

May be taken in this State before the clerk of a court of record or other person authorized to administer oaths, three days' notice to be given the adverse party if not over 25 miles, and one day additional for every twenty-five miles, unless the courts direct otherwise. Either party may attend and examine. Deposition to be written by the officer, or by the witness or some disinterested person in his presence. When completed it shall be read to or by the witness and subscribed by him. Officer to certify the above was done (under his official seal, if he have one), and at a place mentioned, between certain hours of a day or days mentioned, and that the witness was first sworn to the truth, the whole truth and nothing but the truth. Same to be enclosed in a sealed envelope, directed to the clerk of the court or the justice of the peace where action is pending, and forward by mail or the usual channel. It may be used by either party, at any time. The testimony of a witness may be taken conditionally and perpetuated in the usual manner.

§ 318. **Pa.**—Upon the affidavit of either party or their agent, that the testimony of any material witness is wanted, who resides out of the county, or from infirmity, or other causes, cannot be obtained personally, a cause shall be postponed to a certain day, within such reasonable time as the distance of the witness, the season of the year and the circumstances of the roads may render it proper, to obtain the deposition of the witness wanted; and whenever a cause is postponed at the instance of the defendant, he shall enter into a recognizance for a sum sufficient to cover the demand in question together with the costs, with one sufficient surety (for his appearance

on the day fixed), and whenever a rule for taking the deposition of a witness or witnesses shall be applied for, as aforesaid, the party so applying shall file a copy of the interrogatories or questions intended to be asked the witnesses; and a copy of the same shall be delivered to the opposite party or his agent, who may also file such additional questions as he may think proper; Provided, it be done within four days after receipt of the copy; which rule and interrogatories being certified by the justice before whom the cause is depending, shall be sufficient authority for the justice who may be named in said rule, to take the answers of such witnesses as may be named therein; but where the witnesses reside in the county, or in cases where the parties or their agents agree to enter a rule to take depositions, it may be done without filing interrogatories, upon notice given, agreeably to the rule, of the time and place appointed for the examination. Testimony so taken shall be read in evidence on the trial before the justice or referee. Either party may obtain testimony out of the State for causes pending before a justice of the peace in the same manner. When not convenient to take before a justice of the peace, a commissioner may be appointed, at the suggestion of the party or parties, who on receipt of his commission, with a copy of the rule and interrogatories, certified by the alderman or justice of the peace, shall have authority to administer oaths and take the answers of the witnesses named. Same shall be as good as if taken before a justice of the peace.

A court of common pleas on receipt of letters rogatory from any court in the United States, may compel the attendance of witnesses, penalties to be attached, and a fine not exceeding one hundred dollars imposed. Examiners or commissioners may on request appoint a stenographer; court to direct compensation together with such reasonable additional amount as the examiner may suggest, including traveling and hotel expenses and extra services.

§ 319. **R. I.**—Except in equity causes, any justice of the Supreme Court, justice of the peace, or notary public, may take depositions of any witness to be used in the trial of a civil suit where he is a disinterested party and commenced or pending in this State or any other State or country, the adverse party or his attorney to be notified as to time and place, before the taking. If his residence or his attorney be unknown the justice shall prescribe the method of notice. The notification shall be issued to a disinterested party by the commissioner at least twenty-four hours, exclusive of Sundays and holidays, before the taking. It shall be read to the party, if found, otherwise, a copy to be left at his usual abode; manner and time of service to be returned and sworn to before some officer authorized to take oaths. Any person may be compelled to appear and depose within this State.

The supreme, probate or district court may, on motion of either party in an action pending therein, grant a commission to take depositions. May be taken in this State to be used in any other State or country, before any person residing in this State to whom a commission shall be directed. Taken out of the State to be used in this State, may be obtained on an order from the trial court, and taken according to the law of such State or country, or if within the United States, it

shall be taken before a commissioner appointed by the governor of this State, or a judge, chancellor, justice of the peace, notary public, or civil magistrate of such State. If taken out of the United States, before a resident United States official or if the deponent be in the military or naval service of the United States, before a colonel, lieutenant-colonel or major in the army, or before any officer in the navy not below the grade and rank of lieutenant-commander. The deponent shall be sworn to testify the truth, the whole truth, and nothing but the truth, and after giving testimony, shall subscribe to it in the presence of the officer taking it. The deposition may be reduced to writing by the officer or by any one under his direction and in his presence, or taken in shorthand and a transcript made in long hand, typewriting, print or other reproduction sworn to by the person reporting it, and signed by the deponent. The signature in the latter case, to be attested by the officer. The deposition to be delivered by the officer's own hand to the court, or shall, together with a certificate of its having been taken, be by the officer sealed up and directed to the court, and delivered to its clerk.

For depositions in perpetual memory, the same methods are employed as in other depositions. The officer taking has the same power and authority as magistrates in acting. They can compel attendance and testimony. If party entitled to notice resides outside the State he may be served by any disinterested person. After taking, it shall be sealed up, with the petition, and directed to the clerk of the common pleas division of the supreme court in the county in which some one of the parties notified of the taking reside; if they reside outside of the State, then in the county in which the person preferring the petition resides; in case both parties reside outside the State, then in Providence county. The clerk, on its receipt, sealed and addressed, shall open and record it, on payment of the legal fees, noting on same the time received, page of the book where recorded, and return it to the party. If not recorded, it cannot be received as evidence in any court in this State, unless it is opened in the Court at the time of the hearing of the cause in which it is used.

§ 320. **S. C.**—Any judge or clerk of the circuit court has power to grant commissions, under the seal of the court, directed to two or more commissioners, to take the depositions in writing of the witness or witnesses therein mentioned. Where the witness resides without the State or county, or at a greater distance than one hundred miles from the court, or is about to go without the limits of the State before the next term of court or before trial, or when their presence cannot be procured by attendance on some public official or professional duty as an attorney at such time, or by reason of sickness or infirmity, ten days' notice to be given the adverse party with copy of interrogatories propounded. The application must be accompanied with an affidavit showing the necessity for the taking.

Either party may, in the court's discretion, on motion, and a showing that two days' notice has been given the adverse party or his attorney, be entitled to a rule to compel the attendance of any witness residing in the county, or not more than thirty miles from the court. The testimony of an officer in a lunatic asylum may be taken by com-

mission. Subpœnas may issue from the cause for witnesses to attend before the commission at a certain time and place not more than fifteen miles from his residence and answer on oath according to their knowledge the interrogatories and cross-interrogatories annexed to the commission.

Persons unable to leave home by reason of sickness, age or infirmity shall be attended by the commissioners, and in case of their refusal to give evidence or answer the interrogatories, etc., they shall be liable for damages to the party injured. Clerks of the court of common pleas may take depositions, ten days' notice having been given the adverse party. All privileges and powers allowed as by commission. Clerk's fee for each witness, one dollar.

Depositions de bene esse may be taken in civil actions depending in the court of common pleas where the witness lives outside the county or more than one hundred miles from court or is bound for sea, going out of the State or county, or is aged or infirm. Same may be taken before any circuit court, judge or clerk, any trial justice, notary public of this State, chancellor, justice or judge of a superior or supreme court, mayor or chief magistrate of a city, trial justice, judge of a county court or court of common pleas of any of the United States or Dominion of Canada or Kingdom of Great Britain, or any notary public not being of counsel or attorney. Notice of ten days must first be given in writing by the party or his attorney to the adverse party, with notice of time and place. If impracticable, the judge of any circuit court shall determine how notice to be given. Manner of taking—Witness to be sworn to testify the whole truth. Testimony to be reduced to writing by the officer or by the witness in officer's presence and by no other person, to be subscribed to by the witness, delivered into the court by the hand of the officer, or with a certificate of reasons for taking, and the notice given adverse party, be sealed up and directed to the court by the officer and forwarded by mail or express. If witness is able to appear at the trial the deposition shall not be used. Contempt of Court—An attachment may issue from any circuit court for failure of the witness to answer the subpœna for attendance. Commissions issued out of any United States or other State courts for the examination of witnesses in this State, produced to a judge of the supreme or circuit courts of this State, shall have the same consideration as if issued by a court of this State and subpœna issued, with same fees and contempt proceedings as allowed in this State. Two days' time to be allowed the witness before attendance is required. He is entitled to same fees for each day's attendance as allowed in civil cases, with necessary ferriages going to and coming from. To be paid by the party requiring the deposition. Commissioners are authorized to retain the deposition until same is paid.

§ **321. S. Dak.**—May be taken in this State by a judge or clerk of the supreme or district court, a justice of the peace, notary, U. S. circuit or district court commissioner or any person empowered by a special commission.

Outside the State by judge, justice or chancellor or clerk of any court of record, justice of the peace, notary, mayor or chief magistrate of a city or town corporate, a commissioner appointed by the Governor of this State, or any special commission. Officer must not

be a relative or attorney of either party or interested in the action. Any judge or clerk of a court of record of this State can appoint a commission to take, under seal of court. Witnesses—Notary can issue subpœna for. For failure to attend the notary can issue attachment.

§ 322. **Tenn.**—May be taken when the witness, from age, infirmity or other cause, is incapable of attending at the trial or resides out of the State, or residing in another county of the State, in which case the adverse party may have him subpœnaed. When leaving the State, or is the only witness to a material fact, or an officer of the United States, the State, or the county, or clerk of another court of record, a member of the legislature in session, clerk or officer thereof, a practicing physician or attorney, a jailer or keeper of a public prison in another county. When he is a notary public, whether a suit be pending or not; to be evidence between the same parties in any suit then, or thereafter depending, should the notary die or remove out of the State before the trial. When the suit is brought in forma pauperis. The deposition of any person residing in the county may be taken by either party, but the opposite party may summon the witness, in which case he shall be examined as if summoned by the party taking the deposition. It may be taken any time after action brought, upon such notice as the court or justice may order, or upon giving the usual notice. Party exempt from attending, must claim at the time; he may claim exemption by application to the court. The adverse party may compel the attendance in court, of the deponent, unless witness is exempt by law.

Witness may be cross-examined by any court or justice of the peace before whom an action is pending, may make orders and issue commissions to take depositions, upon application of either party. The clerk or his deputy may act in like manner. Court or justice may prescribe notice. Parties may take without a commission, upon giving opposite party notice of time and place or by filing interrogatories.

May be taken in this State for use in any other State, or foreign government. Attendance of witnesses may be compelled, by application to any judge of the superior courts of the State, or to any justice of the peace of the county. Witness to have two days to prepare and not obliged to leave the county. Service and return of the subpœna to be in the usual way and failure of witness to appear subjects him to the penalties of the law. Witness fees to be allowed as in cases in this State. Time of notice, five days. If out of the county, for 50 miles or less, 5 days; 50 to 100, 10 days; between 100 and 250, 15 days; 250 to 400, 20 days. If to be taken in another State west of the Rocky Mountains, such time as the court or clerk may order, not over forty days. In foreign countries, as the court or clerk may order. Service may be made by the sheriff, coroner or constable, with the usual return notice. Service of notice as to time and place may be made on the attorney of a non-resident. If the witnesses reside out of the State or over 150 miles from place of trial either party may take the deposition by filing interrogatories with the clerk, giving opposite party notice, who shall have ten days to file cross-interrogatories. Officer taking, is vested with all the powers of a court, and to control the conduct of the parties. The officer to swear the witness, the questions to be reduced to writing before being put, and read to the witness, the

answers to be written down and then read to or by the witness. When deposition is complete, it shall be enveloped, together with the commission and other documents, sealed, the commissioner's name written across the seal, and directed to the clerk of the court, title of cause indorsed thereon and sent to the clerk of the court. If sent by private conveyance the person delivering must make an affidavit to the clerk, that papers have not been out of his possession or opened since received by him. The court or clerk may determine whether notice shall be given to each person where more than one person is plaintiff or defendant. The clerk shall certify in the deposition how received. The commissioner can subpœna witnesses. Penalty for failure to appear may be enforced by the tribunal having cognizance of the suit as in other cases. Depositions may be taken by any judge, justice of the peace, mayor or chief magistrate of a town or city, the clerk of any court, or any person properly commissioned or appointed by the court or clerk, not being interested, of counsel or related to either party, any notary public, in his county, and his certificate to show the county.

Persons may have testimony perpetuated by petitioning the circuit or chancery court judge, he will fix the time and place. Notice to a nonresident may be given by publication in such paper as the judge directs. The evidence of a notary public may be taken and perpetuated in matters officially done by him, without petition, upon notice to the other side. Deposition of a notary may be taken whether a suit be pending or not, on ten days' notice to the opposite party, if resident in the State, and forty days' notice out of it, to be read as evidence between the parties in any suit then or afterwards depending, should the notary die or remove from the State before the trial.

§ 323. **Texas.**—May be taken when the witness is a female, is aged, infirm, sick, or when official duty prevents attendance at court; when witness resides without the State or county, or is about to leave the State or county, and probably cannot be at the trial, or to perpetuate testimony. May be taken when residents or not of the county where suit is pending; provided, the failure to secure same shall not be regarded as want of diligence. The party shall file with the court clerk, or justice of the peace, as may be, a notice of his intention with interrogatories attached. The notice to state name and residence of witness, or where he can be found, and the suit to be used in. A copy of all shall be served on the adverse party, or his attorney of record, five days before the commission issues. If the adverse party is a corporation, or joint stock association, service may be on its president, secretary, treasurer, or local agent in the county where the suit is, or by leaving it at the principal office of such corporation during office hours.

On an affidavit, that either party is beyond the jurisdiction of the court, or cannot be found, or that he has no attorney of record, or his claimants have not become parties to the suit, and are unknown; by the party wishing the deposition, the clerk or justice of the peace shall cause a notice to be published in some newspaper for thirty days, stating the number of the suit, names or original parties, the court where pending, name and residence of witnesses, that a commission will issue on or after the thirtieth day.

The style of the commission shall be, "The State of Texas;" it shall be

dated and tested as other process; addressed to the officer authorizing and requiring him to summon the witness before him forthwith, to take his answers under oath to the direct and cross-interrogatories, if any, a copy shall be attached to the commission, and to return without delay the commission and interrogatories and the answers of the witness thereto, to the clerk or justice of the proper court, giving his official and postoffice address. Cross-interrogatories may be filed by either party before commission issues.

Who may take in the State; any clerk of the district court, any judge or clerk of the county court or any notary public of the county. In any other State, a clerk of a court of record having a seal, a notary, or commissioner of deeds in that State appointed by the governor of this State. In foreign countries; a United States minister, commissioner, charge d' affaires, consul general, consul, vice-consul, commercial agent, vice commercial agent, deputy consul, or consular agent resident in such country, or any notary public in that country. If witness fails to appear he shall be subpœnaed through the sheriff or constable of the county. Attachment, fine and imprisonment may follow. The answers shall be written, sworn to and signed by the witness. The officer shall certify that they were so taken before him, and seal it in an envelope with the commission and interrogatories, etc., write his name across the seal, indorse on the envelope the names of the parties to the suit and the witnesses, direct it to the clerk of the court or justice from whom issued. An interpreter may be summoned and sworn by the officer. Return may be made by mail, the party interested or other parties. The postmaster or his deputy shall indorse their receipt upon them, the clerk or justice likewise. If sent other than by mail, party shall make affidavit before the clerk or justice, that he received them from the officer and that they have not been out of his possession nor undergone any alteration. It may be opened by the clerk or justice at the request of either party or counsel; he shall indorse upon them the date and at whose request they were opened, signing his name; they shall remain on file for either party's inspection. When cross-interrogatories have been filed and answered, either party has the right to use the deposition. When the deposition has been filed in court one day before trial any objections to them shall be in writing and notice given to opposite counsel. They shall be read, subject to legal exceptions. Surplusage may be stricken out by the court upon objections thereto.

Deposition to perpetuate testimony may be made through the proper county court, after the same manner.

§ 324. **Utah.**—The testimony of a witness out of this State may be taken by deposition at any time after the service of the summons, or the appearance of the defendant, and in a special proceeding, at any time after a question of fact has arisen. May be taken in this State when the witness is a party to the action, or a person for whose immediate benefit the action is. When he resides out of the district, when the action is pending in the district court, and out of the county in other cases, in which his testimony is to be used; when he is about to leave the district or county where action is, and will probably be absent when required; when infirm, or his testimony is required on a motion, or in any other

case where the oral testimony is not required. If out of the State, for use in the State, may be taken upon a commission issued from the court under its seal, upon an order of the judge, or court, or probate judge, or justice of the peace under his hand in any case pending before either of such courts; on the application of either party, upon five days' notice to the other. If issued to any place within the United States, it may be directed to any person agreed upon by the parties, or, if they do not agree, to any judge or notary public, or person named or commissioned by the officers issuing it. If issued to any country out of the United States, it may be directed to a United States minister, ambassador, consul, vice consul or consular agent in the country, or to any person agreed upon by the parties. Parties may prepare their interrogatories, direct and cross; if they disagree, then the officer granting the commission shall prepare, at a day fixed in the order. If the parties agree it may be without written interrogatories.

Depositions for use in other States may be taken where witness resides in this State. If a commission has been issued, by producing same to a district or probate judge here, with satisfactory affidavit as to its necessity, he may subpœna the witness to appear and testify before the commissioner at a specified time and place. If a commission has not been issued, a district or probate judge, or justice of the peace, may on the presentation of a satisfactory affidavit, subpœna the witness to appear before him and testify. The testimony to be taken in writing, certified and transmitted to the court or judge requiring same, as the law of the State requires.

May be taken in this State, before a judge or officer authorized to administer oaths, on at least five days' notice to the adverse party of the time and place of examination, together with a copy of an affidavit showing that the case is within the statute; allowing also one day for every twenty-five miles of distance to the place of examination from the residence of the party, unless, for cause shown, a judge by order prescribes a shorter time, copy of which must then be served with the notice. Either party may attend the examination and put proper questions. The deposition must be read to the witness, corrected if desired, subscribed to by him, certified to by the officer, enclosed in an envelope, sealed and directed to the clerk of the court where action is pending, or to such person as the parties in writing may agree and delivered personally or by mail. It may be used by either party at the trial. Depositions to perpetuate testimony may be taken when required.

§ 325. **Vt.**—Who may take, in the State—Justices, notaries, masters in chancery, judges and registers of probate, shall have the same powers. Notary need not use his official seal. A resident commissioner of another State may take for use in the State of his appointment.

Out of the State—A judge of the Supreme Court may, in vacation, upon the application of a party in a suit pending in a county court, and on such notice to the adverse party, or his attorney, as the judge thinks reasonable, cause the clerk of his court to issue a commission to a person designated, to take the testimony of a person residing, or without the State; it shall be taken upon interrogatories settled by the order of the judge upon oral examination. May be taken by a justice so authorized by his State and a commissioner appointed by the governor of

this State. Depositions of witnesses without this State, taken agreeable to the laws of this State, or of the State or country in which they are taken, shall be allowed in any court. May be taken at any reasonable time after suit is commenced, in whatever court the suit is pending, or while suit is passing from one court to another. The party desiring it shall cause personal notice to issue from the magistrate taking, to the adverse party, or by citation signed by a justice, notary, or master in chancery, served like a writ of summons on the adverse party, or if he resides out of the State, on his attorney, if in the State. Such notice to state the time and place of taking, the name of the magistrate; give reasonable time to be present. A party may, without notice, take a deposition when the adverse party is a non-resident and has no attorney in the State; but such deposition shall be filed in court where the cause is pending, at least twenty days before the trial. A magistrate of competent authority shall issue subpœnas for witnesses at the request of either party. Attachment may issue to compel attendance, and a forfeiture of ten dollars and all just damages paid the party in whose behalf he is summoned. Refusing to depose when fees have been tendered shall cause commitment to jail, until he deposes and pays costs of commitment. Deposition can not be used unless the officer to take has appeared at the place within two hours of the time mentioned in the notice. The deposition subscribed and sworn to by the witness, the authority taking shall certify it, seal it up, and deliver it to the person at whose request it was taken, superscribed, "The within deposition of A. B. was taken and sealed up by C. D. (adding his official designation). No interested person can write the deposition. If returned to the clerk of the court unsealed or with the seal broken, it shall be rejected by the court. The provisions for taking to be used in the courts of this State, shall be applicable to the taking of depositions to be used in courts without this State.

Testimony in perpetuam may be taken on affidavit before a judge of the Supreme or county court.

§ 326. **Va.**—May be taken in this State by a justice or notary or a commissioner in chancery and, if certified under his hand, may be received without proof of the signature. If the party resides out of this State, or is out of it in the service thereof, or of the United States, it may be taken before any commissioner appointed by the governor of this State, any justice, notary, or other officer authorized to take depositions in the State where the witness may be, or if in a foreign country, before any person that the parties may agree upon in writing, or any American minister, plenipotentiary, charge d' affaires, consul general, vice consul, commercial agent appointed by the government of the United States, or any other representative of the United States in a foreign country, or the mayor, or other magistrate of any city, town or corporation in such country or any notary therein. The officer may administer an oath to the witness, take and certify the deposition with his official seal annexed, if he have none, then the genuinesness of his signature shall be authenticated by some officer of the State or country, under his official seal, unless the deposition is taken by a justice out of this State, but in the United States, or before some person agreed upon in writing by the parties, in which case it shall be received with-

out any seal or authentication of the signature. If taken before some person agreed upon in writing by the parties other than the officer authorized to take, the said writing must accompany the deposition, or the deposition can not be read. No commission is necessary to take a deposition except for proving a will. Reasonable notice to be given the adverse party of the time and place of taking. The deposition may be used in several suits between the same parties involving the same controversy. Notice may be served on the party's counsel, if the party is a non-resident. The deposition may be retaken without the consent of the court first obtained, if discreet. Depositions may be read in the case when the witness is dead, out of the State or one of its judges, or a superintendent of a lunatic asylum distant more than thirty miles from the place of trial, or in any public service or office, the duties of which prevent his attending the court, or be unable to attend from sickness or infirmity, or be more than a hundred miles from the place of trial. The latter may not excuse, if good cause be shown the court. When completed it shall be certified and returned by the officer taking it, to the clerk of the court where the case is pending or to the person before whom it is to be read. When received, the clerk or other person to whom sent, after endorsing thereon the time it was received, shall file it among the papers of the suit. It may be read by either party. Testimony may be perpetuated by filing with a commissioner in chancery a petition stating the matter.

§ 327. **Wash.**—May be taken to be read in evidence in an action when witness resides out of the sub-district (county), more than twenty miles from the place of trial; is about to leave and go more than twenty miles from the place of trial and remain; is sick, infirm, aged and unable to attend trial, or resides out of the state. Either party may commence taking testimony after service of summons upon the defendants. May be taken in this State before a judge of the superior court, justice of the peace, clerk of the supreme or superior court, mayor of a city, or notary public. Notice to be served on the adverse party, his agent or attorney of record, with time to attend by the usual route and three days' preparation, exclusive of day of service and the examination day; notice to state if any adjournment, also to specify the tribunal where it is to be used and the time and place of taking. Officer may compel attendance of witnesses within twenty miles of his abode, under penalty. Taking out of the State may be by a judge, justice or chancellor or clerk of a court of record, justice of the peace, notary, mayor, chief magistrate of any city or town, or by a special commission from any court of this State. Commission to take in or out of the State may issue from any superior court or judge thereof. The commissioner must be named in the commission by the clerk, under the court seal; deposition must be upon written interrogatories, unless the parties otherwise agree. Before granting, the party applying shall serve notice of application on the adverse party, stating time and place, notice to be served as before stated. The court or judge shall settle the interrogatories the clerk shall attach to the commission. If the adverse party is a non-resident and has no agent or attorney therein, notice may be by three consecutive weeks' publication in the county newspaper. If not printed, then in a State paper circulat-

ing generally in the county. It must contain all that is required in the notice and proved by affidavit. Deposition to be written by the officer or by the witness, or some disinterested person, in the presence and under the direction of the officer. It shall be carefully read to or by the witness, corrected and subscribed to by him. If taken up on notice it shall be certified by the officer. The officer to enclose it in an envelope, seal and direct it to the clerk of the court or justice, where case is pending, or as the parties in writing may agree. Delivery by mail or in person. It may be used by either party at the trial. It may be used in any other action in the same cause, between the same parties; provided, it shall have been filed with the court in the meantime. May be used on appeal.

Deposition to perpetuate testimony may be taken on a sworn statement in writing by the party in interest, by filing same in the superior court. If pertaining to land it shall be filed in the county where the land lies; in other cases where the parties reside.

§ 328. **W. Va.**—May be taken by a justice of the peace in his county. May in case pending, without a commission be taken in or out of the State by a justice or notary, commissioner in chancery, or before any officer authorized to take, in the county or State where they may be taken, and if certified under his hand, may be received without proof of the signature. On an affidavit that a witness resides out of the State, or is out of it in the service thereof, or of the United States; his deposition may be taken by or before any commissioner appointed by the governor of this State, or any justice, notary, or officer so authorized to take in the State where the witness may be. If in a foreign country, by or before such commissioner or commissioners agreed on by the parties or appointed by the court, or before any United States American minister, plenipotentiary, charge d' affaires, consul-general, consul, vice-consul, consular agent, vice deputy consular agent, commercial agent or vice commercial agent, or by or before the mayor or other chief magistrate of any city, town or corporation in such country or any notary public thereof. The person taking, may administer an oath to the witness, take and certify the depositions with his official seal annexed, and if he have none, the genuineness of his signature shall be authenticated by some officer of the same State or country, under his official seal. Reasonable notice to be given the adverse party of the time and place of the taking; in a suit in equity a deposition may be read if returned before the hearing of the cause, although after an interlocutory decree, if it be as to a matter not thereby adjudged, and be returned before a final decree. In a case at law when taken on such notice it may be read in such case, if when offered the witness be dead, out of the State, or one of its judges, or in any public office or service, the duties of which prevent attending the court, or sickness, infirmity, out of the county where case is pending; the latter on motion to the court before trial, may not excuse. After filing it may be read by either party.

Depositions to perpetuate testimony may be taken on petition to a commissioner in chancery.

§ 329. **Wis.**—May be taken on application to the court or presiding judge; court to determine whether on verbal or written interrogator-

ies; the deponent to be sworn, officer taking to insert every answer or declaration; deposition to be read and subscribed to by the witness, sealed and delivered to the clerk of the court where matter is pending. In the State may be taken by a justice of the peace, notary, court commissioner or other authorized officer; any time after action begun, notice to adverse party, agent or attorney, giving witnesses' names, officer, time and place. Twenty-four hours' service allowed in same city or town; if elsewhere in the State, two days allowed and one day additional, Sundays excepted, for every fifty miles' travel, after the first ten miles from the place where notice is served, when taken within the State, and time of one day for each three hundred miles from the place where notice is served. When taken without the State, commission may issue from any court of record. The party desiring it may prepare his interrogatories, state the commissioner proposed, name of witness, residence of each, serve a copy on the adverse party; within ten days commission will issue, subject to the objections of adverse party. Before whom taken outside the State—Any judge or justice, court commissioner or master in chancery of any court of record in the United States or State, notary, justice of the peace, commissioner of deeds appointed by the governor of this State, or special commissioner. If for use in a court not of record, not more than thirty days' notice to be given; if for a court of record, ten days' notice to be given. One day's notice shall be sufficient in case of the depositions of additional witnesses desired to be examined, given during the course of the taking of any deposition where the parties on each side appear. In case the officer fail to appear, it may be taken before any other officer authorized by law. But in any action in any court, no notice of the taking need be given to a defendant, who having been served with process fails to appear within the time allowed. May be taken in a foreign country by commission by any judge or clerk of a court of such country, any notary, consul, vice-consul, deputy consul of consul agent of the United States, resident in such country, by any officer authorized by the laws of the United States, or by a commissioner or commissioners, whether otherwise authorized or not, appointed for that purpose by such commission. When it shall appear to the judge of the court from which the commission issues, that the witness is unable to speak or understand the English language, such judge may appoint a competent and disinterested person to translate the commission, rules, interrogatories, etc. Same shall be sent to the commissioner in place of the original papers, or such as have been translated. Upon the return of the commission and deposition such judge shall in like manner cause the same to be translated into English, and all other proceedings; such translation shall be filed. The translator shall append his affidavit to the translation, stating that he knows both languages and that he truly translated and that it is correct; the same effect shall be had as if all the proceedings were in English, but the trial court, upon the deposition being offered in evidence, may admit the testimony of witnesses learned in such foreign language for the correction of errors, and if it shall appear that the first translation was in any respect so incorrect as to mislead the witness, the court may in discretion continue the cause for the further taking of testimony.

Deposition to perpetuate testimony—May be taken before any judge of a court of record on filing statement of what is desired, etc. Fee—Witness per day, $1.50; half day, 75c; justice taking 12c per folio. Each party to pay his commissioner and witnesses.

Subpœna may issue for the attendance of witnesses in this or other state.

§ 330. **Wyo.**—May be taken in this State before a judge or clerk of the supreme or district court, a justice of the peace, notary public, mayor or chief magistrate of a municipal corporation, or any other person authorized to administer oaths, or any person empowered by a special commission. May be taken out of the State before a judge, justice or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any municipal corporation, a commissioner appointed by the governor of this State to take depositions, or any other person authorized to administer oaths, or any person authorized by a special commission from this State; provided, that when a deposition is taken by an officer not having a seal, his jurat shall be accompanied by a certificate of the clerk of the county in which same is taken, setting forth the fact that the officer is such officer, and that his signature is genuine. Either party may commence taking testimony by deposition after service upon the defendant. Officer taking must not be a relative or interested in the action. Any court of record of the State, or a judge, may grant a commission to take depositions within or without the territory, to be issued by the clerk under the seal of the court. The persons to whom issued must be named therein, and deposition must be taken on written interrogatories unless parties otherwise agree. Written notice to be given the adverse party, unless taken under special commission, must specify the action, name of the court where it is to be used, the time and place of taking, and in case the deposition of a party to the suit be taken, it shall not be used in his own behalf, unless the notice so specifies; it shall be served upon the adverse party, his agent or attorney of record, or left at their usual abode. It shall only be used against such parties as are so served. Sufficient time, exclusive of Sundays, day of service, and day of preparation, and time for travel, shall be allowed. May be adjourned from day to day if so stated in the notice. Notice by publication may be given when adverse party is a non-resident, and has no agent or attorney of record in the State, the publication must be for three consecutive weeks in a newspaper published in the county; if no newspaper there, then in one published in the State circulating generally in the county; proved by affidavit; deposition to be written in the presence of the officer, by him or the witness or some disinterested person, and subscribed to by the witness. Officers' certificate to show that the witness was sworn to testify the truth, the whole truth, and nothing but the truth. That the deposition was reduced to writing by some proper person, and subscribed to in his presence. That it was taken at the time and place specified in the notice. It shall be sealed in an envelope indorsed with the title of the cause, the name of the officer taking; he shall address and transmit it to the clerk of the court of the action, there to remain unopened subject to the court's orders, or the request of the party to the action, or his attorney. It

must be filed in court at least one day before trial. If taken out of this State by an authorized officer it may be taken in this form or in the form authorized where taken; in the latter case the certificate shall be deemed prima facie, as made in accordance with the laws of the place where made when it so certifies. Subpœna for witness shall be issued by the officer. A witness shall not be compelled to go out of his county. Depositions may be used only when the witness does not reside in, or is absent from the county where the action is pending; when dead, aged, infirm or imprisoned; when the testimony is required upon a motion, or the oral examination is not required. It may be read in any stage of the action or in any other action upon the same matter, between the parties. A deposition taken by an authorized officer having a seal of office, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal, and no other act of authentication is required. If he has no official seal, and is not taken in this State, it shall be certified and signed by the officer and further authenticated, either by parol proof in court or by the certificate and seal of the secretary or other officer of the State who is the custodian of the great seal of the State, or the certificate and seal of the clerk or prothonotary of any court of the State where taken, attesting that such officer was at the time of taking authorized to take. If taken in this State by an officer not having a seal, or within or without this State under a special commission, the official signature of the officer or commissioner is sufficient, and when not certified according to law, the fact neglected may be shown by parol proof. Fees: 15c per folio and $5 for all other services.

§ 331. **Canada.**—Of witnesses outside of the province may be taken by commission upon interrogatories. Open commission can issue by consent of parties.

CHAPTER V.

NEGOTIABLE INSTRUMENTS.

§ **332. Responsibility.**—This chapter treats of one of the most responsible parts of a notary's duties. Grave complications are constantly arising from ignorance or neglect on the part of the notary, causing serious loss and damage, either to the notary himself, his bondsmen or his principals. A notary should have some knowledge of the law of commercial papers—the more the better. The moment a notary receives commercial paper for demanding acceptance, payment or protest, he immediately becomes the agent of the owner of the paper, his duty is to him and all others affected, by the notary's official acts. An agreement by him to share any portion of his legal fees with a bank or others, to induce the placing in his hands of such papers, is void, on the ground of public policy. A notary, as a public officer, is independent of all outside influences. Mere favoritism in his selection for the official service cannot be regarded in any such agreement.[1]

§ **333. Liability.**—The doctrine was established in New York at an early period and has since been maintained, that a bank receiving negotiable paper for collection, in the absence of an express agreement or recognized custom limiting its liability, stands in the attitude of an independent contractor, and that if, in the course of the performance, it employs a notary to present the paper for payment and give the proper notice to charge the parties, the notary is the agent of the bank, and not of the depositor or owner of the paper. The bank is therefore liable for his negligence. The same rule formerly prevailed in Louisiana and South Carolina, but has since been overruled. It appears to be approved in Indiana, and is unqualifiedly in New Jersey. It is also approved in Kansas. But the weight of authority is believed to be that if the bank exercises due care in the selection of a competent notary, it is not liable for his neglect in the performance of the duty

[1] Ohio Nat. Bank of Washington v. Hopkins, 8 Court of App. D. C., 146; supported by Britton v. Nichols, 104 U. S., 757.

entrusted to him. Where, however, 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 officer of the bank, and the bank will be liable for his negligence or default.[2]

A bank receiving commercial paper for collection, by placing it in the hands of a notary public for protest, is not liable for failure of the notary to perform his duty, under the code of Mississippi. The liability rests upon the notary and his sureties.[3] If no loss is sustained by reason of a notary's defective protest, no damages can be claimed against him.[4]

§ **334. Negligence.**—He is liable for negligence in presenting or protesting negotiable papers.[5]

§ **335. Recovery.**—Recovery cannot be had against a notary for negligent omission to give notice of protest to an indorser where the holder could but would not resort to other grounds for charging the latter.[6]

§ **336. Negotiable instruments** is a term constantly applied to bills of exchange, promissory notes and checks, which are made negotiable by being made payable to order or to bearer.[7]

§ **337. 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.[8] Bills are either inland or foreign. An inland bill is a bill drawn and payable within the same country; all others are foreign bills.[9] The States of the Union are foreign to each other within the meaning of this article.[10] An architect's certificate notifying the owner of a building that a certain sum was due the contractors which was endorsed by the owner in the form of an order to his banker, is a check and not a bill of exchange.[11] The law recognizes as bills of

[2] Mechem's Agency, Sec. 514; supported by Ayrault v. Bank, 47 N. Y., 570; Allen v. Merchants Bank, 22 Wend., 215; Bank of Lindsberg v. Ober, 31 Kas., 599; Bird v. Bank, 93 U. S., 96.

[3] Tiernan v. Com'l Bank of Natchez, 7 How. Miss., 648; Bowling v. Arthur, 34 Miss., 41.

[4] Franklin v. Smith, 21 Wend., 624.

[5] Mechems P. O., Sec. 704; supported by Allen v. Suydam, 20 Wend., 321; Exchange Nat. B'k v. Third Nat. Bank of N. Y., 112 U. S., 276; Warren Bank v. Parker, 8 Gray, 221; Bowling v. Arthur, 34 Miss., 41; Dorchester & M. Bank v. New Eng. Bank, 55 Mass., 177.

[6] Sutherlands Damages, Sec. 90; supported by Franklin v. Smith, 21 Wendell N. Y., 624; Emerling v. Graham, 14 La. Ann., 289.

[7] Burrill's Law Dictionary.

[8] Bouvier's Law Dict'y.

[9] Benjamin's Chalmers Bills p. 38.

[10] Benjamin's Chalmers Bills and notes, p. 39; Freeman's Bank v. Perkins, 18 Me., 292; Mason v. Dousay, 35 Ill., 424; Dickens v. Beal, 10 Peters, 571.

[11] Ind. B'k v. Bowes, 165 Ill., 70.

exchange only instruments of writing for the payment of money.[12] If drawn in Wisconsin, but dated in Illinois, and is between citizens of Illinois, it is an inland bill.[13]

§ **338. Promissory note defined.**—Is a written engagement by one person to pay absolutely and unconditionally to another person therein named, or to his order, or to the bearer, a certain sum of money at a specified time, or on demand, or at sight.[14]

I. PRESENTMENT FOR ACCEPTANCE.

§ **339. What should be presented for acceptance.**—Presentment for acceptance is necessary in the case of a bill of exchange payable at or after sight. In other cases, in the absence of express stipulation, it is optional.[15]

§ **340. Who may present.**—Any person in possession of a bill of exchange may present it for acceptance.[16]

§ **341. Time for presenting.**—The holder of a bill of exchange, payable at or after sight, is bound either to negotiate it away or to present it for acceptance within a reasonable time. If he omit to do so, the drawer and prior indorsers are discharged. If payable otherwise it may be presented at any time before maturity.[17]

§ **342. An acceptance** is the assent in due form by the drawer of a bill of exchange to the order of the drawer. It may be: Mode—1st. In writing on the bill, or on a separate paper. 2nd. Oral, implied from acts of the drawer. 3rd. A written or verbal promise to accept, either before or after the existence of the bill. Time—Such promise must be made within a reasonable time before or after the issue of the bill. It must specify the bill to be drawn so as to distinguish it from any other. Promise—It must be taken by the holder on the faith of such promise.[18]

[12] Bradley v. Moores, 4 Ill. (2 Scam.), 182.

[13] Strawbridge v. Robinson, 10 Ill. (5 Gil.), 470.

[14] Hall v. Farmer, 5 Denio (N. Y.), 484; supported by Story on Promissory Notes, Sec. 1; Chit. on Bills, ed. 1839, p. 548; Cooledge v. Ruggles, 15 Mass., 387; also Klauber v. Biggerstaff, 47 Wis., 551.

[15] Benjamin's Chalmers B. & N., p. 152; supported by Waller v. Stetson, 19 O. S., 400; Allen v. Suydam, 20 Wend., 323.

[16] Benjamin's Chalmers B. & N., p. 153; Freeman v. Boynton, 7 Mass., 483.

[17] Benjamin's Chalmers B., N. & C., pp. 153-55; Strong v. King, 35 Ill., 9; Pryor v. Bowman, 38 Ia. 92; Wallace v. Agry, 4 Mason, 336; Walsh v. Dart, 23 Wis., 334.

[18] Benjamin's Chalmers Bills & Notes, p. 42, 43, 44; Jones v. Bank, 34 Ill., 313; Scudder v. Bank, 91 U. S., 406; Sturges v. Bank, 75 Ill., 595; Nelson v. Bank, 48 Ill., 37; Coffman v. Campbell, 87 Ill., 98; First Nat. B'k v. Pettit, 41 Ill., 492.

§ **343. To whom.** — It must be made to the drawee personally, or to some person who has authority to accept or refuse acceptance on his behalf.[19]

§ **344. Manner.** — An oral acceptance in Illinois of a bill of exchange is valid.[20] It is usually indicated by writing across the face of the bill the word "Accepted," adding the date and party's signature. A promise in writing to accept a bill of exchange will not, in law, amount to acceptance, unless the bill was taken on the strength of the letter.[21] A letter written within a reasonable time, describing a bill of exchange and promising to accept it, is, if shown to the person who afterwards takes it on the strength of the letter, a virtual acceptance, binding the person making the promise.[22]

§ **345. Delay.**—In order to charge the indorser on a note the holder must use due diligence.[23] Delay of more than a year in the proper presentation of a draft agreed to be accepted, is unreasonable.[24]

§ **346. Days of grace.**—The law of the place of payment must govern as to whether days of grace are allowed on commercial paper.[25] It is premature to bring an action on a promissory note on the last day of grace.[26]

An instrument drawn payable at a future date is treated as a bill of exchange and is entitled to days of grace. The allowance of days of grace is to be determined by the law of the place.[27] Days of grace abolished in California, Idaho, Montana, Nevada, Oregon, Utah, Kansas, Illinois, Connecticut, Vermont, New York, Pennsylvania, New Jersey and Virginia.

II. PRESENTMENT FOR PAYMENT.

§ **347. Presentment for payment.** The date of the note is only prima facie evidence of the maker's residence, and in all cases due diligence must be exercised by the holder to discover the mak-

[19] Benjamin's Chalmers B. & N., p. 156; Sharpe v. Drew, 9 Ind., 281.

[20] Scudder v. Union Nat. B'k, 91 U. S., 406.

[21] McEvers v. Mason Hodgson & Co., 10 Johns. R., 207; Goodrich & DeF. v. Gordon, 15 Johns. R., 6; Mayhew v. Prince, 11 Mass., 54; Parker v. Greele, 2 Wendell, 545; Kennedy v. Geddes & Co., 8 Porter (Ala.), 258.

[22] Coolidge v. Payson, 2 Wheat., 61; Kennedy v. Geddes, 8 Porter (Ala.), 263.

[23] Baer v. Lichten, 24 Ill. App., 311.

[24] First Nat. B'k v. Bensley, 2 F. R., 609.

[25] Skelton v. Dustin, 92 Ill., 49.

[26] Weisinger v. First Nat. B'k, 106 Mich., 291.

[27] Bowen v. Newell, 8 N. Y., 190; id., 13 N. Y., 290.

er's residence.[28] It has been held that if, after the making and endorsement of the note, the maker absconds or moves out of the State, the holder is not bound to follow him to make the demand.[29] If he subsequently removes to another place in the same State, reasonable diligence must be made to discover his residence and make demand there.[30] It seems also that if the maker of a promissory note resides and has his domicile in one State, and actually dates, makes and delivers it in another State, it will be sufficient for the holder to demand payment at the place where it is dated, if the maker cannot personally upon reasonable inquiries be found within the State, and has no known place of business there.[31] If demand at the place designated in the contract became impossible, as if the bank has ceased to exist, then demand at the place is excused.[32] It is the existence, or non-existence of the bank, as a place of payment, that excuses the want of demand at that place; and not the state of its assets, nor their location, nor the amount or character of its business.[33] When a particular place of payment is agreed upon, and the demand is not excused or made at such place, no personal demand of the maker can in any way fix a liability on the endorser of the paper sued upon.[34] If a drawer of a note or acceptor of a bill, having a regular place of business, is absent from it, or has absconded before the day of payment, or if his house be closed, notice of such fact is equivalent to notice of the demand and dishonor of the paper.[35]

§ **348. To whom demand made.** — Demand may be made of the maker of the note, or of the acceptor of the bill, or of their resident agent if the parties themselves cannot be conveniently reached. The maker of a note should be present personally or by agent at the place of payment, prepared to make the payment.[36] It is not necessary that the person making the presentment should be personally acquainted with the party in charge where the paper is payable.[37] In the absence of proof to the contrary it is sufficient to show a demand for payment of the drawer and his refusal.[38]

[28] 3rd Kent, 96.
[29] Andrews v. Drake, 14 Johnson, 114.
[30] Story on Prom. Notes, Sec. 236.
[31] Story's Prom. Notes, Sec. 236, citing Hepburn v. Toledano, 10 Martin (La.), 643.
[32] Bynum v. Apperson, 65 Tenn., 632.
[33] Bynum v. Apperson, 65 Tenn., 632.
[34] Bynum v. Apperson, 65 Tenn., 632.
[35] Bynum v. Apperson, 65 Tenn., 632.
[36] B'k of Cooperstown v. Woods, 28 N. Y., 561.
[37] B'k of Cooperstown v. Woods, 28 N. Y., 561.
[38] Hunt v. Maybee, 7 N. Y., 266.

Bills of exchange are always dishonored before they are handed to a notary to protest. The presentment and demand are practically of no moment to anyone. The material thing is notice of dishonor.[39] Diligent search must be made for the maker before protest, otherwise the note is not dishonored and the indorsers are discharged from liability. If payment has been made by an indorser under a notice of dishonor he is entitled to recovery and interest as damages from the time of payment.[40] No demand or notice is necessary on an absolute guaranty.[41] Nor when the drawer and drawee are the same.[41a]

§ **349. Time.**—The time of presentment for payment of a note is at its maturity which is indicated on the face of the note. The time of presentment for a draft is likewise indicated on its face. The holder's neglect to present for payment at maturity, only affects his remedy against the drawer in case of the latter's insolvency occurring in the meantime, or some event to the prejudice of the drawer.[42] Where no time is specified, the law implies that it must be presented within a reasonable time. More than a year is unreasonable.[43] In case of non-payment, notice must be given promptly to the drawer, to charge him. Reasonable time depends on peculiar facts and must be judged accordingly.[44] A note payable Feby. 1st, 1839, presented at bank and protested June 9, 1842, did not discharge the maker in the absence of proof that he had funds there at the appointed day, nor that he has sustained any loss or injury by the delay in presentment.[45] In the absence of statutory provision to the contrary, a bill presented for payment on the last day of grace is presented in proper time.[46]

§ **350. Hour.**—It may be presented any reasonable hour of the day, during business hours at the place of business or before the person retires for rest at the dwelling. A note presented during business hours, at the place of payment, and payment demanded, which the maker refused, the protesting being made on the same

[39] Commercial B'k of Ky. v. Varnum, 49 N. Y., 269, citing Chitty on Bills, 457 (13th ed.).

[40] Talbot v. Nat. B'k of the Commonwealth, 129 Mass., 67.

[41] City S. B'k v. Hopson, 53 Conn., 453.

[41a] Kaskaskia Bridge Co. v. Shannon, 1 Gil., 15.

[42] Springfield M. & F. Ins. Co. v. Tincher, 30 Ill., 399.

[43] First Nat. Bk. of Lacon v. Bensley, 2 F. R., 609.

[44] Montelius v. Charles, 76 Ill., 303.

[45] Bradford v. Cooper, 1 La. Ann., 325; Wallace v. McConnell, 13 Peters, 136.

[46] Cook v. Renick, 19 Ill., 598; Elsten v. Dewes, 28 Ill., 438; Reese v. Mitchell, 41 Ill., 365.

day was not premature.[47] When not presented at a bank it may be presented any hour before bed time.[48]

§ **351. Place.**—If not indicated on the instrument where it is payable, then it should be presented at the party's place of business during his business hours. If they have no place of business, then at the dwelling, or wherever they can be found. No formal demand is necessary where the bill is payable at a bank.[49] Where the maker and indorser of a bill of exchange reside in one State and the payment is to be made in another State, the parties elect to make the bill foreign and protest must be made where it is payable.[50] The notary's protest is competent evidence of its non-payment. The law of the place where the bill is payable governs as to time of presentment and payment.[51]

§ **352. Mode.**—The person who presents a bill for payment must produce it and must be ready and willing to deliver it up on receiving payment. When the bill is not produced, but payment is refused on some other ground, the bill is deemed to have been duly presented.[52]

§ **353. Excuse for delay.**—An impossibility in presenting for payment is about the only excuse admissible. The inquiry will always be whether, under the circumstances, due diligence has been used. These circumstances must be stated in the certificate, that the court and jury may see whether there has been due diligence. There must appear some fact to excuse demand; as that the maker could not be found at his last place of business, or that he had absconded, left the State, his place of residence deserted, or that the endorser, and others likely to know, had been inquired of and could not tell, or some other fact as recognized in the books. The liability of the endorser depends upon the diligence of the holder in demanding payment of the maker.[53] The question of diligence is one of law and fact, to be determined by the court and jury and not to be certified by the notary.[54]

III. PROTEST.

§ **354. Protest** is a notarial act, made for want of payment of a promissory note, or for want of acceptance or pay-

[47] Guignon v. Union T. Co., 53 Ill. App., 581.
[48] Skelton v. Dustin, 92 Ill., 49.
[49] Ning v. Beach, 31 Ill. App., 78.
[50] Warren v. Warren, 16 Me., 259.
[51] Pierce v. Indseth, 106 U. S., 546; Wooley v. Lyon, 117 Ill., 244.
[52] Benjamin's Chalmers B. & N., p. 165.
[53] Cockrill v. Lowenstein & Bro., 65 Tenn., 206.
[54] Cockrill v. Lowenstein & Bro., 65 Tenn., 206.

ment of a bill of exchange, by a notary public, in which it is declared that all parties to such instruments will be held responsible to the holder for all damages, exchanges, re-exchange, etc.[55] The term is not applicable, technically, to promissory notes, but by general usage includes all acts necessary by law to charge an endorser. In business, when a note is said to be protested, something more is understood than the official declaration of a notary, a request by an indorser to the indorsees "not to protest, that he would waive the necessity thereof," includes all acts popularly accepted by the term. The only thing necessary for the indorsees to do is to demand payment of the maker and give notice to the indorser.[56] It includes all that is necessary to hold the indorsers.[56a]

§ **355. Protest is to charge the indorser.**—The protest of a foreign bill must be made in order to charge the drawer or indorser, unless some good excuse can be made for the omission; but the omission to allege protest in an action, if an objection at all, is only one of form. It cannot be reached by general demurrer.[57] The protest is evidence of demand and protest.[58] This is the formal notice to the world of the dishonor of a negotiable instrument, notice of which is sent to each and every party interested, either as maker, drawer, indorser or acceptor of it. The statute of Illinois defining the duties of notary public "protests" are but declaratory of their duties in this State upon the subject.[59] No authority is given by statute to any notary to certify a fact independent of the protest.[60] A notary's protest of commercial papers must be made on his own knowledge of the facts, and not on hearsay.[61] It must be necessary in order to fix the indorser's liability, otherwise he cannot be subjected to costs of protest.[62]

§ **356. What should be protested.**—Any negotiable instruments are subject to protest. An inland bill need not be protested.[63]

§ **357. Place of.** — The law of the place where the notes are payable govern as to time and mode of presentment for payment, manner of process and giving of notice.[63a] Where payment

[55] Bouvier's Law Dict'y.
[56] Coddington v. Davis, 1 N. Y., 186.
[56a] City S. Bk. v. Hopson, 53 Conn., 453.
[57] Hart v. Otis, 41 Ill. App., 43.
[58] Dickens v. Beal, 10 Peters, 571.
[59] Skelton v. Dustin, 92 Ill., 49.
[60] Whitman, etc., v. Farmers Bk. of Chattahoochie, 8 Porter (Ala.), 258.
[61] Williamson v. Turner, 2 Bay (S. C.), 410.
[62] McKay v. Hinman, 13 Neb., 33.
[63] Smith v. Curlee, 59 Ill., 221.
[63a] Wooley v. Lyon, 117 Ill., 244; Pierce v. Indseth, 106 U. S., 546.

is demanded at the place the note is, by its terms, to be paid, other demand upon the maker is not required.[63] The notary's certificate of protest is presumptive evidence of presentment during the proper business hours. These, except where the paper is due from a bank, for the purpose of presenting a note or bill for payment, range until bed time in the evening.[64]

§ **358. By whom.**—A notarial certificate of protest stating that the presentment and demand was made by the notary, when it was made by his clerk, voids the certificate.[65] The protest must be made by a notary public or other person authorized to act as such.[66] Where protest is necessary, the notary must present the bill in person, unless power has been given to him to substitute another in his place or where custom warrants a presentment by deputy.[67] The law presumes that the holder of a negotiable instrument acquired it without notice of anything to impeach his title. The title of a bona fide holder for value on accepted draft indorsed in blank, is not affected by the fact that the party from whom he received it, before its maturity, had possession of it for certain purposes and misappropriated it.[68]

§ **359. Form.**—The protest should contain: First. An exact copy of the bill, or the bill itself annexed. Second. A statement of the parties for whom and against whom the bill is protested. Third. The date of protesting and the date where protest is made. Fourth. A statement that acceptance or payment was demanded by the notary; the terms of the answer, if any; or a statement that no answer was given, or that the drawee or acceptor could not be found. Fifth. A reservation of rights against the party liable. Sixth. The subscription and seal of the notary making the protest. A protest may be in duplicate or triplicate.[69]

§ **360. Foreign bill.**—A foreign bill of exchange should be noted for protest on the day that it is dishonored. When a foreign bill of exchange is dishonored it must be duly protested for non-acceptance or non-payment, as the case may be, in order that the holder may preserve his right of recourse against the drawer and in-

[63] Guignon v. Union T. Co., 53 Ill. App., 581.
[64] Skelton v. Dustin, 92 Ill., 49.
[65] Gowtry v. Doane, 51 N. Y., 84.
[66] Benjamin's Chalmers Bills & Notes, p. 177.
[67] Mechem's P. O., Sec. 704; Com. Bank v. Varnum, 49 N. Y., 269; Cribbs v. Adams, 13 Gray, 597.
[68] Collens v. Gilbert, 94 U. S., 753; Shaw v. Rw'y Co., 101 U. S., 563; Brown v. Sheppard, 95 U. S., 481; Soloy v. Bank, 39 La. Ann., 90.
[69] Benjamin's Chalmers B. & N., 177.

dorsers. When the acceptor of a bill of exchange becomes bankrupt before its maturity it may be protested for better security.[70]

§ **361. Formal preparation of protest.**—Before a protest for dishonor can be made, the notary himself, unless by a statute, or a well-established custom, a deputy is authorized, must make a presentment for acceptance or payment. Then, in case of refusal, it is his duty to "note" the fact, at the time, on the very day of dishonor.[71]

§ **362. Noting.**—The "noting" consists of the notary's initials, the date, and the amount of the noting charges, and sometimes a statement of the cause of dishonor, e. g., "no effects," or "no advice," or "no account." The noting is usually made on a ticket attached to the bill.[72] This is done to charge the memory of the notary. After noting, the bill is then protested.[73]

§ **363. Protesting.**—This is a formal declaration annexed to the bill, or a copy, that the bill has been presented for acceptance, which was refused, and why, and that the holder intends to recover all damages, expenses, etc., which he or his principal, or any other party to the bill, may sustain on account of non-acceptance.[74]

§ **364. Statement of facts.**—A statement of the facts in connection with a notary's protest cannot vitiate a protest otherwise properly made. A necessary statement or averment, well stated, is not weakened or in any manner affected by the statement of facts not necessary to be stated.[75]

§ **365. Record is prima facie evidence.**—The statute, making a notary's record of the protest of bills which he is required to keep, or a certified copy thereof, prima facie evidence of the facts therein stated, applies to all bills, both domestic and foreign. Such record or copy is prima facie evidence of demand of payment of the drawee, and of notice of dishonor to the drawer. It is liable, however, to be rebutted by other competent evidence.[76] A certificate of protest by a notary of another State, under the notary's

[70] Benjamin's Chalmers Bills, N., Etc., pages 178, 179, 180; Ocean Bank v. Williams, 102 Mass., 141; Jaccard v. Anderson, 37 Mo., 91.

[71] Proffatt's Notaries, p. 267; Daniel's Neg. Inst., Vol. 2, fourth ed., p. 10.

[72] Benjamin's Chalmers B. & N., p. 177; Daniel's Neg. Inst., 4th ed., V. 2, p. 11; Chitty on Bills, 333 (11th Am. ed.).

[73] Bailey v. Dozier, 6 How., 23; Dennistoun v. Stewart, 17 How., 607.

[74] Chitty on Bills, 333, 11th ed.

[75] Reapers Bank v. Willard, 24 Ill., 439.

[76] Montellius v. Charles, 76 Ill., 303.

seal, is prima facie evidence that the act had been done by him.[77] In the case of inland bills of exchange, the notarial protest is not evidence of a demand of payment on the drawee nor of notice of non-payment to the drawer.[78] The notarial certificate of protest is not evidence of that fact.[79] A notarial certificate of protest under seal is good on mere production.[80]

§ **366. Notary—Signature.**—A note protested by Wm. H. Scudder Jr., and signed Wm. H. Scudder, sworn to by Wm. H. Scudder Jr., does not justify the inference that two different persons officiated in the protest.[81] Under the civil law the signature alone of the notary was sufficient without the seal. Many English writers mention only the signature. The protest is said to be a part of the constitution of a foreign bill of exchange. The form is governed by the lex loci contractus (where the contract was made) and when required cannot be dispensed with. When the protest, or authenticated copies, is to be received in evidence, the lex fori (court where received) governs.[82] Courts take judicial notice of the law merchant, which prevails throughout the United States, except in States where it is so far modified by statute. A notarial protest is known under that law, and it requires no witnesses in conjunction with the notary. His act, certified by his signature and official seal, suffices.[83]

§ **367. Protesting national bank notes.**—Whenever any national banking association fails to redeem in the 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

[77] Fletcher v. Ark. Nat. B'k, 62 Ark., 265.

[78] Kaskaskia Bridge Co. v. Shannon, 1 Gil., 15.

[79] McAllister v. Smith, 17 Ill., 328.

[80] So held in Johnson v. Brown, 154 Mass., 105; supported by Porter v. Johnson, 1 Gray, 175; Pierce v. Indseth, 106 U. S., 546; Browne v. Phila. B'k, 6 S. & R., 484; Townsley v. Sumivall, 2 Pet., 170; Carter v. Burley, 9 N. H., 558, 566.

[81] Guignon v. Union T. Co., 53 Ill. App., 581.

[82] Bank of Rochester v. Gray, 2 Hill (N. Y.), 227.

[83] Bradford v. Cooper, 1 La. Ann., 325.

amount demanded, and the fact of the non-payment thereof. The notary public, on making such protest or upon receiving such admission, shall forthwith forward such admission or notice of protest to the comptroller of the currency, retaining a copy thereof. If any 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.[84]

After a default on the part of an association to pay any of its circulating notes has been ascertained by the comptroller, and notice (if forfeiture of the bonds thereof) has been given by him to the association, it shall not be lawful for the association suffering the same to pay out any of its notes, discount any notes or bills, or otherwise prosecute the business of banking, except to receive and safely keep money belonging to it, and to deliver special deposits.[85]

Where no stipulation for interest is made in the note it can only be allowed from the time of protest.[86]

IV. NOTICE OF PROTEST.

§ **368. N** .—It is not the notice of demand and nonpayment that fixes the liability of the indorser, it is the fact of such presentment and dishonor and notice. On a foreign bill, the notarial protest and seal is evidence of the fact, but in case of a promissory note it is not (unless in case of the removal or death of the notary); the demand and refusal must be proved by other evidence.[87] A demand of payment and notice to the indorser is sufficient to charge the indorser. Waiving the necessity of protest by the indorser dispenses with both. Notice may be written or verbal.[88]

§ **369. To whom notice given.**—When a bill is dishonored, due notice of dishonor, unless excused, is a condition precedent to the liability of the drawer or any indorser thereof.[89] Notice should be sent to all the parties meant to be held liable for payment.[90] Each indorser of a bill or note is entitled to notice, and

[84] U. S. Rev. Stat. 1878, Sec. 5226.
[85] U. S. Rev. Statutes, Sec. 5228.
[86] Bradford v. Cooper, 1 La. Ann., 325.
[87] Barkalow v. Johnson, 16 N. J., 397.
[88] Coddington v. Davis, 1 N. Y., 186; Cayuga Co. Bk. v. Warden, 1 N. Y., 413.
[89] Benjamin's Chalmers B. & N., p. 182; Kupfer v. Galena Bank, 34 Ill., 328; Walker v. Rogers, 40 Ill., 278; Wood v. Surrells, 89 Ill., 107.
[90] Daniels Neg. Inst., p. 46.

so also is the drawer of a bill payable to a third party, as bills generally are. The acceptor of a bill and the maker of a note are not entitled to notice, they being the primary debtors; nor are those who, from their irregular execution of the instrument are adjudged joint makers or sureties, their contract being to pay in default of the principal at all events.[91] When an indorser becomes bankrupt and assigns, notice of protest to his assignee will bind such indorser.[92] In Illinois the maker and indorsers of every bill, note or written instrument protested must be notified.[93] A primary debtor, not an endorser, is not entitled to notice of dishonor of a note.[94] Notice of refusal to pay must be given to the drawer, where he has or expects funds in the hands of the drawee, for the protection of both.[95] Failure to promptly present a check for payment and to promptly notify the drawer of its non-payment does not discharge the drawer unless he has suffered some loss or injury thereby.[96] A bill of exchange must be presented to the drawee within a reasonable time, and where payment is refused, notice must be given promptly to the drawer, otherwise he cannot be held liable.[97] Where a bill indorsed by a partnership is dishonored, notice to either of the late partners is sufficient to bind all.[98] Where there are several successive indorsers, the holder may, and ordinarily does, give notice to all, with a view to preserve his recourse upon all. But he is not bound to give notice to all, in order to bind those to whom he does give it. He may, if he please, give notice to any one or more of the indorsers, who are then made liable to him; and the indorser receiving notice must then notify antecedent indorsers in order to assure himself. It is not, therefor, necessary for the notary to take any notice of the residence of the maker of the note, or make any inquiry as to the residence of any of the endorsers except the last.[99]

If the party entitled to notice be dead, and this is known to the holder, notice should be sent to his executor or administrator. The

[91] Walker v. Rogers, 40 Ill., 278.
[92] Am. Nat. B'k v. Junk Bros., 94 Tenn., 624.
[93] S. & C. Ill. Anno. Stat. 1896, p. 2818.
[94] Guignon v. Union T. Co., 53 Ill. App., 581.
[95] Kupfer v. Galena Bank, 34 Ill., 328; Welch v. Taylor Mfg. Co., 82 Ill., 579.
[96] Ind. B'k v. Bowes, 165 Ill., 70.
[97] Industrial B'k v. Bowes, Jr., 165 Ill., 70; Montelius v. Charles, 76 Ill., 303; Bickford v. First Nat. Bk. of Chi., 42 Ill., 238.
[98] Hubbard v. Matthews, 54 N. Y., 43; supported by Brown v. Turner, 15 Ala., U. S., 832; Coster v. Thomason, 19 Ala. U. S., 717; Slocomb v. Lizardi, 21 La. Ann., 355; Gates v. Beecher, 60 N. Y., 518.
[99] Daniels' Neg. Inst., 4th ed., p. 53.

address should be to such party by name. To one of several executors, or administrators, is sufficient.[1] Notice to agent is notice to the principal.[2] Notice to the assignor of an instrument need not be given by the assignee to charge the assignor.[3]

§ 370. Form of notice.—No particular phrase or form is necessary. The object of it is to inform the party to whom it is sent: First, that the bill or note has been presented; second, that it has been dishonored by non-acceptance, or non-payment; and, third, that the holder considers him liable, and looks to him for payment. And in framing the notice, all that is necessary to apprise the party of the dishonor of the instrument is to intimate that he is expected to pay it. It should comprise, first, a sufficient description of the bill or note to ascertain its identity; second, that it has been duly presented for acceptance or payment to the drawee, acceptor or maker; third, that it has been dishonored by non-acceptance or non-payment; fourth, that the holder looks to the party notified for payment.[4] The notary's name may be printed at the foot of the notification.[5] A notice sufficiently descriptive to perfectly identify a note in mind, without knowledge of others of same tenor and date, is sufficient.[6] No precise form of words is necessary in giving notice. The terms used must be expressed or implied, sufficiently to identify the note, that payment of it on due presentment has been neglected or refused by the maker.[7]

It is not necessary to state that the note was presented for payment, or that the holder looks to the endorser, this may be made to appear by implication.[8]

A single seal to several certificates of a notary's is sufficient; he may certify to each act separately and by one certificate verify them all. If it be under his hand and seal of office it is sufficient. It is unimportant where the seal is affixed. He is not required to certify to the sealing.[9]

§ 371. Description of instrument.—The notice should describe the bill or note in unmistakable terms. Should state where

[1] Daniels' Neg. Inst., 4th ed., p. 59; Mass. Bank v. Oliver, 10 Cush., 557; Beals v. Peck, 12 Barbour, 245.
[2] Iglehart v. Gibson, 56 Ill., 81.
[3] State Bk. v. Hawley, 1 Scam. (Ill.) 580; Harding v. Dilley, 60 Ill., 528.
[4] Daniels' Neg. Inst., 4th ed., p. 34; Mills v. Bank, 11 Wheaton, 431; Gilbert v. Dennis, 3 Met., 495.
[5] Bk. of Cooperstown v. Woods. 28 N. Y., 561; Sussex Bk. v. Baldwin, 17 N. J., 487.
[6] Bank of Cooperstown v. Woods, 28 N. Y., 561.
[7] Cayuga Co. Bk. v. Warden, 1 N. Y., 413; Same, 6 N. Y., 19; Cook v. Litchfield, 9 N. Y., 279.
[8] Burgess v. Vreeland, 24 N. J., 71.
[9] Olcott v. Tioga R. R. Co., 27 N. Y., 546.

the note is, that the party notified may find it; should state who the holder is, and who gives the notice, or at whose request it is given. The object of the law in requiring a correct description in the notice to the drawer or indorser is that he may be put upon notice of the extent of his liability, and placed in possession of the material facts necessary to enable him to secure the liability of others over to him.[10] Name of maker must be stated.[11]

§ **372. Fact of dishonor.**—The fact that a drawer or indorser of a bill knows that it has been dishonored does not dispense with the necessity for giving him notice of dishonor.[12] Proof of notice of non-payment is unnecessary.[13] The law of New York, requiring proof of notice by certificate, applies only to the notaries of that State. The seal of foreign notaries impressed upon some adhesive substance must accompany the certificate.[14]

§ **373. Waiver of notice, etc.**—A neglect on the part of the drawer to provide funds in the hands of the drawee, to meet the bill, amounts to a waiver of notice of protest.[15] The presentation of the bill at maturity may be waived by agreement.[16] An indorser may waive demand and notice by express words, or by implication of acts or conduct.[17]

§ **374. Delay.**—Negligence in sending notice of protest is no excuse. If the indorser fails to receive notice he is discharged from liability unless the holder shows he has used due diligence in his efforts to find him. Where this can be shown, however, it is immaterial that the notice does not reach the indorser.[18] An indorser who has changed his residence without the knowledge of the holder is bound by notice sent to his former place of residence, if the holder is not guilty of negligence in his failure to have knowledge of the change.[19]

§ **375. Notice necessary to indorsers.**—In order to fix the liability of indorsers to a promissory note they must be promptly

[10] Daniels' Neg. Inst., 4th ed., p. 34; Howland v. Adams v. Vroom, 30 N. J., 41.

[11] Home Ins. Co. v. Green, 19 N. Y., 518.

[12] Benjamin's Chalmer's Bills & Notes, p. 182; Juniata Bank v. Hale, 16 Serg. & Rawle, 157; Lane v. Bank, 9 Heisk., 419.

[13] Bradfor v. Cooper, 1 La. Ann., 325.

[14] Bank of Rochester v. Gray, 2 Hill (N. Y.) 227.

[15] Brower v. Rupert, 24 Ill., 182.

[16] Curtiss v. Martin, 20 Ill., 557.

[17] Sheldon v. Horton, 43 N. Y., 93.

[18] Am. Nat. Bk. v. Junk Bros. Lumber & Mfg. Co., 94 Tenn., 624.

[19] Am. Nat. Bk. v. Junk, 94 Tenn., 624; Bk. of Utica v. Phillips, 3 Wend., 408; Requa v. Collins, 51 N. Y., 148; Harris v. Memphis Bk., 4 Hum., 518.

notified that demand had been made of the maker and payment refused, and that the holder looks to them for payment.[20] Diligence is required of the holder to ascertain where the indorser or maker can be found and advise the notary. Where the estate of a deceased person is sufficient to pay all claims, the failure by a holder of decedent's note to file the same as a claim against the estate will operate to release a surety thereon.[21] The circumstances which in the law merchant will excuse the demand and notice necessary to charge an indorser, are such as amount in themselves, to a dishonor of the paper by operation of law. They are such as impose a moral or physical impossibility to make the demand with the exercise of that prudent and diligent forecast and attention that a prudent man would use in relation to his own affairs, or the absence of all necessity for demand, superinduced by the changed condition or relation of the parties.[22] Adding the word "Memphis" under his name, by the indorser, may be held as an implied direction to give notice through the postoffice at Memphis.[23] Every joint indorser is entitled to notice.[24] Demand and notice by the notary is sufficient.[25] A person having contracted to assume the liability of indorser, he cannot be held as a guarantor.[25a]

§ 376. Who may give notice.—It is not necessary that a notary should make presentment, or give the notice of protest; an agent having parol authority or the possession of the paper is sufficient. A notary cannot delegate his power to protest.[26] Notice must be given by the holder or one of the parties thereto; a stranger is not sufficient. An agent of either may give it, but in doing so he acts for his principal, although he may be a notary acting in his official character.[27] The circumstances which excuse demand do not relieve the holder from giving due notice to the indorser, if like circumstances do not intervene to prevent that also. Mere personal knowledge by the indorser will not dispense with notice.[28] It is usual for the holder only to give notice to the person from whom he immediately received the bill or note, especially if he is ignorant of the residence of the other parties, his neglect to give notice cannot deprive either of the others of the right to proceed

[20] Lawrence v. Miller, 16 N. Y., 235.
[21] Waughop v. Bartlett, 165 Ill., 124.
[22] Lane v. Bk. of W. Tenn., 9 Heisk. (Tenn.), 419.
[23] Tomeny v. The German Nat. Bk., 9 Heisk., Tenn., 493.
[24] Shepard v. Hawley, 1 Conn., 367.
[25] Hartford Bank v. Stedman, 3 Conn., 489.
[25a] Milligan v. Holbrook, 68 Ill. App., 631.
[26] Hunt v. Maybee, 7 N. Y., 266; Cole v. Jessup, 10 N. Y., 96.
[27] Lawrence v. Miller, 16 N. Y., 235.
[28] Lane v. Bank of W. Tenn., 65 Tenn., 419.

against the person who indorsed to him, provided he in his turn has duly forwarded notice.[29] Each party to a bill or note, whether by indorsement or mere delivery, has, in all cases, until the day after he has received notice to give or forward notice to his prior indorser.[30] It should emanate from the holder at the time of its dishonor.[31] If the holder be dead, notice may be given by his personal representative.[32]

§ 377. Manner of giving notice.—The notice need not be in writing; it is sufficient if it be given verbally; but for precision and safety written notice is preferable. Mere knowledge of dishonor does not constitute notice. When the fact is communicated it is then to be inferred that the intention is to hold the party notified responsible.[33] Notice must be in writing in Illinois.[34] It must be personal if parties reside in same town. Otherwise notice by mail is sufficient.[35] Depositing notice in a street P. O. box is the same as in the postoffice.[36] Notice sent to the indorser's place of business, and there remailed to his residence by his bookkeeper, duly stamped, with return card on envelope, and sent to the postoffice by the office boy, as customary with the daily mail, is sufficient, although never received by the indorser.[37] Notice left at the room where indorser does business and receives mail, although he is often absent for some time, is sufficient.[38] If left at the indorser's office in a conspicuous place it is sufficient.[39] Where the indorser has no regular place of residence which the reasonable diligence of the holder can enable him to discover, the law dispenses with giving regular notice.[40] When the indorser resides at the place of presentment and dishonor of the note the notice must be served on him personally, or left at his dwelling or place of business if he has one there.[41] And no particular form of words is necessary, but such as to convey notice

[29] Chitty on Bills, 520; Whitman v. Hubbard, 8 Porter, Ala., 258.

[30] Whitman, Etc., v. Farmers' Bk. of Chattahoochie, 8 Porter (Ala.), 258.

[31] Daniels' Neg. Inst., p. 46; Cromer v. Platt, 37 Mich., 132; Bank of Utica v. Smith, 18 Johns., 230.

[32] White v. Stoddard, 11 Gray, 258; Mass. Bank v. Oliver, 10 Cush., 557; Cayuga Bk. v. Bennett, 5 Hill, 236.

[33] Daniels' Neg. Inst., 4th ed., p. 33.

[34] Starr & Curtis' Anno. Statutes of Ill., 1896 Ed., p. 2818.

[35] Shepard v. Hall, 1 Conn., 329; Hartford Bk. v. Stedman, 3 Conn., 489.

[36] Johnson v. Browne, 154 Mass., 105; supported by Skilbeck v. Garbett, 72 B., 846; Pearce v. Longfit, 101 Pa. St., 507.

[37] Swampscott Mach. Co. v. Rice, 159 Mass., 404.

[38] Lamkin v. Edgerly, 151 Mass., 348.

[39] Hobbs v. Strawe, 149 Mass., 212.

[40] Hunt v. Maybee, 7 N. Y., 266.

[41] Van Vechten v. Pruyn, 13 N. Y., 549; supported by Ireland v. Kip, 10 Johns, 490; Ransom v. Mack, 2 Hill, 587; Shelden v. Benham, 4 Hill, 129; Smedes v. Bank of Utica, 20 Johns, 372.

of dishonor and a description of the bill showing the facts of refusal to accept or pay upon presentment at the right time and place.[42] It is not incumbent on the indorser to show the holder where the maker is to be found, so that he may make a demand on the maker, when no application is made to him by the holder.[43] If facts exist which render a notice uncertain or equivocal, and the knowledge of these facts are confined to the indorser, or is not brought home to the holder of the paper, the notice is sufficient to charge the indorser.[44] The giving of notice is no part of the province or duty of a notary.[45] If the indorser resides out of the State it may be mailed to his place of business or where he receives his mail.[46] If addressed to the indorser and left at the postoffice where he is postmaster it is sufficient.[47] If the parties are not to be found at their place of business it may be left at their residence with any one residing in the family, providing the party himself is not at home.[48] If sent by mail it must be properly addressed to the party at a distance. It should be directed to the postoffice at or nearest to the party's place of residence or place of business.[49] The main thing is to show that notice was received by the proper person within proper time. A notice stating that it had been given in writing, of the demand, non-payment and protest to the indorsers and left at their offices is sufficient.[50] Where the parties reside in the same town a notice left at the place of business of the individual is sufficiently described as the office of the party.[51]

§ **378. Time.** — Notice of protest must be sent within a reasonable time; it must be shown by whom notice was sent and the time of depositing in the mail.[52] Notice on the day the note was protested is not too soon, it must be given on the next day, or placed in the postoffice, to be sent by the next mail.[53] On the removal of the impediment, preventing the giving notice, the holder must give notice of the dishonor within a reasonable time.[54] By presentment on the day of maturity and giving notice of dis-

[42] Bynum v. Apperson, 65 Tenn., 632.
[43] Lane v. Bk. of W. Tenn., 65 Tenn., 419.
[44] Bk. of Cooperstown v. Woods, 28 N. Y., 545.
[45] Bk. of Rochester v. Gray, 2 Hill, N. Y., 227.
[46] Wooley v. Lyon, 117 Ill., 244.
[47] Cook v. Renick, 19 Ill., 598.
[48] Blakely v. Grant, 6 Mass., 386; Adams v. Wright, 14 Wis., 408; John v. Bank, 57 Ala., 96.
[49] Daniels' Neg. Inst., p. 77; Sherman v. Clark, 3 McLean, 91; Bank of Columbia v. Lawrence, 1 Peters, 578.
[50] Curry v. Bk. of Mobile, 8 Porter, Ala., 360.
[51] Curry v. Bk. of Mobile, 8 Porter, Ala., 360.
[52] Apple v. Lesser, 93 Ga., 749.
[53] Curry v. Bk. of Mobile, 8 Porter, Ala., 360.
[54] Bynum v. Apperson, 65 Tenn., 632.

honor the liability of the drawer of an inland bill is fixed.[55] It is the duty of the holder to give immediate notice to the drawer if it be a bill, and to the indorser whether it be a bill or note. The party primarily liable is not entitled to notice, for it was his duty to have provided for payment of the paper; and the fact that he is maker or acceptor for accommodation does not change the rule. Notice is not due to any party to a bill or note not negotiable.[56] As soon as the demand is made and the dishonor has occurred, the holder need not wait until the close of business hours to send notice. He is not obliged to give notice on the very day of dishonor; he has the option until the expiration of the following day.[57] Each successive party who receives notice is entitled to a full day to transmit it to any antecedent party who is chargeable over to him upon payment of the bill or note.[58] It is immaterial whether the indorser receives notice so long as he is properly served. The rights of a holder of a note are not affected if the notice does not reach the indorser. Due diligence in serving him notice is sufficient.[59] A note falling due on Saturday, the last day of grace, and protested on that day, notice need not be given until the following Monday; the indorser has until the day following to give notice to the previous indorsers.[60] When parties reside in different places, diligence consists in sending notice by the first mail of the day of protest.[61] It must be placed in the postoffice in time to go by mail of the day following the day of dishonor. It is necessary to show positively that the notice was deposited in time for the mail of the day following.[62] If sent by mail, it may be sent on the day following the third day of grace.[62a] A written notice to the indorser, properly mailed, though never received by him, is due diligence.[63]

§ **379. Failure to notify.**—Failure to notify the indorser not only discharges him as a party to the note, but also a debtor upon the original consideration, though it be secured by a mort-

[55] Wood v. Surrells, 89 Ill., 107.

[56] Daniels' Neg. Inst., 4th Ed., p. 30; Farmers' Bank v. Durall, 7 G. & J., 78; King v. Crowell, 61 Me., 244.

[57] Daniels' Neg. Inst., 4th Ed., pp. 90-91; Bank of Alexandria v. Swan, 9 Peters, 33; Adams v. Wright, 14 Wis., 498; Haskell v. Boardman, 8 Allen, 38; Carter v. Burley, 9 N. H., 558.

[58] Daniels' Neg. Inst., p. 96; Howland v. Adams, 30 N. J., 41.

[59] Gawtry v. Doane, 51 N. Y., 84; Dickens v. Beal, 10 Peters, 571.

[60] Farmers' Bk. of Bridgeport v. Vail, 21 N. Y., 485; Hendershot v. Neb. Nat. Bk., 25 Neb., 127; Phelps v. Stocking, 21 Neb., 443.

[61] Dickens v. Beal, 10 Peters, 571.

[62] Burgess v. Vreeland, 24 N. J., 71; State Bank of Elizabeth v. Ayers, 7 N. J., 130.

[62a] Sussex Bk. v. Baldwin, 17 N. J., 487; Howland v. Adrian, 30 N. J., 41; Woodruff v. Daggett, 20 N. J., 526.

[63] Washington Banking Co. v. King, 9 N. J., 45; Ferris v. Saxton, 4 N. J., 1.

gage or deed of trust.[64] The reputed insolvency of the maker of a note is no excuse for not sending notice to the indorser.[65]

§ **380. Legal holidays.**—If a bill falls due on a Sunday or legal holiday, if entitled to grace, it is deemed to be due on the preceding day; if not entitled to grace, it is deemed to be due on the succeeding day. The computation of time is determined by the law of the place of payment if shown. In reckoning the twenty-four hours, non-business days must be excluded.[66] In Michigan, under the act of 1893, notes falling due on Saturday are presentable for payment and payable on the next secular or business day, which is Monday, unless such succeeding Monday is a legal holiday, in which case the note is payable on Tuesday. Notes maturing on Sunday are payable Monday.[67]

§ **381. Liability of notary.**—(See Notaries' Liability, Sec. 17, 333.) A notary is liable for loss occasioned for his failure to make protest when it is required. He is liable when he neglects to give proper notice to all parties entitled to notice of dishonor. His position is the same as an agent in any other line. He can be held liable for mistakes, negligence and due diligence.

§ **382. Liability of drawee and acceptor.**—When the drawee breaks his contract with the drawer by dishonoring his draft, the consequences reasonably resulting from the breach of contract constitute the measure of damages. The acceptor of a bill of exchange who dishonors it is liable for (1) the amount of the bill with interest (a) from the maturity thereof if the bill be payable on a day certain, or (b) from the time of presentment for payment if the bill be payable on demand. (2) As special damage, the notarial expenses consequent on dishonor, and (perhaps) the loss on re-exchange, incurred by an indorser who has taken up or paid the bill.[68]

§ **383. Liability of indorsers.**—If the holder of a note sends it to a bank or other agent for collection it is sufficient to hold prior indorsers if the agent gives notice of the dishonor in due time to his principal, and if he without delay transmits notice to the

[64] Daniels' Neg. Inst., 4th ed., p. 32; Fitchburg Ins. Co. v. Davis, 121 Mass., 121; Benjamin's Chalmers, 183; Miers v. Brown, 11 M. & W., 372.

[65] Oliver v. Munday, 2 N. J., 982; Snyder v. Findley, 1 N. J., 78.

[66] Benjamin's Chalmers, pp. 33 & 157; City Bank v. Cutler, 3 Pick, 414; Avery v. Stewart, 2 Conn., 69; Salter v. Burt, 20 Wend., 205.

[67] Hitchcock v. Hogan, 99 Mich., 124.

[68] Benjamin's Chalmers, pp. 211, 217, 218; Ilsley v. Jones, 12 Gray, 260.

prior indorser.[69] An indorser on a note in the firm's name, subsequently dissolved, cannot deny the existence of the firm in order to save himself from liability. A dissolution of partnership has respect to the future only. The parties remain bound for all antecedent engagements.[70]

§ **384. Liability of drawer or indorser.**—The drawer of a bill of exchange engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be not so accepted and paid he will indemnify the holder, provided due notice of dishonor be given. Any person who signs a negotiable bill otherwise than as drawer or acceptor, prima facie incurs the liability of an indorser. Except an indorsement by way of receipt. The indorser of a bill is in the nature of a new drawer. The indorser of commercial paper is entitled to notice of protest and non-payment if no notice is received by him he is not liable thereon.[71] The drawer or indorser of a dishonored bill is liable for damages at the following rates: (1) Inland bill. The amount of the bill with interest from (probably) the time of dishonor. (2) Foreign bill of exchange. The amount of the bill with interest from the time of dishonor, and the notarial expenses, or if it be payable abroad, the re-exchange, interest and expenses. Re-exchange means the loss resulting from the dishonor of a bill of exchange in a country different from that in which it was drawn or indorsed.[72a] A corporation is liable as indorser on commercial paper where notices of protest are addressed to it in its corporate name.[72] In the absence of special agreement successive indorsers on an accommodation note of a third person are liable in the same order as indorsers for value.[73]

§ **385. Excuses for non-notice.**—Notice of dishonor is dispensed with—(1) When the drawer or indorser sought to be charged is, as between the parties to the bill, the principal debtor, and has no reason to expect that it will be honored on presentment. (2) As regards the drawer, when drawer and drawee are the same person, or identical in interest. (3) When the drawer or indorser sought to be charged is the person to whom the bill is presented for payment. (4) When the drawee is a fictitious person, or (perhaps)

[69] Lynn Nat. Bk. v. Smith, 132 Mass., 227; supported by Colt v. Noble, 5 Mass., 167; Church v. Barlow, 9 Pick., 547; True v. Collins, 3 Allen, 438; Eagle Bk. v. Hathaway, 5 Met., 212.

[70] Hubbard v. Matthews, 54 N. Y., 43.

[71] Apple v. Lesser, 93 Ga., 749.

[72a] Benjamin's Chalmers, B. & N., pp. 218-224.

[72] Am. Nat. Bank v. Junk Bros., 94 Tenn., 624.

[73] Moore v. Cushing, 162 Mass., 594; Shaw v. Knox, 98 Mass., 214.

a person not having capacity to contract, and the drawer or indorser sought to be charged was aware of the fact at the time he drew or indorsed the bill. (5) When the drawer or indorser sought to be charged has received an assignment of all the property of the acceptor as security against his liability. (6) When, after the exercise of reasonable diligence, notice of dishonor cannot be given to or does not reach the party sought to be charged. (7) By waiver express or implied.[74] A letter misdirected, when information is readily obtained, cannot be excused.[75]

§ 386. Notary's certificate as evidence.—To destroy the effect of the certificates of the notary as presumptive evidence, the party must positively deny a receipt of the notice. An affidavit denying receipt upon information and belief, will not answer the requirements of the statutes and cannot be treated as an affidavit.[76]

§ 387. Uniform negotiable instrument law.—The following is a revision of the English Bills of Exchange Act of 1882, with such changes as adapt it to the existing American law. It was prepared by the committee on commercial law of the American Bar Association, and was presented and recommended for adoption by the various States of the Union, at the meeting of the Association held at Saratoga, New York, in August, 1897. It has been adopted by the States of Colorado, Connecticut, Florida and New York and Virginia. It is likely to be adopted generally by the other States, and is presented here as a matter of general convenience.

An Act relating to Negotiable Instruments, being An Act to Establish a Law Uniform with the Laws of other States on that Subject.

GENERAL PROVISIONS.

This act shall be known as the Negotiable Instruments Law. In this act, unless the context otherwise requires: "Acceptance" means an acceptance completed by delivery or notification. "Action" includes counter-claim and set-off. "Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not. "Bearer" means the person in possession of a bill or note which is payable to bearer. "Bill" means bill of exchange and "note" means negotiable promissory note. "Delivery" means transfer of possession, actual or constructive, from one person to another. "Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof. "Indorsement" means an indorsement com-

[74] Benjamin's Chalmers, p. 198.
[75] Patterson Bk. v. Butler, 12 N. J., 238.
[76] Gawtry et al. v. Doane, 51 N. Y., 84.

pleted by delivery. "Instrument" means negotiable instrument. "Issue" means the first delivery of the instrument, complete in form to a person who takes it as a holder. "Person" includes a body of persons, whether incorporated or not. "Value" means valuable consideration. "Written" includes printed, and "writing" includes print. The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same; all other parties are "secondarily" liable. In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof. In any case not provided for in this act the rules of the law merchant shall govern.

TITLE I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE I.

FORM AND INTERPRETATION.

Section 1. An instrument to be negotiable must conform to the following requirements: (1) It must be in writing and signed by the maker or drawer, (2) must contain an unconditional promise or order to pay a sum certain in money, (3) must be payable on demand, or at a fixed or determinable future time, (4) must be payable to order or to bearer, and (5) where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Sec. 2. 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 fee, in case payment shall not be made at maturity.

Sec. 3. 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.

Sec. 4. 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.

Sec. 5. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which (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.

Sec. 6. 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.

Sec. 7. An instrument is payable on demand, (1) where it is expressed to be payable on demand, or at sight, or on presentation, or (2) in which no time for payment is expressed. Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

Sec. 8. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order (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.

Sec. 9. 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.

Sec. 10. 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.

Sec. 11. 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.

Sec. 12. 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.

Sec. 13. Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

Sec. 14. 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.

Sec. 15. Where an incomplete instrument has not been delivered, it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Sec. 16. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in 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.

Sec. 17. Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply: (1) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference 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.

Sec. 18. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

Sec. 19. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

Sec. 20. Where the instrument contains, or a person adds to his signature, words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Sec. 21. A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

Sec. 22. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

Sec. 23. Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

ARTICLE II.

CONSIDERATION.

Sec. 24. 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.

Sec. 25. 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.

Sec. 26. 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.

Sec. 27. 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.

Sec. 28. 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.

Sec. 29. 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.

ARTICLE III.

NEGOTIATION.

Sec. 30. 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.

Sec. 31. 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.

Sec. 32. 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.

Sec. 33. An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

Sec. 34. 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.

Sec. 35. 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.

Sec. 36. 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.

Sec. 37. 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.

Sec. 38. 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.

Sec. 39. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

Sec. 40. 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.

Sec. 41. 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.

Sec. 42. 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.

Sec. 43. 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.

Sec. 44. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Sec. 45. 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.

Sec. 46. Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

Sec. 47. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Sec. 48. 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.

Sec. 49. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferer had therein, and the transferee

acquires, in addition, the right to have the indorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

Sec. 50. 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.

ARTICLE IV.

RIGHTS OF THE HOLDER.

Sec. 51. The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

Sec. 52. 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.

Sec. 53. 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.

Sec. 54. 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.

Sec. 55. 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.

Sec. 56. 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.

Sec. 57. 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.

Sec. 58. 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 instrument, has all the rights of such former holder in respect of all parties prior to the latter.

Sec. 59. 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.

ARTICLE V.

LIABILITIES OF PARTIES.

Sec. 60. 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.

Sec. 61. 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.

Sec. 62. 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.

Sec. 63. 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.

Sec. 64. 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.

Sec. 65. 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.

Sec. 66. Every indorser who indorses without qualification war-

rants, 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.

Sec. 67. Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

Sec. 68. 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.

Sec. 69. Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 65 of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

ARTICLE VI.

PRESENTMENT FOR PAYMENT.

Sec. 70. 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.

Sec. 71. 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.

Sec. 72. 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.

Sec. 73. 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.

Sec. 74. 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.

Sec. 75. 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.

Sec. 76. 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.

Sec. 77. 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.

Sec. 78. 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.

Sec. 79. 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.

Sec. 80. 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.

Sec. 81. 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.

Sec. 82. 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.

Sec. 83. The instrument is dishonored by non-payment when (1) it is duly presented for payment and payment is refused or cannot be obtained, or (2) presentment is excused and the instrument is overdue and unpaid.

Sec. 84. Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder.

Sec. 85. 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 Saturday when that entire day is not a holiday.

Sec. 86. 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.

Sec. 87. 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.

Sec. 88. 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.

ARTICLE VII.

NOTICE OF DISHONOR.

Sec. 89. 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.

Sec. 90. 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.

Sec. 91. 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.

Sec. 92. 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.

Sec. 93. Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

Sec. 94. 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.

Sec. 95. 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.

Sec. 96. 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.

Sec. 97. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Sec. 98. 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.

Sec. 99. 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.

Sec. 100. 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.

Sec. 101. 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.

Sec. 102. 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.

Sec. 103. Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times: (1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following; (2) if given at his residence, it must be given before the usual hours of rest on the day following; (3) if sent by mail, it must be deposited in the post-office in time to reach him in usual course on the day following.

Sec. 104. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times: (1) If sent by mail, it must be deposited in the post-office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter. (2) If given otherwise than through the post-office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post-office within the time specified in the last subdivision.

Sec. 105. Where notice of dishonor is duly addressed and deposited in the post-office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Sec. 106. Notice is deemed to have been deposited in the post-office when deposited in any branch post-office or in any letter-box under the control of the post-office department.

Sec. 107. 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.

Sec. 108. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows: (1) Either to the post-office nearest to his place of residence, or to the post-office where he is accustomed to receive his letters; or (2) if he live in one place, and have his place of business in another, notice may be sent to

either place; or (3) if he is sojourning in another place, notice may be sent to the place where he is sojourning. But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

Sec. 109. 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.

Sec. 110. 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.

Sec. 111. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

Sec. 112. 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.

Sec. 113. 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.

Sec. 114. Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) Where the drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment.

Sec. 115. 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.

Sec. 116. 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.

Sec. 117. An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

Sec. 118. 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.

ARTICLE VIII.

DISCHARGE OF NEGOTIABLE INSTRUMENTS.

Sec. 119. 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.

Sec. 120. 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.

Sec. 121. 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.

Sec. 122. 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.

Sec. 123. 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.

Sec. 124. 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.

Sec. 125. 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.

TITLE II.

BILLS OF EXCHANGE.

ARTICLE I.

FORM AND INTERPRETATION.

Sec. 126. 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.

Sec. 127. 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.

Sec. 128. 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.

Sec. 129. 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.

Sec. 130. 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.

Sec. 131. 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.

ARTICLE II.

ACCEPTANCE.

Sec. 132. 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.

Sec. 133. 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.

Sec. 134. 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.

Sec. 135. 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.

Sec. 136. 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.

Sec. 137. 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.

Sec. 138. 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.

Sec. 139. 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.

Sec. 140. 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.

Sec. 141. 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.

Sec. 142. 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.

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

Sec. 143. 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.

Sec. 144. 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.

Sec. 145. 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.

Sec. 146. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day.

Sec. 147. 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.

Sec. 148. 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.

Sec. 149. 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.

Sec. 150. 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 indorsers.

Sec. 151. 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.

ARTICLE IV.

PROTEST.

Sec. 152. 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.

Sec. 153. 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.

Sec. 154. Protest may be made by (1) a notary public; or (2) by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

Sec. 155. 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.

Sec. 156. 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.

Sec. 157. A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

Sec. 158. 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.

Sec. 159. 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.

Sec. 160. 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.

ARTICLE V.

ACCEPTANCE FOR HONOR.

Sec. 161. 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.

Sec. 162. 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.

Sec. 163. 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.

Sec. 164. 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.

Sec. 165. 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.

Sec. 166. 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.

Sec. 167. 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.

Sec. 168. 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 104.

Sec. 169. The provisions of section 81 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

Sec. 170. When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

ARTICLE VI.

PAYMENT FOR HONOR.

Sec. 171. 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.

Sec. 172. 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 from an extension to it.

Sec. 173. 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.

Sec. 174. 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.

Sec. 175. Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Sec. 176. 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.

Sec. 177. The payer for honor on paying to the holder the amount of the bill and the notarial expenses incident to its dishonor, is entitled to receive both the bill itself and the protest.

ARTICLE VII.

BILLS IN A SET.

Sec. 178. 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.

Sec. 179. 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.

Sec. 180. 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.

Sec. 181. 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.

Sec. 182. 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.

Sec. 183. 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.

TITLE III.

PROMISSORY NOTES AND CHECKS.

Sec. 184. 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.

Sec. 185. 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.

Sec. 186. 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.

Sec. 187. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

Sec. 188. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

Sec. 189. 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.

STATUTORY REQUIREMENTS.

§ 388. Ala.—PROTEST—Damages, cover exchange in this country. For foreign currency add exchange. NOTICE OF PROTEST—Mail to where party resided, personal notice not necessary. DAYS OF GRACE—Are allowed. HOLIDAYS—Sundays, Jan. 1, Feb. 22, April 26, July 4, Thanksgiving, Good Friday and Mardi Gras, Dec. 25, first Monday in September. If any fall on a Sunday then the following Monday; paper entitled to days of grace or subject to protest falling due on a holiday, must be taken as due on the next succeeding business day.

§ 389. Ariz.—PROTEST and notice of. The holder may secure and fix the liability of an indorser or drawer of same without protest or notice of, by instituting suit against the maker within sixty days next after the right of action shall accrue. SUIT may be brought in the holder's name. Parties not primarily liable may be sued jointly. Notary shall set forth in his protest and record a full

statement of facts as to what he did relating thereto, as to demand made, sum specified, of whom, when, where, etc., also the notices to drawer's indorsers must be stated in the protest as to whom served, when, where, how, etc. Same must be noted in his record, which shall be admitted as evidence in all courts of the territory. The holder of a protested draft or bill of exchange drawn within the limits of the territory upon his agent outside the territory, after having fixed the liability of same, shall be allowed 10 per cent on the amount as damages, with interest and costs. DAYS OF GRACE—Three days' grace are allowed. HOLIDAYS—Sundays, Jan. 1, Feb. 22, May 30, July 4, Dec. 25, State election days, Thanksgiving day. If any of these fall on Sunday, the following Monday is observed. Compute by excluding the first and including the last day.

§ 390. **Ark.**—PROTEST—A refusal to write the acceptance on a bill subjects it to protest. A failure to return the bill, accepted or non-accepted, within twenty-four hours, is deemed an acceptance. Notice of Protest. NOTICE can be mailed when the parties reside at different places. By the mail of the day after the dishonor, if the mail is not closed before. It may be sent by messenger or given personally, but must reach the party at farthest on the same day it would have reached him by mail. (Minehart v. Handlin, 37 Ark., 276.) DAYS OF GRACE—Are allowed. HOLIDAYS—Sunday, Jan. 1, Feb. 22, July 4, Thanksgiving day, Dec. 25. Bills of exchange, drafts and promissory notes falling due on these days shall be deemed as due the preceding day, and noted and protested then, provided it shall not be necessary for the holder of such to give notice of dishonor until the day succeeding the holiday. DAMAGES—For protested bills of exchange drawn or negotiated within the state, for value received. 1st. If drawn on any person at any place within the State, 2 per cent on the principal. 2nd. If payable in Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, Missouri or any Ohio river point, 4 per cent on the principal. 3rd. If payable within the United States other than before stated, 5 per cent on the principal. 4th. If payable without the United States, 10 per cent on the principal. If for value received, and payable to order or bearer, drawn on any person at any place within the State, accepted and protested for nonpayment. 1st. Drawn by any person at any place within this State, 2 per cent on principal. 2nd. If drawn outside this State but within the United States, 6 per cent on principal. 3rd. If drawn outside the United States, at 10 per cent on principal. In additlon, protest fees and interest at 10 per cent per annum on the principal are allowed from the date of protest until paid. Right of action allowed if properly protested.

§ 391. **Cal.**—PROTEST—Must be made by a notary, if none can be found, by a reputable person in the presence of two witnesses. Must be in writing, giving copy of the bill or annexing the original, the manner made, presence or absence of the drawee or acceptor, the refusal, the reason, finally protesting against all parties to be charged. In the place presented for payment or acceptance on the day of presentment. NOTICE—Can be given only by notice of protest, by the notary protesting. DAYS OF GRACE—Abolished. HOLIDAYS—

Sunday, 1st day of January, 22nd day of February, 30th day of May, 4th day of July, 9th day of September, 1st Monday of September, 25th day of December, 1st days of election in the State, every Fast, Thanksgiving or holiday appointed by the President of the United States or the Governor of the State. If these days fall on a Sunday then the next day, Monday, is a holiday.

§ 392. **Col.**—(See Sec. 387.) PROTEST—May be made by a notary, or any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. It must be made on the day of its dishonor. Notice of protest to be served the drawer and indorsers personally, if resident in same town as notary, or within one mile thereof. Otherwise by mail. DAYS OF GRACE—Abolished. Instruments falling due on any day, in any place, where any part of such day is a holiday, shall be presented on the next succeeding day. The day of date, is not a part of the time. HOLIDAYS—In cities of 100,000 population, during June, July and August, Saturdays after 12 o'clock, Sundays, January 1st, February 22, May 30, July 4, December 25, Thanksgiving Day, 1st Monday in September, November election day. If any of these days fall on a Sunday, then the Monday following. All notes falling due on these days mature on the business day succeeding. HOLIDAYS—Jan. 1, Feb. 12, 22, May 30, July 4, 1st Monday in September, Thanksgiving Day. When any of these days fall on Sunday, the following Monday. When the day of maturity falls upon Sunday or a holiday, the instrument is payable on the next succeeding business day. If payable on Saturday it must be presented on the next succeeding business day, except when payable on demand, may, at the option of the holder, be presented for payment before twelve o'clock noon Saturday when that entire day is not a holiday. PROTEST—May be made by a notary, or by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. NOTICE to be given at once. Days of Grace—Are abolished.

§ 393. **Conn.**—(See Sec. 387.) ACCEPTANCE to be in writing. Negotiable instruments must be in writing, signed by the maker or drawer, and contain an unconditional promise or order to pay a sum certain in money. Must be payable to order or to bearer, and where the instrument is addressed to a drawee, he must be named or otherwise indicated with reasonable certainty. Holder may sue in his own name. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if it is, by its terms, payable at a special place and he is able and willing to pay it there at maturity, that is equivalent to a tender of payment.

§ 394. **Del.**—PROTEST AND NOTICE. Sufficient to mail. HOLIDAYS—In the City of Wilmington, Saturday afternoon after 12 o'clock is a legal holiday, bills of exchange, notes, drafts, checks or other negotiable instruments falling due at that time, shall be due on the next succeeding secular day, providing no one shall incur any liability for not presenting. Dec. 25, July 4, Thanksgiving Day, Jan. 1, Feb. 22, May 30, 1st Monday in September. If any of these days fall on Sunday, then the following Monday will be observed. Bills, notes, checks and other negotiable instruments falling due on these days

will be due the Saturday preceding. In New Castle county, Saturday afternoons will be holiday after 12 o'clock from June 1st to September 1st, inclusive, notes, bills of exchange, checks and drafts falling due then must be presented before 12 o'clock. DAYS OF GRACE—All checks, notes, drafts or bills, foreign or inland, payable without time or at sight, are payable without grace. All drafts or bills of exchange payable at a future time, are entitled to grace, but no checks. Damages on foreign protested bills of exchange, 20 per cent.

§ **395. D. C.**—PROTESTS—Made by notaries, to state presentment, time, place, etc., same to be prima facie evidence of the fact. NOTICE—To be served on interested parties as to protest time, place, to whom, etc. DAYS OF GRACE—Are abolished. HOLIDAYS—Jan. 1, July 4, Dec. 25, Feb. 22, Presidential Inauguration day, May 30, Thanksgiving Day, 1st Monday in September. Any of these days falling on a Sunday, then the succeeding day shall be observed, and any notes, drafts, checks or commercial or negotiable paper falling due on these days shall be deemed as maturing on the day next succeeding. Every Saturday which under existing laws shall not become a legal holiday in its entirety, in the District of Columbia, shall therein be a legal holiday, from twelve o'clock at noon, for all purposes respecting the presentation for payment or acceptance or the protesting or giving notice of the dishonor of bills of exchange, bank checks, drafts, promissory notes, and all commercial paper whatsoever, whether made in or beyond the said District or whether made before or after the passage of this act, and all such bills of exchange, bank checks, drafts, promissory notes, and commercial paper which otherwise would be due and payable or presentable for acceptance or payment in said District, on such half holiday Saturday, shall therein be due and payable or presentable for acceptance or payment on the secular or business day next succeeding. Provided, however, that any acceptance or payment thereof with interest thereon to said date when the same bears interest made on such half holiday Saturday, before twelve o'clock noon, shall be lawful. (U. S. Rev. Stat. Supp., vol. 2, pp. 136-7.)

§ **396. Fla.**—(See Sec. 387.) HOLIDAYS—Sunday, April 26, Jan. 19, Jan. 1, Feb. 22, July 4, Dec. 25, general election day, Thanksgiving. Whenever any of these days fall on a Sunday the Monday following to be observed. All bills notes and checks falling due on these days are presentable on the Saturday preceding. DAMAGES—On foreign protested bills, 5 per cent.

§ **397. Ga.**—INDORSER—Anyone indorsing or transferring a negotiable instrument may limit their responsibility by express restrictions. Every transferer of a negotiable instrument warrants, unless otherwise agreed by the parties, that he is the lawful holder, and that the instrument is genuine. If there are several indorsers each is liable to subsequent ones; or the indorser will not be held liable thereon; but it shall not be necessary to protest in order to bind indorsers, except, when a paper is made payable on its face at a bank or banker's office, or when it is discounted at a bank or banker's office, or when it is left at a bank or banker's office for collection. In all such cases days of grace shall be allowed. Damages on bills of exchange

payable out of this State and in the United States, when returned protested for nonacceptance or nonpayment, the holder shall be entitled to recover of the drawer and indorsers in the first case and the acceptor also in the latter case, in addition to the principal, interest and protest fees, five per cent damages on the principal. If without the United States, ten per cent. The indorser may be sued in the same action, and in the same county with the maker, or drawer, or acceptor. The holder of a negotiable instrument receiving the same before due, without notice of any defect or defense, shall be protected from any defenses set up by the maker, acceptor or indorser, except non est factum, gambling or immoral and illegal considerations, or fraud in its procurement. PROTEST AND NOTICE—When bills of exchange and promissory notes are made for negotiation or intended to be negotiated at a chartered bank, and are not paid at maturity, notice of nonpayment and of the protest for non-payment or nonacceptance must be given to the indorsers within a reasonable time, either personally or by post (if the residence of the indorser be known.) DAYS OF GRACE are allowed, except on bills, notes and drafts, when payable at sight. HOLIDAYS—Jan. 1, Jan. 19, Feb. 22, April 26, July 4, Dec. 25, 1st Monday in September, Thanksgiving Day or any other declared by the law of Georgia to be a public holiday, shall, as regards the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, be treated and considered as the first day of the week, called Sunday, and as public holidays; such bills, checks and notes, otherwise presentable on said days, shall be deemed to be presentable on the secular or business day next preceding, except, when such holiday falls upon Sunday, the Monday next following shall be deemed a public holiday, and papers due on such Sunday shall be payable on the Saturday preceding; papers otherwise payable on such Monday, shall be payable on the Tuesday thereafter. Whenever these days shall fall on Saturday, papers due on the Sunday following shall be payable on the Monday succeeding. Whenever either of said days shall fall on Monday, papers which would otherwise be payable on that day, shall be payable on the Tuesday next succeeding. Paper payable on demand is due immediately. When no time is specified for the payment of a bill or order, it is due as soon as presented and accepted. DAMAGES on bills payable outside the State, protested, 5 per cent; outside the United States, 10 per cent in addition to principal, interest and protest fees.

§ 398. **Ida.**—PRESENTMENT FOR ACCEPTANCE—May be made any time before a bill of exchange is due, and if refused the bill is dishonored. PROTEST of a bill of exchange must be made by a notary, if one can be obtained, otherwise by any reputable person in the presence of two witnesses. If for nonacceptance, must be made where presented, and for nonpayment where presented for payment, must be noted on the day of presentment or the next business day. It may be written out any time. Must be in writing, with a copy of the bill attached, stating the presentment, manner, presence or absence of the drawee or acceptor, the refusal or inability, reason, and protesting, against all parties. NOTICE must be given in same way as notice of

dishonor. If waiver of, on its face, then notice may be given to any party, except, if an indorser requires protest, by writing on the bill at or before his indorsement, protest must be made and notice given to him and all subsequent indorsers. One who pays a foreign bill for honor, must declare before payment, in the presence of a person authorized to make protest, for whose honor he pays it. DAYS OF GRACE—Are abolished. HOLIDAYS—Sunday, Jan. 1, Feb. 22, July 4, Dec. 25, election day throughout the State, last Monday in April, Thanksgiving Day. Any act of a secular nature falling on this day may be performed upon the next business day. DAMAGES are allowed in lieu of accrued interest before notice of dishonor, re-exchange, expenses and all other damages, in favor of the holder for value only, upon bills drawn or negotiated in this State and protested for nonacceptance or nonpayment. 1st. If drawn on a person in this State, two dollars on each hundred. 2nd. If on any person out of this State, but west of the Rocky Mountains, five dollars per hundred. 3rd. If on any person in the United States east of the Rocky Mountains, ten dollars per hundred. 4th. If drawn on any person abroad, fifteen dollars per hundred. LAWFUL INTEREST allowed after dishonor, and damages. A CHECK is subject to all the provisions of bills of exchange, except that: 1. The drawer and indorsers are exonerated by delay in presentment only to the extent of their injury. 2. An indorsee, after its maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorser before such period.

§ 399. Ill.—PRESENTMENT. The holder of the instrument, or his authorized agent, (which a notary would be) is the proper person to present the same for acceptance. PLACE—Presentment for acceptance may be made either at the drawee's place of business or at his dwelling. BY WHOM—A demand of payment must be made on every bill, note or other written negotiable instrument before the same can be protested, notary publics to perform this duty. MANNER—A proper presentment for acceptance is the taking of the bill to the drawee and asking his acceptance. There is no prescribed form. TIME—A month is a calendar month, and a year twelve calendar months; a day shall be considered a thirtieth part of a month. HOLIDAYS—The first day of January, New Year's Day; twenty-second day of February, Washington's birthday; thirtieth day of May, Decoration Day; Fourth of July, Declaration Day; twenty-fifth day of December, Christmas day; first Monday of September, Labor day; twelfth day of February, Lincoln's birthday; first day of each week, Sunday; any day appointed by the Governor of the State or the President of the United States, as a day of fast, or Thanksgiving, are declared legal holidays, and for all purposes whatsoever as regards giving notice, etc., of the dishonor of negotiable instruments are to be considered the same as Sundays. All notices falling due or maturing on these days, shall be deemed as due on the day following, and when two or more of these days come together, or immediately succeed each other, then upon the day following the last of such days. DAYS OF GRACE—Are abolished. PROTEST—Notaries public are authorized to protest for nonpayment or acceptance, all negotiable instruments. DAMAGES—

On bills of exchange, drawn or indorsed within this State, and payable without the limits of the United States, is duly protested for nonacceptance or nonpayment, the drawer or indorser on notice being given, shall pay said bill with legal interest, from the time due, until paid, and ten per cent damages in addition, together with the costs and charges of protest. Drawn upon any person, out of this State, but within the United States, presented for acceptance or payment and protested, the drawer or indorser thereof, notice being given, shall pay said bill, with legal interest from the time due until paid, with cost and charges of protest, and in case suit has to be brought, five per cent damage in addition. RECORD—Notary publics shall keep a correct record of all notices, and the time and manner served, names of all parties to whom directed, the description and amount of the instrument protested. EVIDENCE—Said record, or copy 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 stated, but the same may be contradicted by other competent evidence. PROTESTS—Notices—Every notary public in this State making a protest shall give notice in writing to the maker, and to each indorser, on the day protest is made, or within forty-eight hours from the time of such protest; notary public to personally serve the notice, provided he or they reside in the town, precinct, city or village where such protest was made, or within one mile thereof; but if such person or persons reside more than one mile from such town, precinct, city or village, then the notice may be forwarded by mail or other safe conveyance, if the city where the protest is made contains ten thousand or more inhabitants, the notice may be forwarded by mail. MONEY NOTES—The rights of the lawful holders of promissory notes payable in money, and the liabilities of all the parties to or upon said notes shall be made the same as that of like parties to inland bills of exchange according to the custom of merchants. Every assignor of every other note, bond, bill or other instrument in writing shall be liable to the action of the assignee or lawful holder thereof, if such assignee or lawful holder shall have used due diligence by the institution and prosecution of a suit against the maker thereof, for the recovery of the money or property due thereon, or damages in lieu thereof. But if the institution of such suit would have been unavailing, or the maker had absconded or resided without or had left the State when such instrument became due, such assignee or holder may recover against the assignee as if due diligence by suit had been used. PERSONS severally LIABLE upon bills of exchange or promissory notes, payable in money, may all, or any of them severally, be included in the same suit at the option of the plaintiff, and judgment rendered in said suit shall be without prejudice to the rights of the several defendants as between themselves.—S. & C., Anno., Ill., Statutes 1896.

§ 400. **Ind.**—PROTESTS and NOTICES of to be made and given by notaries according to custom of merchants. Bank notes held by an individual on one day presented for protest shall be counted, sealed in a package, and forwarded to the State Auditor and entitled to but one protest. Bank officers or employes cannot act as notaries. Any

assignee, having used due diligence in the premises, shall have his action against his immediate or any remote indorser; and in suit against a remote indorser, he shall have any defense which he might have had in a suit brought by his immediate assignee. DAYS OF GRACE—Three are allowed. A promise to pay money without relief from valuation laws, judgment, shall be rendered and execution had accordingly. HOLIDAYS—Sundays, Jan. 1, July 4, Dec. 25, Thanksgiving day, Feb. 22, May 30, first Monday in September, general, national or State election days. All bills of exchange, bank checks, promissory notes or other negotiable or commercial paper maturing thereon shall be deemed as having matured on the Saturday previous, and when the legal holiday comes Sunday, the day following shall be the holiday. ATTORNEY'S FEES—Agreements as to attorney's fees depending upon conditions as set forth in any bill of exchange, acceptance, draft, or other written evidence of indebtedness, are illegal and void. DAMAGES on protest bills drawn or negotiated in this State, on persons in other states, 5 per cent. Outside the United States, 10 per cent. Interest from date of protest. If upon notice of protest and demand, the principal is paid, the cost of protest only to be charged. Holder must have given a valuable consideration. Damages do not apply to notes discounted at bank and protested for non-payment. Damages on non-accepted or non-paid bills of exchange drawn in this State if on a person out of the United States or in California, Oregon, Nevada or any of the territories, 5 per cent with interest from time of protest. If on a person in any other State, excepting this, 3 per cent with interest. If the holder of an instrument for the payment of money is absent from the State when it becomes due, and the indorsee or assignee has not notified the maker, the maker may tender payment at the last residence or place of business of the payee before the instrument became due, and if there be no person authorized to receive payment and give the proper credit therefor, the maker may deposit the amount due, with the clerk of the district court, in the county where the payee resided at the time it became due, paying the clerk one per cent on the amount deposited, and the maker shall be liable for no interest from that time.

§ 401. Iowa.—PROTEST—Notary's certificate of is prima facie evidence, without proof. A copy from his record, certified by him, will receive the faith and credit entitled by the law of merchants. NOTICE is required. Mailing to the nearest postoffice of the party on the day of demand is sufficient. DAYS OF GRACE allowed, demand made during same is sufficient to charge the indorsers. HOLIDAYS—Sunday, January 1, May 30, July 4, first Monday in September, Thanksgiving Day, December 25, Bills of exchange, checks, promissory notes and any bank or mercantile paper falling due on these days, are due on the preceding day.

§ 402. Kas.—BONDS, BILLS OF EXCHANGE, promissory notes, drawn for any sums of money certain, and payable to any person or order, or bearer, are negotiable by indorsement, if payable to order, and by delivery if payable to bearer. Any indorsee or holder may institute and maintain suit for the recovery of the money due thereon against the maker, drawer or obligor or the indorser, having first used due

diligence to collect the same. ACCEPTANCE to be in writing on the bill accepted. A destruction or withholding of the bill after presentation for acceptance shall be deemed an acceptance. Suit may be brought jointly or severally against the drawers, indorsers, makers or obligors on a protested bill for the principal, damages, interest and protest charges. PROTEST AND NOTICE—Every notary public protesting, shall give immediate notice in writing to each party protested against, by depositing the same in the mail, postage paid, directed to the party at his reputed place of residence, and shall deliver to the holder a certificate of the time, manner and service, and parties protested against and notified, which shall be due evidence of the facts stated until the contrary is shown. GRACE—Three days' grace are allowed. HOLIDAYS—Sundays, July 4, December 25, January 1, May 30, Thanksgiving Day and the first Monday in September, are legal holidays. If any of these fall upon a Sunday the day succeeding will be observed. Bills, notes, drafts and checks falling due on these days, with days of grace added, will be deemed due on the next preceding business day.

§ **403. Ky.**—BILLS, NOTES AND CHECKS payable in bank notes or currency, or other funds, wheresoever drawn or payable are deemed negotiable, and treated as if drawn for money, except as to the value of the currency in which they are payable. PROTEST to be made by a notary. NOTICE to be sent to all parties interested or liable. When their residence is unknown, notices to be sent to the holder of the paper. Must state in the protest the names of parties to whom sent, time and manner of sending. Protest under the seal of a notary for non-acceptance or non-payment is prima facie evidence of its dishonor. A promissory note made payable to the obligor or to his order, signed on the back by him, and delivered, is a promise to pay at maturity to the party to whom it is delivered. Such party may fill in the blank with the words of promise, and recover thereon as if he had been the payee. Such note is assignable. DAYS OF GRACE—Presumed. HOLIDAYS—Feb. 22, May 30, July 4, Dec. 25, Thanksgiving day, and shall be treated as Sundays. If any of these fall upon a Sunday the day following shall be observed. All notes, bills, drafts, checks, etc., falling due on these days, shall be deemed due or to be presented for acceptance or payment or protested or notice given, on the Saturday previous.

§ **404. La.**—No obligations for the payment of money, made within this State, shall be received as evidence of a debt when the whole sum shall be expressed in figures, unless the same shall be accompanied by proof that it was given for the sum expressed. The cents may be in figures. PROTEST—New Orleans notaries protest throughout the parish. If no notary can be found, protest may be made in the presence of two witnesses, residents of the parish. They to certify and subscribe to same. Notaries in New Orlears can appoint deputies to assist them, notary to be responsible for their acts. The certificate to state demand, manner, circumstances, manner of service of notice, etc. Same to be evidence of the facts stated. NOTICE of protest to be mailed to parties residing elsewhere may be addressed to the place indicated on the bill or note, if no other address is known. DAYS OF GRACE are allowed on other than drawn at sight. HOLIDAYS—Jan. 1, Jan. 8, Feb. 22, (Mardi Gras, in New Orleans), July 4, Dec. 25, Sun-

days and Good Friday. Bills falling due on these days shall be deemed due the following business day. DAMAGES on protested bills—If drawn and payable in foreign countries, $10 per hundred; if drawn and payable in any other State in the United States, $5 per hundred. Damages are in lieu of interest, protest, and all other charges, but the holder shall be entitled to demand and recover lawful interest and damages from the time of protest. If the amount of the bill is expressed in U. S. money the rate of exchange has no consideration.

§ 405. **Me.**—ACCEPTANCE—To be in writing and signed. PROTEST and notice—Notary may, when requested, protest commercial paper, and notify each party liable on same under his signature and official seal. DAYS OF GRACE are abolished. HOLIDAYS—Sundays, Thanksgiving day, Jan. 1, Feb. 22, May 30, July 4, Dec. 25, first Monday in September, and Saturdays after twelve o'clock. Any note, draft, check or bill of exchange falling due on these days shall be payable or presentable on the succeeding secular or business day.

§ 406. **Md.**—PROTEST—Inland bills or orders drawn in other States on any person in this State shall be liable to official protest, by a notary or the clerk of the county circuit court, under seal of office. A protest, or notice of, by a notary public is prima facie evidence of facts stated. DAYS OF GRACE not allowed on sight bills, drafts or notes. HOLIDAYS—Jan. 1, Feb. 22, July 4, Dec. 25, Good Friday, general and congressional election days throughout the State, Thanksgiving day. Any of these days falling on a Sunday, the day following shall be observed. All bills, notes, drafts and checks due or presentable on these days shall be deemed presentable the day preceding. Saturday afternoon is a legal holiday for the City of Annapolis. All negotiable paper falling due or protested on that day will be deemed due the following business day. DAMAGES on a bill of exchange drawn in this State on persons in other States, protested, 8 per cent, with costs of protest and legal interest from protest. An indorser paying same can recover with interest. On persons in foreign countries, 15 per cent on the principal, with protest costs and legal interest from protest.

§ 407. **Mass.**—ACCEPTANCES—The person on whom drawn, has until two o'clock P. M. of the next succeeding business day to the first presentation, to decide on its acceptance, except that when the succeeding day is a Saturday which is not a holiday according to law, the time for such decision shall expire on such Saturday at twelve o'clock noon. If held over one day for cause, they shall, when accepted, date from the day of presentation. If liable to be protested for non-acceptance or non-payment at twelve o'clock noon on any Saturday which is not a holiday according to law, they may be protested on such Saturday at any time after twelve o'clock noon, or on the next succeeding business day. Those payable on demand, which would otherwise be payable on any Saturday not a holiday according to law, shall be deemed to be and shall be payable on the next succeeding business day. All except those payable on demand, which would otherwise be payable on any Saturday not a holiday according to law, shall be deemed to be payable and shall be payable on the next succeeding business day.

Presentment of a demand note before sixty days is a reasonable time. Must be within the sixty days to charge the indorsers. Notice of non-acceptance or non-payment may be sent by mail to the residence or business address of the party. PROTEST—A notarial protest duly certified under his hand and official seal shall be prima facie evidence of the facts stated in such protest and of the notice given to the drawer or indorser. DAYS OF GRACE are allowed on bills of exchange, promissory notes, orders and drafts payable in the State at a future day certain, unless stipulated to the contrary, as on foreign bills of exchange. No grace allowed on bills, notes and drafts payable on demand nor on bank checks. HOLIDAYS—Christmas day, Thanksgiving day, Feb. 22, May 30, July 4, first Monday of September, April 19. When Christmas day occurs on Sunday, the following day is a legal holiday. Promissory notes, checks, drafts or bills of exchange falling due on Sunday or a legal holiday shall be payable and presentable on the next succeeding business day. DAMAGES on a protested bill drawn or indorsed within the State and payable beyond the limits of the United States, 5 per cent at current rate of exchange at time of demand, with interest from date of protest, in full for all damages, charges and expenses. If payable in Maine, New Hampshire, Vermont, Rhode Island, Connecticut, or New York, 2 per cent; if in New Jersey, Pennsylvania, Maryland, or Delaware, 3 per cent; if in Virginia, West Virginia, North Carolina, South Carolina, or Georgia, or in the District of Columbia, 4 per cent; if in any other State, 5 per cent. The rate of damages on a sum of money not less than $100, payable not less than 75 miles distant from the place where drawn or indorsed, and not accepted, shall be one per cent in addition to the contents and interest on the contents.

§ 408. **Mich.**—PROTEST and notice—Notaries public to protest and give notice to interested parties on commercial papers according to the law of nations and commercial usage. Same under notary's hand and seal is presumptive evidence of the fact. Notices of protest to be mailed properly directed. Foreign protested bills are payable at the current rate of exchange at time of demand. Circulating bank notes may be protested by notary at the instance of the holder. Fee for protesting to be paid by party having them protested. DAYS OF GRACE allowed on all bills, notes and drafts not payable on demand, nor on any bank or banker or stating exact time of payment. Acceptance to be in writing. HOLIDAYS—Jan. 1, Feb. 22, May 30, July 4, first Monday in September, Dec. 25, Thanksgiving day, Saturday after 12 noon. Any of these days falling on Sunday, the following Monday shall be observed. Notes, bills of exchange, or checks falling due on these days shall be deemed due on the next succeeding the holiday. DAMAGES on, 5 per cent, with interest. Damages on bills within the U. S., viz.: Wis., Ill., Ind., Pa., Ohio, N. Y., 3 per cent, with interest and costs; Mo., Ky., Me., N. H., Vt., Mass., R. I., Conn., N. J., Del., Md., Va., and D. C., 5 per cent, with interest and costs; other States, etc., 10 per cent, with interest and costs.

§ 409. **Minn.**—DEMAND NOTES—A demand made at the expiration of sixty days from the date thereof without grace, or at any time within that term, shall be deemed a reasonable time. No presentment

of such note to the promiser and demand of payment shall charge the indorser, unless made on or before the last day of said term of sixty days. ACCEPTANCE to be in writing. NOTICE OF PROTEST to be immediately mailed to each party protested against, directed to their reputed place of residence. Protest to state time and manner of service of notice. Record to be kept of same. DAYS OF GRACE allowed, unless otherwise stated. HOLIDAYS—Sunday, Thanksgiving day, Good Friday, first Monday in September, first Tuesday after the first Monday of November in each even-numbered year, Dec. 25, Jan. 1, Feb. 22, July 4, May 30, Feb. 12, or the following day when either of the last six occur on Sunday. Bills, notes, drafts and contracts due or payable on these days shall be payable or performable upon the business days next preceding, and in case of non-payment or non-fulfilment, shall be noted and protested upon such preceding day; but notice of the dishonor, non-payment or non-fulfilment need not be given until the business day next following. DAMAGES on bills of exchange drawn or endorsed in this State, and payable without the U. S., protested, 10 per cent, together with interest from time of protest. If payable in the U. S., 5 per cent, with legal interest, costs and charges. Due notice being given in both.

§ 410. Miss.—ACCEPTANCE of a bill of exchange must be in writing, duly signed; the holder may require it to be written on the bill; a refusal may be taken as a refusal to accept. The record, or copy, of the officer protesting shall, when verified by the oath of the officer, be evidence of the facts stated, and giving or mailing of the notice, with statements made, shall be prima facie evidence. PROTESTS—Bills of exchange and indorsed notes may be protested by any notary public, justice of the peace, mayor of a city, town or village, or by the clerk of a circuit or chancery court. Immediately after protest, the officer shall give notice thereof in writing to each party protested against. NOTICE may be served by mail directed to the party at his known or usual place of abode or business. The officer shall deliver to the holder of the instrument a copy of his protest, signed and verified by oath. DAYS OF GRACE allowed on all bills of exchange and notes for a sum certain, payable only in money. HOLIDAYS—When a bill or note should be presented for acceptance or payment, according to its terms, shall be a Sunday, New Year's day, Fourth of July, Thanksgiving day or Christmas day, it shall be presented on the day next before the day on which by its terms it is presentable, as shall not be one of the days herein specified. DAMAGES on bills of exchange, drawn upon any person, or body politic or corporate, in the U. S., and out of this State, and protested for non-acceptance, shall draw five per centum damages on the sum drawn for, and interest and principal. If payable out of the U. S., shall draw ten per centum damages, with interest. Holder is in all cases entitled to costs and charges. Domestic bills, drawn and payable in this State, for twenty dollars or more, shall be protested for non-acceptance or for non-payment same as foreign bills. No damages to accrue, they shall be subject to and governed by the customs and usages of foreign bills.

§ 411. Mo.—ACCEPTANCE must be in writing, signed by the acceptor or his lawful agent, on the bill. PROTEST—A notarial protest is evi-

dence of a demand and refusal to pay, as stated in the protest. DAYS OF GRACE—Not allowed on sight or demand drafts or bills. HOLIDAYS—Jan. 1, Feb. 22, May 30, July 4, first Monday in September, a general State election day, Thanksgiving day, Dec. 25. If any fall on Sunday, the following Monday. Negotiable instruments falling due or presentable on these days for acceptance or payment, giving notice if for dishonor, shall be due or presentable the next succeeding day, unless it be a holiday; in such case it shall be due the day previous. In cities with a population over 100,000, every Saturday after 12 o'clock noon, and negotiable instruments due or presentable for acceptance or payment shall be due the next succeeding secular business day. DAMAGES on bills drawn or negotiated in the State on persons in the State and protested, 4 per cent; on persons in other States, 10 per cent; on persons in other countries, 20 per cent. Notice given when required at common law. Holder entitled to recovery when bill acquired for a valuable consideration. No damages allowed if bill is paid with interest and protest charges within twenty days after dishonor.

§ 412. **Mont.**—A NEGOTIABLE INSTRUMENT is dishonored when not accepted or paid when presented. PROTEST must be made when bill was presented and noted same day; it may be written out at any time after. Notice of protest must be in the same manner as notice of dishonor, but must be given by the notary protesting. If foreign bill waives protest, notice of dishonor may be given to any party to it. NOTICE of dishonor may be given by the holder, or a party liable, the instrument to be described. Service may be personal or by mail. A waiver of protest, other than foreign bill, waives presentment and notice. DAYS OF GRACE are not allowed. Acceptance must be in writing across the face of the bill. It may be written on a separate piece of paper. An inland bill of exchange is one drawn and payable within this State. All others are foreign. Notice of the dishonor of a foreign bill can be given only by a notice of its protest. Protest must be made by a notary if obtainable. HOLIDAYS are Sundays, Jan. 1, Feb. 22, May 30, July 4, first Monday of September, Dec. 25, election day throughout the State, Thanksgiving day. If any fall on Sunday, the following Monday to be observed. Contracts falling due on these days may be performed the next business day. DAMAGES allowed if drawn on a person in this State, $2 upon each hundred; if in another State, $5 per $100; if in North America, Europe, or Great Britain, $10 per $100; elsewhere, $15 per $100. Lawful interest allowed from time of protest.

§ 413. **Neb.**—PROTEST of commercial papers to be made by notaries public, same to be prima facie evidence of the fact without proof. NOTICE of protest to be given by them to indorsers, makers, drawers or acceptors. DAYS OF GRACE—Three are allowed on same, except when payable on demand. LEGAL HOLIDAYS—Jan. 1, Feb. 22, April 22, first Monday in September, Dec. 25, May 30, July 4, and Thanksgiving day. When they occur on Sunday, the day following. Any negotiable instrument falling due on these days, it shall be lawful to make demand, protest and give notice of dishonor on the following business day. DAMAGES on protest shall be subject to twelve per centum if drawn on persons without the United States and six per

centum if within the United States, outside this State. SUIT may be brought in the name of the drawee. Endorser may bring suit in his own name. May be brought against the drawers, makers or endorsers, jointly or severally.

§ 414. Nev.—ALL NOTES in writing, made and signed by any person, promising to pay to any other person, or his order, or to bearer, or to the order of any other person, a sum mentioned shall be due and payable as expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants. AN ACCEPTANCE must be in writing, signed by the acceptor, or his lawful agent. If on a paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom it was shown, and who, on the faith thereof, shall have received it for a valuable consideration. NOTICE—Mailing notice of dishonor of bill to the city or town where the person sought to be charged, resided at the time of drawing, making or endorsing it, shall be sufficient, unless the person specified the postoffice at the time. DAYS OF GRACE—Three are allowed on all bills or drafts, except those payable on sight. Holidays coming within these days shall be treated as one of such days. HOLIDAYS—January 1, February 22, July 4, Thanksgiving Day, December 25. Bills and notes falling due on these days shall be due and payable on the day previous. DAMAGES on protested bills. If on persons in the States east of the Rocky Mountains, $15 on the hundred; if in any foreign country, $20 on the hundred. In lieu of interest and protest charges, but interest and damages shall accrue subsequent to protest. Damages are recoverable only by the holder who purchased it for a valuable consideration. SUIT—Payees and indorsees of notes, payable to them, or their order, and the holders of such notes payable to bearer, may maintain action for the sums mentioned, against the makers and indorsees, as in cases of inland bills of exchange, and not otherwise.

§ 415. N. H.—PROTEST upon a promissory note payable on demand, a demand made at the expiration of sixty days from its date without grace, or any time within that term, is reasonable, and any act or neglect which by the rules of law and custom is deemed equivalent to a presentment and demand on a note, payable at a fixed time, or which would dispense with such presentment and demand, if it occurs at or within the sixty days, shall be a dishonor thereof, and authorize the holder to give notice of dishonor to the indorser, as upon a presentment to the promisor and his neglect or refusal to pay the same. No presentment of the note to the promisor and demand of payment shall charge the indorser unless made on or before the last day of the sixty days. NOTICE of the non-payment or non-acceptance, shall be sufficient to charge a party to same, who resides in the town in which it is made payable if the notice is seasonably deposited. Mailed is sufficient. HOLIDAYS—Bills of exchange, etc., maturing or to be paid on Sunday, Thanksgiving, fast day, Labor Day, Christmas, July 4, February 22, May 30, or when either of the last four fall on Sunday or on the day of general election of members of the legislature, are payable and to be executed on the day next succeeding, not being

one of said days and may be noted and protested on such next preceding day. Notice given the following day not a holiday.

§ 416. N. J.—BANK NOTES, countersigned and registered, refused redemption by their makers between the hours of ten and three o'clock where payable, may be protested by a notary public, at the request of the holder, in the usual manner. Notice to be given to the State Treasurer. PROTEST of commercial paper to be made by a notary public; if not, can be had by a justice of the peace. NOTICE OF PROTEST to be sent to all parties liable. Diligent inquiry must be made as to the residence or place of business of the party sought to be charged. Notice may be sent by mail. DAYS OF GRACE—Abolished. HOLIDAYS—January 1, February 12, 22, May 30, July 4, first Monday of September, December 25, any general State election day, Thanksgiving Day, and Saturday from 12 o'clock noon to 12 o'clock midnight. Bills, notes and checks presentable for acceptance, or payment on these days, shall be presentable on the secular day succeeding, and on the half holiday, shall be presentable before 12 o'clock noon of the same day, provided that for the protesting or otherwise holding liable parties to any bill, note or check, not paid before 12 o'clock on Saturday, demand may be made and notice of protest or dishonor given on the next succeeding business day; provided further, that the party receiving such for collection shall not be deemed negligent or liable. Any of these days falling on Sunday the next succeeding day shall be observed, and bills, notes and checks due on that day shall be deemed as due on the next succeeding business day.

§ 417. N. M.—PROMISES to pay are assignable by endorsement. An assignee has a right of action in his own name, subject to any set off of the maker or debtor before notice of the assignment. The assignor may discharge himself from liabillty by specifying in the assignment that the same is made without recourse. ACCEPTANCES must be in writing, signed by the person to be charged or his agent. PROTEST AND NOTICE, taken and sent by a notary public under his official seal. DAYS OF GRACE are allowed. LEGAL HOLIDAYS are July 4, December 25, January 1, Thanksgiving Day. Promissory notes or order for the payment of money at some future time, becoming due on Sunday or a legal holiday, shall be due on the next business day. DAMAGES on non-accepted or non-payment bills of exchange, drawn or indorsed in this territory, when recoverable: If drawn outside the United States, twelve per cent. on the principal with interest from time of protest. If in the United States, six per cent. with interest. SUIT may be brought jointly on all persons liable. May join an executor, etc., liable in a representative character.

§ 418. N. Y.—(See Sec. 387 for Laws.) HOLIDAYS—April 27, 1897, for counties of New York, Westchester and Queens, shall in respect to bills of exchange, checks and promissory notes be considered as Sunday; all such paper shall be deemed payable and presentable the succeeding secular day; January 1, February 12 and 22, May 30, July 4, first Monday of September, December 25. If any of these days are Sunday, then the day thereafter. Each general election day and Thanksgiving Day. The term half-holiday includes the period from noon to midnight of each Saturday which is not a holiday.

§ 419. **N. C.**—PROTEST AND NOTICE—The protest of a notary public, justice of the peace, or clerk of a court of record, setting forth that he made such demand, or gave such notice, and the manner in which he did the same, shall be prima facie evidence of the facts stated. DAYS OF GRACE are allowed unless otherwise specified and on demand. Interest is attached to all bills, bonds, notes, etc., after becoming due, unless otherwise specified. HOLIDAYS—January 1, February 22, May 10, 20, July 4, Thanksgiving, December 25, are legal holidays, any of which falling on Sunday the Monday following shall be observed, and papers due on such Sunday shall be payable on the Saturday preceding, and papers otherwise due on said Monday shall be payable on the Tuesday thereafter. If these days fall on Saturday the papers due on Sunday shall be payable on the Monday succeeding. If they fall on Monday, the papers due on that day shall be payable the Tuesday succeeding. DAMAGES on protested bills drawn in this State upon persons in other States, 3 per cent. on the principal. If in any other place in North America except the northwest coast of America or in the West Indies or Bahama Islands, 10 per cent. If drawn in any other State or in Europe, or South America, 15 per cent. If drawn in any other part of the world, 20 per cent. LIABILITY—Indorsers on bonds, bills or promissory notes are liable as surety to the holder, and no demand need be made on the maker previous to an action on the indorser unless the indorsement plainly express otherwise. This does not apply in any respect to inland or foreign bills of exchange. SUIT may be brought by an indorser in his own name.

§ 420. **N. D.**—AN ACCEPTANCE must be in writing. It is not necessary to make a demand in order to charge the principal. If the instrument is payable at a specified place and the principal is able and willing to pay it there at maturity, that is equivalent to an offer of payment. Must be presented by the holder to the principal debtor if he can be found where presentment should be made; if not, then to any one employed there. It must be presented where specified. A bill of exchange, payable at a certain time after sight, not accepted within ten days after date, with added time to forward for acceptance, is presumed to have been dishonored. PROTEST to be noted on the day of presentment or the next business day. Must be made by a notary if one can be found; if not, then by any reputable person in the presence of two witnesses. NOTICE may be given by a holder or a party liable, in any form which describes the instrument with reasonable certainty and substantially informs the party of its dishonor. May be served personally, or by delivery to a person of discretion at the party's residence or place of business, or through the mail. If after death, on the party's personal representative; or if none, then to any member of the family residing with him at the time of death; if none, then by mailing it to his last place of residence. HOLIDAYS—Sundays, January 1, February 22, July 4, December 25, May 30, Thanksgiving Day, State election day throughout the State. If any of these fall on a Sunday then the Monday following. Acts of a secular nature may be performed upon the day following. DAMAGES on foreign bills of exchange, drawn upon any person in this State, $2 on each one hundred; on persons out of this State, but in the States of Nebraska, Iowa,

Minnesota, South Dakota, Wisconsin, Illinois, Missouri, and Montana, $3 on each one hundred dollars; if on a person in any of the other States, $5 on the hundred; if on a person outside the United States, $10 on the hundred. With interest from notice of dishonor.

§ 421. **Ohio.**—BONDS, NOTES, bills and checks, for a sum certain, payable to any person, or order, or assigns, are negotiable by indorsement; or payable to bearer, are negotiable on delivery. Demand and notice of payment may be made on the third day of grace, and notice given within a reasonable time thereafter shall be due diligence, unless otherwise expressed in the indorsement, but if the third day of grace be the first day of the week, demand shall be made on the preceding business day. Notice may be given by mail. DAYS OF GRACE—Three are allowed except, when drawn on a bank or banking institution payable on a specific day, and it shall not be necessary to protest same for non-acceptance nor to give notice of same to the drawer or indorser. HOLIDAYS—January 1, July 4, December 25, February 22, May 30, Thanksgiving Day, shall be considered as Sunday for presenting and protesting all negotiable paper. If these days occur on a Sunday the succeeding Monday shall be so observed. SUIT—An indorsee or holder may institute action. After due diligence to obtain the amount from the maker, drawer, obligor or acceptor, action may be instituted against the indorser. If indorsed or delivered after the day it is payable and the indorser institute action against the maker, drawer or acceptor, the defendant shall be allowed to set up any defense he might have made had it been instituted in the name and for the person to whom made payable. If indorsed or delivered, before the day it is made payable and the indorsee institute an action thereon, the defendant may prove the payment of any money thereon before it was indorsed or delivered to the plaintiff, on proving that the plaintiff had notice of same before the indorsement and delivery.

§ 422. **Okla.**—PROTEST made when paper is dishonored, which is, when not accepted or paid according to its tenor. NOTICE may be given in any form describing the instrument. DAYS OF GRACE are allowed unless otherwise stipulated. Sundays and holidays are excluded. HOLIDAYS—Sunday, January 1, February 22, July 4, December 25, May 30, election day throughout the territory and Thanksgiving Day. If January 1, February 22, July 4 and December 25 fall upon Sunday the Monday following is holiday. A negotiable instrument falling due on these days shall be deemed due the following business day.

§ 423. **Ore.**—ACCEPTANCE to be in writing and signed by the acceptor or his lawful agent. PROTEST AND NOTICE made by notary, necessary to hold the indorsers. DAYS OF GRACE are abolished. LEGAL HOLIDAYS—Sunday, January 1, February 22, May 30, July 4, first Monday in September, December 25, election day throughout the State, Thanksgiving Day. Any of these falling on Sunday, the Monday following shall be observed. Negotiable instruments falling due on these days shall be due and payable on the next succeeding business day. DAMAGES on inland bills, 5 per cent., with legal interest, costs and protest charges. On foreign bills, 10 per cent. current exchange, with interest from date of protest.

§ 424. Pa.—BILLS, notes or checks drawn or indorsed, payable to order, are negotiable by indorsement and recoverable by the indorsee or indorsers in their name. PRESENTMENT for payment to be made elsewhere than in this State, referred to only in the margin of the bill, or below the name of the drawee, shall not be so construed as to charge the indorsers for non-payment, unless place was, at the date of the bill the actual place of the drawee, or is expressed as such in the reference, or it appear by the protest that, upon diligent inquiry, the place could not be found. NOTICE of protest to the drawer, maker and indorsers, under the hand and official seal of a notary public, is prima facie evidence of the facts stated without proof. DAYS OF GRACE are allowed, except at sight. LEGAL HOLIDAYS are January 1, February 12, 22, the third Tuesday of February, Good Friday, May 30, July 4, first Monday of September, first Tuesday after the first Monday of November, December 25, Saturdays after 12 o'clock, and Thanksgiving Day. Paper presentable for acceptance, payment, or protesting, or giving notice of, on these days shall be presentable or protested on the business day next succeeding, except when payable at sight or on demand. If on a Saturday half holiday, shall be payable at or before 12 o'clock on that day; providing, that for the purpose of protesting or holding liable a party to a bill not paid before 12 o'clock, a demand for acceptance or payment shall not be made and notice of protest or dishonor shall not be given until the next succeeding business day. Any one receiving such paper for collection, etc., on such half holiday shall incur no liability or neglect in not presenting same. Saturday until 12 o'clock is a business day. The entry, issuance, service, or execution of any writ, summons, confession of judgment, or other legal process on any holiday or half holiday designated here, shall not be prevented or invalidated, nor shall any bank be prevented from keeping its doors open for business on such afternoon if its directors so elect. When January 1, February 12, 22, May 30, July 4, or December 25, fall on Sunday, the following Monday shall be observed as a holiday. All bills, etc., falling due on such Monday shall be due and payable on the next succeeding business day. Bills, etc., falling due on the Monday so observed or subject to protest and giving of notice, shall be due and protested on the next succeeding business day. If falling due on Sunday, shall be due on the succeeding business day. DAMAGES—Bills, etc., returned protested are entitled to damages above the principal and protest charges from time of notice and demand. In the United States, 5 per cent., except California, New Mexico, and Oregon; there 10 per cent. In Asia, Africa, or Pacific Islands, 20 per cent. In Mexico, Spanish main, West Indies or Atlantic islands, east coast of South America, or Europe, 10 per cent. On west coast of South America, 15 per cent. Any other part of the world, 10 per cent. In lieu of interest and charges other than protest, to the time of notice. Rate of exchange same as at time of protest.

§ 425. R. I.—ACCEPTANCE—Bills for acceptance shall have until 2 o'clock of the next business day. If held over for cause one day, shall date from the day of presentation. PROTEST AND NOTICE—Notaries to take and give to parties liable. Cannot be made by a notary who is president, officer, clerk or agent of the bank where paper has been discounted or placed for collection. DAYS OF GRACE—Three allowed.

HOLIDAYS—February 22, first Wednesday of April, May 30, July 4, first Monday of September, December 25, second Friday in May, Tuesday after the first Monday of November in every second year after 1896, and Thanksgiving Day. When either of the said days fall on Sunday, then the day following it. Bills, notes, drafts, or other evidences of indebtedness due and payable on such holidays to be made on the business day next following. In default of payment, same may be protested and such protest shall be valid. Saturday is a holiday after 12 o'clock noon. This shall not apply to checks or demand drafts presented before 12 o'clock noon on Saturday. Legal interest is six dollars on a hundred for one year, unless a different rate is expressly stipulated. DAMAGES—Any foreign bill of exchange drawn or indorsed within this State, returned protested, shall be subject to 10 per cent. damages and charges for protest, and 6 per cent. interest from the date of protest. Action may be brought for the principal, damages, interest and charges of protest against the drawers and indorsers, jointly or severally.

§ 426. S. C.—AN ACCEPTANCE must be in writing upon the bill or no drawer shall be liable for costs, damages or interest, unless protested for non-acceptance, and within fourteen days thereafter, it be sent, or notice given, to the party from whom it was received, in writing. If the bill be accepted and not paid before three days' expiration after due and payable, then the drawer shall not be compelled to pay costs, damages nor interest, unless protested and notice given. If any person accept a bill for a former debt due him, it shall be accounted a payment of such, if such person fails to take due course to obtain payment thereof by endeavoring to have it accepted and paid, and make protest, either for non-acceptance or non-payment, but nothing here shall extend to discharge any remedy against the drawer, acceptor or indorser of such bill. PROTEST AND NOTICE—Notary public's protest is sufficient evidence of notice in any action by any person against any of the parties to a bill or note. On an accepted bill protested for non-payment, notice to be sent to the party from whom received, within fourteen days after protest. If such bill be accepted and not paid before the expiration of three days after it becomes due, the drawer shall not be liable for costs, damages or interest unless protest be made and sent or notice given. If any one protest be made, and notice sent, or left, every drawer shall be liable for costs, damages and interest. Protested bills carry 7 per cent. interest from time of protest with damages and costs. Protest not necessary for acceptance or non-payment of an inland bill, unless the value is expressed in the bill and it be drawn for one hundred dollars or more. DAYS OF GRACE are allowed on all bills, sight and otherwise. HOLIDAYS—National Thanksgiving Day, general election days, January 1, February 22, July 4, December 25, first Monday in September. In Charleston County add Saturday afternoons after 12 o'clock. Paper payable on Sunday or a legal holiday shall be payable the next day, provided it be not a Sunday or legal holiday; if so, then on the first day thereafter. DAMAGES on protested bills on parties out of this State, 10 per cent. In any other part of North America or the West Indies, 12½ per cent. Any other part of the world, 15 per cent., and all

charges incidental with interest until paid. Bills and notes drawn for less than $1.00 payable to order or bearer are void.

§ 427. S. D.—PROTEST to be made by notary public if one can be obtained, otherwise any reputable person can so act in the presence of two witnesses. Must be in writing, for non-acceptance must be made in the city or town in which the bill is presented. Protest must be noted the day presentment is made, or on the next business day. NOTICE of protest given in same manner by notary and to state for whom made. DAYS OF GRACE—Three allowed. HOLIDAYS are Sundays, January 1, February 22, July 4, December 25, May 30, Thanksgiving Day, election days. If January 1, February 22, July 4 or December 25 fall on Sunday, the Monday following is holiday. DAMAGES—If drawn upon person in this State, $2.00 on each $100.00 of the principal. Upon persons in Nebraska, Iowa, Minnesota, Wisconsin, Illinois, Missouri or Montana, $3.00 on each $100.00. On persons elsewhere in the United States, $5.00 on $100.00. On a person in a foreign country, $10.00 on each $100.00. If amount is expressed in United States money, estimate without regard to rate of exchange. If in foreign money, estimate as per rate at time of protest of similar bills in the place nearest to where the bill was negotiated.

§ 428. Tenn.—When a malignant epidemic is officially announced in an incorporated town or city, the holders or owners of negotiable paper are excused from presenting the same during its prevalence. Demand, notice and protest, made within fifteen days after the epidemic has been officially declared ended, shall be binding on the parties charged. PROTEST AND NOTICE—Mailing notice of is sufficient and must be done immediately after protest. If a certificate he not made in or on the protest but an entry be made to that effect in the notary's record book and the notary be dead, the book, or a sworn copy thereof, shall be prima facie evidence of the fact of notice to all persons so stated to have received notice. DAYS OF GRACE not allowed on bills payable at sight. HOLIDAYS—January 1, February 22, July 4, December 25, Good Friday, Decoration Day, Memorial Day, first Monday in September; when these days fall on Sunday, then the following Monday; also Thanksgiving Day, all days set apart for county, State or national elections throughout the State. Negotiable paper falling due on these days shall be due and payable the first business day preceding the same. DAMAGES on bills drawn or indorsed in Tennessee on any person in any other place, returned unpaid with legal protest, payee may recover besides the principal, interest and charges; in any other State, 3 per cent; if bordering on the Gulf of Mexico or West India Islands, 15 per cent.; in any other part of the world, 20 per cent. In lieu of interest and other charges to the time of protest, but interest to be computed from that time on the principal, together with the damages and charges of protest. SUIT may be brought jointly or severally against the maker or indorsers for the principal, interest and protest charges.

§ 429. Texas.—PROTEST AND NOTICE—The holder of a bill or note may fix the liability, also, by protesting and giving notice according to the usage and custom of merchants by a notary public. The notary shall set forth in his protest and record, a full statement of

the facts, specifying demand, sum of money, of whom, when and where; also serve notices of protest on the drawers and indorsers made liable, and note in his protest record, with time, place and manner of service. Protest or copy of the record certified under his hand and seal shall be admitted as evidence in all courts of this State. DAYS OF GRACE—Three allowed on all bills and notes negotiable. HOLIDAYS are January 1, February 22, March 2, April 21, July 4, December 25, Thanksgiving Day, and general State election day. Same are treated as Sunday for presentation, protesting and giving notice of on bills of exchange, notes, etc. All exemptions and requirements usual on legal holidays may be observed. If a holiday fall on a Sunday, the day following shall be observed, but bills of exchange, etc., may be presented on the preceding Saturday and proceeded on accordingly. DAMAGES ON PROTESTED BILLS—The holder of any protested bill, etc., drawn by a merchant within the limits of this State upon his agent or factor, living outside this State shall, after having fixed the liability of the drawer or indorser, be entitled to recover 10 per cent. damages on the amount of the bill, with interest and cost of suit accruing. LIABILITY of parties may be fixed without protest and notice, by the holder instituting suit after the right of action accrues. A bill not accepted renders the drawer immediately liable. Assignee may sue in his own name.

§ 430. Utah.—A negotiable instrument is a written promise or request for the payment of a certain sum of money to order or bearer. When time is not specified, it is payable immediately. When place of payment is not specified it is payable at the residence or place of business of the maker, or wherever he may be found. When payable to the order of a fictitious person it is payable to bearer. Indorsement must be on the back of the instrument or upon a paper attached. Not necessary to make demand of payment upon the principal debtor to charge him, his ability and willingness to pay is equivalent to an offer of payment. Presentment for payment, when necessary, must be by presentment of the instrument by the holder to the principal debtor if he can be found where presentment should be made; if not, then to some preson employed there by him. Must be presented upon th day of maturity. If on demand it may be presented any day. Must be presented within reasonable hours. Acceptance must be in writing across the face of the bill. If the holder consents, it may be written upon any part of the bill or upon a separate paper. PROTEST must be made by a notary public, if one can be found; otherwise by any reputable person in the presence of two witnesses. It must be in writing, giving a literal copy of the bill or annexing the original, stating presentment, manner, presence or absence of the drawee or acceptor, refusal to accept or pay, or inability of the drawee to give a binding acceptance, in case of refusal, the reason assigned, finally protesting against all the parties charged. Protest for non-acceptance must be made in the city or town where bill is presented; for non-payment in the city or town where presented for payment. It must be noted on day of presentment. One who pays a foreign bill for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays, in order to entitle him to reimbursement. Notice of dishonor may be given by its holder or by any party who

might be liable. May be in any form describing it with reasonable certainty; may be given by delivering it to the party to be charged, personally, at any place, or to some person of discretion at the place of residence or business acting for him, or by directing it to the party according to the best information and depositing it in the postoffice, prepaid. Notice of dishonor of a foreign bill can be given only by notice of its protest. DAYS OF GRACE are abolished. HOLIDAYS—Sundays, January 1, February 22, May 30, July 4, 24, December 25, Thanksgiving Day. When such days fall on Sunday the following Monday shall be observed. In case the last day of grace upon any note or bill fall upon one of these days, it must be presented on the secular day next preceding, and in case Sunday and the holiday come together, said note or bill must be presented on the day next succeeding said Sunday or holiday. COMPUTATION of time is done by excluding the first and including the last day, unless the last is a holiday, then it is also excluded.

§ 431. Vt.—A DEMAND NOTE is overdue sixty days after date. No presentment shall charge the indorsers unless made on or before sixty days. PROTEST—A negotiable promissory note, inland bill of exchange, draft, or check, may be officially protested for non-payment by a notary public and notice given by him to the parties to the instrument. The certificate of a notary, under his hand and official seal, is evidence of notice. NOTICE by mail to the nearest postoffice of the party, prepaid, is sufficient. DAYS OF GRACE—Abolished. HOLIDAYS—January 1, July 4, August 16, May 30, December 25, February 22, Thanksgiving, shall for presenting for acceptance or payment, protesting, and giving notice of the dishonor of bills, etc., be considered like Sunday. Any of these days falling on Sunday, the preceding Saturday shall, for such purposes, be considered like Sunday. Falling due on Sunday or a legal holiday it shall be considered as due on the following business day. SUIT—The indorsee or holder may maintain in his own name. The indorser shall have the same right to pay as the principal, and upon maturity may tender the true amount. If the holder refuse, he is discharged from liability. DAMAGES are allowed as full compensation for accrued interest before notice of dishonor, re-exchange, expenses and all other damages in favor of holders for value only, upon bills drawn or negotiated in this State and protested. On persons in this State, $1 per $100; in other States, $2.50 per $100; in foreign lands, $5 per $100. Interest from time of notice on the principal and damages. Exchange, no regard to if in the United States. If expressed in foreign money, estimate as where such bills are currently sold.

§ 432. Va.—ACCEPTANCE of a bill, payable at a banker's or other place, shall be deemed general, and presentment may be at such place, or as might have been if no place were specified. If expressed that it is payable at a banker's or place only, it shall be a qualified acceptance, and presentment shall be at such place; but as against the maker of a note or the acceptor of a bill, general or qualified, it shall not be necessary to aver or prove presentment at the time or place specified. Such maker or acceptor may, however, set up, as a matter of defense, any loss sustained by him by reason of the failure to make such pre-

sentment. PROTEST—If the drawer of a bill express that it be payable in any place other than by him mentioned to be the residence of the drawee and it shall not on presentment for acceptance be accepted, such bill may, without further presentment to the drawee, be protested for non-payment in the place expressed by the drawer, unless the amount be paid to the holder on the day on which the bill would have become payable had it been duly accepted. Upon any note which on its face is payable at a particular bank or at a particular office thereof for discount and deposit or the place of business of a savings institution or savings bank, or at the place of business of a licensed banker or broker, and upon any bill of exchange being protested, or the protest waived, an action of debt or assumpsit may be maintained and judgment given jointly against all liable for the principal and charges of protest, with interest from the date of protest; and in case such bill, for the damages also. When a bill is accepted supra protest for honor, or has a reference thereon, in case of need, it shall not be necessary to present it for honor or for referee, until the day following that on which it becomes due; and if the place of address on such bill shall be in any city, town or place other than where made payable, it shall not be necessary to forward it for payment to such acceptor for honor or referee, until the day following on which it shall become due. If that be a Sunday or a holiday it need not be forwarded until the day following. NOTICE OF PROTEST or dishonor mailed to any person in any city or town, is equivalent to personal service. What may be protested—Every dishonored promissory note, check or bill, payable in this State at a particular bank or office thereof for discount and deposit, or at a savings institution or bank, whether negotiable on its face or not, shall be deemed negotiable and may (but need not) be protested, and the protest shall be evidence. DAMAGES on bills drawn or indorsed within this State and protested shall be subject to 3 per cent. if payable out of Virginia and in the United States; if payable without the United States, 10 per cent., upon the principal. Action may be maintained upon any note or writing by which there is a promise, undertaking, or obligation to pay money, if signed by the party who is charged thereby, or his agent, and in an action of assumpsit, on any such note or writing, the rule as to averment and proof of consideration, shall be the same as in any action of debt thereon. HOLIDAYS—January 1, February 22, July 4, December 25, Thanksgiving, or a day of fasting and prayer appointed by the President or the Governor of the State. Negotiable instruments presentable for acceptance or payment on these days shall be presentable on the preceding business day. Such holidays falling on Sunday, the Monday following shall be observed as a holiday, and the negotiable instruments falling due shall be presentable on the business day next preceding. Notice of dishonor need not be given until the first day thereafter which is not a Sunday or such public holiday. DAYS OF GRACE—Abolished.

§ 433. Wash.—ACCEPTANCE—To be in writing, signed by the party or his agent. If on a separate paper it shall bind the acceptor in favor to whom showed and received for a valuable consideration. A refusal to write the acceptance on the bill is a refusal to accept a destruction, or refusal to return bill within twenty-four hours is an

acceptance. PROTEST AND NOTICE—Notary to act. Not necessary on inland bills for fixing liability. DAYS OF GRACE—Three allowed unless otherwise specified. HOLIDAYS—July 4, December 25, Saturdays from 12 o'clock noon to Sunday at midnight. Treated as Sundays for the presentation for acceptance or payment or protest of bills, notes checks, etc. The other holidays do not apply to bills and notes. DAMAGES—Without the United States, 10 per cent.; outside this and in other States, 5 per cent. In lieu of interest, charges of protest and charges previous to protest, with lawful interest from time of protest on the aggregate amount. Suit may be maintained by the payee and indorsees.

§ 434. **W. Va.**—ACCEPTANCE of a bill payable at a banker's or other place, without further expression in the acceptance, is a general acceptance, and presentment for payment may be either at such place, or as it might have been, if no such place had been specified in the acceptance. If place is specified in the acceptance, it is a qualified acceptance and must be presented at such place. But as against the maker of a note or the acceptor of a bill, whether general or qualified, it shall not be necessary to aver or prove presentment for payment at the place specified. Such maker or acceptor may, however, set up as a matter of defense any loss sustained by him by reason of the failure to make such presentment. PROTEST—If a bill expressing that it be payable other than in the place of residence of the drawee, shall not be accepted on presentation, may, without further presentation to the drawee, be protested for non-payment in the place expressed to be payable in, unless the amount be paid to the holder on the day on which it would be payable had it been duly presented. Protest on a foreign bill, check or note and in other cases, is prima facie evidence of the facts stated. NOTICE of dishonor sent through the mail properly addressed to the last known postoffice of the party, is equivalent to personal service. DAYS OF GRACE allowed on time drafts, but not on sight. HOLIDAYS—A bill or note due on a Sunday shall be payable and may be protested on the preceding day. A bill or note due on Christmas Day, January 1, February 22, July 4, or a national Thanksgiving Day shall be payable and may be protested on the preceding day, or if that be Sunday, then on the preceding Saturday; and if it becomes due on a day after a Sunday which is a legal holiday, shall be payable and may be protested on the preceding Saturday. If protested on the day preceding such legal holiday, notice of the dishonor need not be given until the first day afterwards. When a bill is accepted supra protest for honor, or has a reference therein in case of need, it shall not be necessary to present such bill to such acceptor for honor, or to such referee, until the day following that on which such bill shall become due, and if the place of address on such bill shall be in any town or place other than in the town or place where such bill is therein made payable, then it shall not be necessary to forward such bill for presentment for payment to such acceptor for honor or referee until the day after it becomes due. If the day following be a legal holiday, then it shall not be necessary to present it until the day following. Every note or check payable in this State at a particular bank or office thereof for discount or deposit, or at a savings institution or bank, and every inland bill payable in this

State, shall be negotiable and may upon dishonor be protested, the same being in evidence as in case of a foreign bill. An instrument payable subsequent to its date, and otherwise in the form of a check is a bill of exchange. DAMAGES—On a bill drawn or indorsed within this State, payable out of the State but in the United States, 3 per cent.; out of the United States, 1 per cent.

§ 435. **Wis.**—AN ACCEPTANCE must be in writing. PROTEST—Notice of, to be delivered or mailed to the drawer, maker, and indorsers of bills and notes, immediately upon making protest, at their reputed place of residence by a notary public under his signature and official seal. Record of same to be kept, together with time, place and names of all parties interested. This record is presumptive evidence of facts stated. DAYS OF GRACE—Abolished. HOLIDAYS—Sundays, January 1, December 25, February 22, July 4, May 30, Thanksgiving, general election day. If they fall on a Sunday the succeeding Monday is observed. Notes, drafts and bills of exchange falling due on these days are payable on the succeeding business day. DAMAGES—On foreign bills, 5 per cent. and interest; on inland bills, 5 per cent. with legal interest to its tenor with costs and protest charges.

§ 436. **Wyo.**—ACCEPTANCE to be written across the face of the instrument. It is not necessary to make a demand for payment on the principal debtor in order to charge him. PRESENTMENT must be by, or on behalf of, the holder. Must be presented to the principal debtor where presentment should be made, if not, then at his residence or place of business to some other person having charge or employed there. Must be presented on the day of maturity. It is dishonored when not paid or not accepted according to its tenor. PROTEST—By a notary; if can't be found, then by a judge of probate or justice of the peace. Must give a literal copy of the instrument or annex the original, state presentment, manner, presence or absence of the drawee or acceptor, the refusal, reasons, and finally protesting against all parties to be charged. Waiver of protest other than on a foreign bill, waives presentment and notice. NOTICE may be by notary, describing the instrument. Delivery may be personal to some one of discretion at the residence or place of business or by mail, addressed as best informed, on the day of dishonor or the next following. DAYS OF GRACE—Three allowed following the day due, unless the last day is Sunday or a legal holiday, then the next preceding business day shall be the last day of grace. HOLIDAYS—January 1, February 22, May 30, July 4, December 25, Thanksgiving, and others made so by law. If any fall on Sunday, the Monday following shall be observed. Instruments dated on Sunday are valid.

§ 437. **Canada.**—HOLIDAYS—Sundays, New Year's, Good Friday, Easter Monday, July 1, Christmas, Queen's birthday, Thanksgiving, Labor Day, any day appointed by the Lieutenant-Governor. (Some Provinces; Epiphany, Annunciation, Ascension, Corpus Christi, St. Peter and St. Paul's, All Saints' Day, Conception Day, Ash Wednesday.) PROTEST AND NOTICES—Notaries perform these duties.

CHAPTER VI.

COMMISSIONERS OF DEEDS.

§ **438. A commissioner is a person** holding a commission authorizing him to discharge certain duties. A commissioner of deeds is one authorized to take acknowledgments or proofs of written instruments in a foreign State or country. Most of the States of this country have a statute authorizing the governor of its State to appoint a number of residents of other States and countries to act in the taking of acknowledgments or proofs of written instruments, taking depositions of witnesses, taking affidavits and the oaths of persons resident in that State or country for use in the State making the appointment. They are, usually, appointed for a term of years, or during good behavior. They are required to take an oath for faithfulness in office, to have an official seal with which all their acts are to be attested, together with their signature. This seal to contain their name and the name of the State for which they are appointed, together with the word "commissioner." They are usually required to pay a fee for the appointment to the Secretary of the State making the appointment, and are often restricted as to the fee they charge for their acts. Before acting they are required to file with the Secretary of the State appointing them an impression of their official seal, together with their signature, which is kept on file for comparing instruments signed by them.

§ **439. Acknowledgment.**—A certificate of acknowledgment made by a commissioner of another State, need not be under seal. The want of a date to the acknowledgment would not vitiate it, if the acknowledgment was sufficient when the deed was offered in evidence.[1] In Iowa the certificate of a commissioner of deeds was held not sufficiently authenticated by seal, when the word "Iowa" was written in the body of the seal instead of impressed on the paper, as required by statute.[2] A deed acknowledged by a com-

[1] Irving v. Brownell, 11 Ill., 404.

[2] Gage v. Dubuque & P. R. Co., 11 Iowa, 310.

missioner of deeds residing out of the State requires no authentication of his official character.[3] Commissioners of affidavits regularly appointed, have full authority to take acknowledgments within the State for which they are appointed, of lands lying in North Carolina, and, when necessary, to take the privy examination of a married woman, who is a grantor, joining her husband in the execution. When the certificate of such commissioner is adjudged correct by the clerk of the Superior Court of the county in which the land lies, and the deed is registered upon the order of the latter, the registration will be deemed valid for all purposes.[4] An acknowledgment before a commissioner of deeds in one county cannot be read in evidence in another county without the certificate of the clerk of the former county.[5]

§ **440. Administration of oaths.**—A commissioner of deeds for Illinois residing in another State can administer oaths lawfully required in Illinois.[6]

STATUTORY REQUIREMENTS.

§ **441. Ala.**—APPOINTMENT—By the Governor. TERM—Four years. POWERS—To take and certify depositions, acknowledgments, proof of conveyance, and affidavits, for record in this State by persons outside. OATH of office to be taken. SEAL of office to be procured to authenticate official acts with.

§ **442. Ariz.**—APPOINTMENT—By the Governor. COMMISSION—Fee, $2.50. TERM—Four years. POWER—Within his State or country. To administer and certify oaths, take depositions, affidavits and acknowledgments. SEAL—Provide an official seal having engraved upon the words "Commissioner of Deeds for Arizona Territory" and the name of his State or country. All his official acts to be authenticated with the same. His acts have the same force and effect as those executed in this State by an officer so authorized. OATH of office to be taken and subscribed to before an officer authorized in his State or country to take oaths for faithful performance of his duties. Same to be filed with the Secretary of this territory within six months after taking. FEES to be the same as those prescribed for notaries.

§ **443. Ark.**—APPOINTMENT—By the Governor. (Fee, $5.00.) TERM—At the pleasure of the Governor. POWER—To administer oaths, take depositions, affidavits and acknowledgments. The same, when certified by them, to be effectual in law as by any other authorized officers. OATH of office to be taken and subscribed to before some officer authorized to administer oaths in their State, before acting. The oath, signature and an impression of his official seal to be filed with the

[3] Vance v. Schuyler, 1 Gilman, 160.

[4] Buggy Co. v. Pegram, 102 N. C., 540.

[5] Wood v. Weinant, 1 N. Y., 77; Borst v. Empire, 5 N. Y., 33.

[6] Kassing v. Griffith, 86 Ill., 265.

Secretary of this State within six months after appointment. A SEAL to be provided to authenticate his official acts. FEES—Not prescribed.

§ 444. **Cal.**—APPOINTMENT—By the Governor. (Fee, $5.00.) TERM—Four years. POWER—Within his State and country to administer oaths, take and certify depositions and acknowledgments. A SEAL to be procured having engraved upon the coat of arms of this State, the words commissioner of deeds for the State of California and the name of his State. All his official acts to be authenticated with it. His acts have the same effect as if done and certified in this State by any officer so authorized. OATH of office must be filed with the Secretary of this State within six months after the appointment. FEES—To be the same as those prescribed for notaries public. Names of commissioners to be published three times at the seat of government of the State in some weekly paper.

§ 445. **Colo.**—APPOINTMENT—By the Governor. (Fee, $5.00 Com., $1.00 O. and B.) TERM—At the pleasure of the Governor. POWERS—To take acknowledgments, depositions, affidavits and administer oaths. A SEAL to be procured to authenticate their acts with name of State on. OATH of office to be taken and subscribed to before a judge or clerk of a court of record where he resides. Oath, impression of his seal, and signature to be deposited with the Secretary of this State within six months after appointment. His acts under official seal have the same effect as any officer so authorized. FEES to be the same as notaries. Noting for protest, 50c; protest and record, 75c; notice of protest, each, 50c; certificate and seal, 50c; acknowledgments, 50c; additional, 25c; taking depositions, 15c per 100 words; affidavit, 25c; other fees same as a justice of the peace.

§ 446. **Conn.**—APPOINTED by the Governor. (Fee, $6.00.) TERM—Five years. POWER—To take acknowledgments, oaths, etc., examine witnesses, take depositions. OATH of office to be filed with the Secretary of State. SEAL—Official seal to be procured to authenticate their acts with. FEES fixed by the State in which they reside.

§ 447. **Del.**—APPOINTED by the Governor. (Fee, $10.) TERM Seven years. JURISDICTION for the State in which they reside or are appointed. SEAL to be procured. POWER to administer oaths, take depositions, affidavits, acknowledgments and the private examination of any married woman, party to a deed. OATH of office signed and certified to be filed with the county recorder. FEES—Same as notaries.

§ 448. **D. C.**—APPOINTMENT—By the President. (No fee required.) TERM OF OFFICE—Five years. POWER—To take acknowledgments of deeds for conveyance of property in the District, to administer oaths, take depositions in cases pending in the courts of the District. SEAL—His acts properly attested by hand and seal of office has full faith and credit.

§ 449. **Fla.**—APPOINTMENT—By Governor. (Fee, $7.00.) TERM—During pleasure of the Governor. POWER—To take acknowledgments for conveyances in this State, any contracts, letters of attorney or other writings under seal to be used or recorded in this State, to administer oaths. OATH of office to be taken before a notary or justice of the peace in his city or county for faithful performance of all duties,

same to be filed with the Secretary of this State. SEAL to be procured to authenticate his acts.

§ 450. **Ga.**—APPOINTMENT—By the Governor. (Fee, $5.00.) TERM—No statute. POWERS—To take and certify acknowledgments or proofs of conveyances, take depositions, powers of attorney, wills, affidavits, oaths and other writings requiring attestation in this State. OATH of office to be taken before anyone authorized to administer oaths and filed with the Secretary of State. SEAL of office to be procured to authenticate his official acts. FEES regulated by the State where resident.

§ 451. **Idaho.**—APPOINTMENT—By the Governor. (Fee, $5.00.) TERM of office, four years. POWER—To take depositions, acknowledgments and oaths, within his State. SEAL of office to be procured for authenticating his official acts with, having on it "Commissioner for the State of Idaho," his name. His oath of office to be filed with the Secretary of this State within six months. FEES—Same as allowed notaries.

§ 452. **Iowa.**—APPOINTMENT—By the Governor. (Fee, $5.00.) TERM—Three years. POWERS—To take depositions, affidavits, acknowledgments and oaths. SEAL—To procure same having on "Commissioner, Iowa," his name and State. Same with signature received as evidence in this State. OATH for faithfulness to be taken before a judge or clerk of a court of record or an authorized commissioner for Iowa, under the hand and official seal of party taking, same with signature added and impression of the seal of the appointee to be sent to the Secretary of this State. Commissioners of like nature appointed by other States for this State, are invested with the authority of justices of the peace to issue subpœnas for witnesses before them, and can administer oaths when permitted by such State. False swearing is subject to the perjury laws of this State. Such commissioner shall file a certificate of his authority and appointment with the Secretary of this State. FEES—Same as allowed in his State for like services.

§ 453. **Ind.**—APPOINTMENT—By the Governor. (Fee, $5.00.) TERM of office, four years. POWERS—To take depositions and affidavits to be used in the courts of this State, acknowledge deeds and other documents for record in this State, same to be attested with their official seal. OATH of office to be subscribed to before some officer authorized to administer it, same to be filed in the office of the Secretary of this State. SEAL—To procure an official seal to authenticate his acts with. FEES—Certificate and seal, 50c; depositions, etc., per 100 words, 10c; administering oath, 10c; protest, 50c; notice of, 25c; acknowledgments and seal, 25c; per 100 words, copying protests, 10c.

§ 454. **Kas.**—APPOINTMENT—By the Governor. (Fee, $1.00.) TERM—During pleasure of the Governor. POWERS—To administer oaths, take depositions, affidavits and acknowledgments of deeds, etc., powers of attorney and instruments for record in this State, same to be effectual in law. OATH of office to be taken and subscribed to before a justice of the peace or other officer authorized to administer oaths. Same to be filed with the Secretary of this State; also his

signature and impression of official seal. SEAL—To be procured to authenticate his official acts with. FEES—No statute.

§ 455. Ky.—APPOINTMENT—By the Governor. (Fee, $5.00.) TERM OF OFFICE—Two years. AN AFFIDAVIT to well and truly perform his duties, to be made before an officer authorized to administer oaths, same to be transmitted for filing to the Secretary of this State. POWERS—To take proofs, acknowledgments (except wills), oaths and depositions for record in this State. All his acts certified under his hand and seal are entitled to record. SEAL of office to be procured to authenticate his acts. FEES—No statute.

§ 456. Ill.—APPOINTMENT—By the Governor. Not to exceed five for any city or county and one for every 10,000 inhabitants in cities, States and territories. Applicant shall present to Governor, under seal of the mayor of the city or judge of a court of record of the city, that the applicant is a proper person for the appointment. (Fee, $6.00 for commission and instructions.) TERM—Four years. OATH of office to be taken before a court of record where resident. POWERS—Take release of dower, acknowledgments, contracts, assignments, transfers, letters of attorney, satisfaction of judgments or mortgage, or any instrument for record in the State. To certify to the official character, seal or signature of any other officer within their district authorized to take acknowledgments or oaths; take depositions. His properly executed acts to have same effect as any officer in this State so authorized. SEAL to be procured having on "A Commissioner for the State of Illinois," together with the name of State and county, town or city of his appointment. Within six months of his appointment he shall file with the Secretary of this State his oath, signature and impression of his seal. Failure to qualify within six months forfeits appointment. No one can act before qualifying. FEES—See notaries.

§ 457. La.—APPOINTED by the Governor. (Fee, $5.00.) TERM—Four years. ELIGIBILITY—Of known integrity and ability, resident in that State. POWERS—To take depositions by virtue of a commission, to take acknowledgments and any writings to be used in this State, oaths or affirmations, etc., to attest signatures, official capacity and official acts of any judge, justice of the peace or other public officer holding a commission or acting under authority of the State in which he resides. His power extends only to parties resident of his State, except in taking testimony under a commission. Their commission to conform to the laws of this State. Their signature and official seal to be attached. They can act as notaries in the State where appointed. SEAL of office to be provided bearing their name, office and State. Their signature and impression of seal to be deposited with the Secretary of this State. American ministers, charge d' affaires, consuls-general, consuls, vice-consuls and commercial agents in any foreign country can act and use their own seals of office. Notaries of other States may act, with proof of their signature.

§ 458. Maine.—APPOINTMENT—By the Governor. (Fee, $5.00.) A justice of the Supreme Court or the Governor of the State of the applicant must sign the application. TERM OF OFFICE—At the Governor's pleasure. POWERS—To take acknowledgments and certify

same under his official seal, to administer oaths, to take and certify depositions. OATH of office to be taken and subscribed to before a judge or clerk of the Superior Court of his State or country. Same with impression of his official seal to be filed with the Secretary of this State. False certificates of acknowledgments, or signatures, shall be punished as forgeries. SEAL to be provided to authenticate his acts. FEES—No statute regarding.

§ 459. **Md.**—APPOINTMENT—By the Governor, with the Senate's consent, biennially. (Fee, $10.00.) TERM OF OFFICE—Two years. OATH of office to be taken before a justice of the peace or notary public in the city or county of his residence. SEAL—He shall provide an official seal for authenticating all his official acts. An impression of his seal with his oath of office to be filed with the Secretary of this State. POWERS—After qualifying he can administer oaths for use in this State, take acknowledgments, and other instruments for record in this State. The record of his appointment with the Governor's certificate under the great seal of the State shall be evidence of appointment.

§ 460. **Mass.**—APPOINTMENT—By the Governor, with consent of council. (Fee, $5.00.) TERM—Three years. OATH of office to be taken and subscribed to within three months after the appointment, before a justice of the peace or other magistrate of the city or county where he resides or before a clerk of a court of record of his county. SEAL to be provided with the words "Commissioner for Massachusetts," and the name of the State, city or county in which he resides. An impression of such seal, with his oath of office and signature, to be filed with the Secretary of the commonwealth. POWERS—To administer oaths, take affidavits, depositions, acknowledgments in his State for record in this State, certified under his official seal. FOREIGN COMMISSIONERS—Oath of office to be taken before a judge or clerk of a court of record of his country or before a resident United States minister or consul. The same, with an impression of his official seal, shall be filed with the Secretary of this commonwealth. TERM—At the pleasure of the Governor. SPECIAL COMMISSIONERS appointed and qualified shall have the same powers as justices of the peace in administering oaths, taking depositions, affidavits and acknowledgments, and to issue summonses. Women who are attorneys may be appointed by the Governor with consent of the council. To take oaths, depositions and acknowledgments. FEES—Oath and certificate, $1.00; acknowledgments, $1.00; depositions, per page (224 words), 50c; affidavit, 50c; oath on deposition, $1.00; other fees same as a justice of the peace. Court may add more for depositions. FEE OF ALL OFFICERS—Officers must make a detailed statement of fees or forfeit three times the amount paid. Fee list to be posted in his office. Fee to be indorsed on each writ. Hire of horse and carriage must be shown necessary.

§ 461. **Mich.**—APPOINTED by the Governor. (Fee, $3.00.) Must present a written application to the Governor, a recommendation from the Governor of the State or judge of a county court of record where the applicant resides, or other satisfactory evidence of fitness for the office. TERM—Five years. POWERS—To take acknowledgment of deeds, mortgages or other conveyances of lands, etc., lying in this

State, any contract, power of attorney or other writings under seal to be used or recorded in this State. Same must be under his seal of office. OATH for the faithful discharge of the duties of the office to be furnished, subscribed to before any party authorized to administer oaths where applicant resides. Same to be filed with the Secretary of this State. FEES—No statute regulating. See notaries.

§ 462. **Minn.**—APPOINTMENT—By the Governor. (Fee, ——.) TERM—Pleasure of the Governor. POWER—To take acknowledgments of deeds and other papers pertaining to matters in this State, take oaths, etc. SEAL—Official seal must be attached to all papers to be effective. OATH OF OFFICE—Must subscribe to an oath before a judge or clerk of a court of record of his State for the faithful discharge of his duties, which oath, with a description or impression of his seal of office to be filed with the Secretary of this State.

§ 463. **Miss.**—APPOINTMENT—By the Governor. (Fee, $5.) TERM—Four years. POWER—To administer oaths, certify acknowledgments, take and certify depositions and affidavits, for use or record in this State, same to be as effectual as if done in this State by an authorized officer. OATH for faithfulness in office to be taken and subscribed to before an officer authorized to administer oaths. FEES—Deposition, certificate and oath, 50c; acknowledgments, 25c; deposition, per 100 words, 10c.

§ 463a. **Mo.**—APPOINTMENT—By the Governor. (Fee, $7.50.) TERM OF OFFICE—The pleasure of the Governor. POWERS—Take acknowledgments or any writings under seal or note to be used and recorded in this State. If in a foreign country, they may certify to the official character, signature or seal of any officer in their district authorized to take acknowledgments or oaths, administer oaths and take and certify depositions. OATH of office to be taken before a judge or clerk of a court of record where he resides, to well and faithfully execute and perform all the duties of his office, under and by virtue of the laws of the State of Missouri. The oath, impression of his official seal and signature to be filed with the Secretary of this State within six months after appointment. FEES—The same as clerks of courts of record. Taking acknowledgments, 50c; administering oaths, 25c; certificate and seal, 50c; affidavits, certificate, 15c; summons, 50c; witness fees, per day, $1.00; outside county, per day, $1.25; travel, per mile, 5c; oaths and affidavits, 25c; subpœnas, 25c; making deed, $1.00.

§ 464. **Mont.**—APPOINTMENT—By the Governor, for five years, subject to removal. (Fee, $5.00.) POWER to act in the State or county where appointed. To certify and take depositions, acknowledgments and affidavits. SEAL—To provide and keep an official seal and authenticate their acts with, having engraved on their name, "Commissioner of Deeds for the State of Montana," and the name of their State. OATH—Their official oath and impression of their seal to be filed with the Secretary of this State within six months from their appointment. FEES—Same as notaries public.

§ 465. **Neb.**—APPOINTMENT—By the Governor. (Fee, $1.00.) TERM of office, four years. DUTIES—To take acknowledgments, administer oaths, take depositions. OATH—To take oath of office before an officer authorized to take oaths. SEAL—To procure a seal of office

having on his name, "A Commissioner for Nebraska," with the name of his city, county and State. The oath, impression of seal and signature to be filed with the Secretary of State. His acts must be certified to by the Secretary of State before admitted to record or read in evidence. To act only within his place of appointment, and specify the day, city, town or county where act was done. FEES—Oaths, 10c; acknowledgments, 50c; depositions, per 10 words, 2c; certificate and seal, 25c.

§ **466. Nev.**—APPOINTMENT—By the Governor. (Fee, $10.00.) TERM of office, four years, unless sooner removed. POWER—To administer oaths, take depositions and affidavits and acknowledgments, to be used in this State, to certify same under his hand and seal. Same have the same effect as if done by a notary. OATH of office to be taken and filed with Secretary of State within six months before acting. SEAL—To procure seal and authenticate his acts therewith. FEES—Affidavit, deposition, etc., per folio, 30c; oath or affirmation, 25c; sealing an instrument, 50c; acknowledgments or proofs, with seal and certificate, $1.00; each additional signature, 50c.

§ **467. N. H.**—APPOINTMENT—By the Governor, with the advice of the council. (Fee, $1.00.) TERM of office, five years. OATH to be taken and subscribed to before a judge of a court of record for faithful performance of duties of the office before acting, same to be filed with Secretary of State within six months. POWERS—To administer oaths, take depositions and affidavits, notify parties of the time and place thereof, take acknowledgments for use or record in this State, in the same manner and with the same effect as a justice of the peace of this State. Commissioners of other States with like powers in this State to be used in other States or appointed by the Supreme Court or justices thereof, shall have power to administer oaths and affirmations, to issue summons to witnesses, to proceed against same for neglect to answer summons or testify, and in all proceedings under his commission that is vested in justices of the peace in like cases. FEES—Controlled by the courts.

§ **468. N. J.**—APPOINTED by the Governor, and not more than six to a township, divided into an election district, or townships having a population of 2,500, and three for each of the other townships, a like number for the wards of cities, boroughs and towns, fifteen for aldermanic districts or wards (not to exceed three for each ward or fifteen for each aldermanic district). (Fee, $5.00, and $1.00 for recording seal.) ELIGIBILITY—Competent. POWERS—To take acknowledgments; may take outside his own State or county. TERM of office begins on the first day of April; five years. REMOVAL from township voids the appointment. OATH of office to be taken and subscribed to before the county clerk within two months, before acting. FEES, same as allowed for like services. FOREIGN COMMISSIONERS—APPOINTED by the Governor. (Fee, $5.00.) TERM OF OFFICE—Three years. REMOVAL of residence from his State vitiates his commission. Overcharging of fees incurs removal from office. POWERS—To take acknowledgments or proofs, to administer oaths, affirmations and affidavits. SEAL—To provide themselves with an official seal to attest their acts with. An impression of same with

their oath of office to be sent to the Secretary of this State. FEES—For acknowledgments or proof, $1.00; each oath, 25c. OATH of office to be taken and subscribed to before the mayor or other chief magistrate of the city where resident or before a judge of the Supreme or Superior Court of his State, to faithfully perform the duties of his office. This before acting. Commissioners for New York and Pennsylvania may reside in this State but not to act here. Women are eligible to the appointment.

§ **469. N. M.**—APPOINTMENT—By the Governor. (Fee, $5.00.) TERM—At the Governor's pleasure. POWERS—To take depositions, affidavits, acknowledgments or proofs of written instruments, and to administer oaths for use in this territory. The same certified under his hand and appropriate seal to be as effectual in law for all intents and purposes as if done and certified by a justice of the peace in this territory. OATH to be taken and subscribed to before some judge or clerk of a court of record where he is to exercise his appointment, for faithfulness in office, before acting, same to be certified under the hand of the party taking it, and the seal of the court. The oath and certificate, with the commissioner's signature and an impression of his official seal on paper and on wax or wafer, to be filed with the Secretary of the Territory. Same to have the same force as evidence as those of a notary public. FEES allowed to be the same as those allowed for like services by the laws of his State or territory. Commissioners of other States and territories appointed in this territory with like authority, are invested with the authority of a justice of the peace, to issue subpœnas requiring the attendance of witnesses before them to give their testimony by deposition or affidavit, can administer oaths in any matter required or permitted by the law of their State or territory. False swearing is subject to the penal laws of this territory relating to perjury. SEAL of office to be procured to authenticate their acts with.

§ **470. N. Y.**—APPOINTMENT—In the cities of the State, by the city common council. TERM, two years. Number to be appointed, to be determined at the end of every two years. Not applicable to the city of New York. POWERS, to take acknowledgment of all written instruments. APPOINTMENT in other states and countries—By the Governor. ELIGIBILITY—To reside where appointed. TERM—Four years. OATH of office to be taken, if in the United States, before a justice of the peace, or some other magistrate. If abroad, before a person authorized by the laws of this State to administer oaths in such country. SEAL of office to be provided having on the words "Commissioner of deeds for the State of New York," and the name of the city or county, and the State or country from which appointed; shall file a clear impression of such seal, his signature and oath certified by the officer before whom taken, in the office of the Secretary of State. Upon receipt of same he shall receive instructions and forms. POWERS—Within the place of his appointment to take acknowledgments, except a bill of exchange, promissory note, or will. To take oaths, same to be admitted as evidence or for record. NEW YORK CITY—APPOINTMENT by the board of aldermen. TERM, two years, not required to be approved by the Mayor of city council. Oath of office shall be taken before the commissioner of deeds clerk, and a fee of

$5.00 paid. ELIGIBILITY—A resident of the city of New York, a citizen of the United States and the State of New York. Commissioners of deeds clerk shall be appointed by the city clerk to enter the names of the commissioners and make out certificates of appointment, together with such other duties as required. DUTIES—To take acknowledgments. In counties where his signature and seal have been recorded, his acts may be performed without his official seal. He is liable to parties injured for any misconduct in office. FEES—If for another State, not to exceed four times the amount allowed by the laws of such State. In no case for an acknowledgment or an oath over $1.00. IN GREAT BRITAIN—Taking acknowledgments and issuing certificates, four shillings, administering an oath, one shilling. In France or other foreign country—Administering an oath, and certifying, one franc and twenty-five centimes. Taking an acknowledgment or certifying to the correctness of a copy of a patent, etc., five francs. Certificate under State seal, $1.00; for recording a certificate, notice or other paper, per folio, 15 cents; for certificate of official character of a commissioner of deeds in another State or a foreign country, 25 cents; certificate of same under seal, $1.00.

§ 471. N. C.—APPOINTMENT, by the Governor. TERM, two years. POWERS to take acknowledgments or proofs of deeds and other instruments in writing, to take the private examination of married women to certify same, and it shall have the same force and effect as if taken in this State. To administer oaths or affirmations, take depositions and examine witnesses. OATH to be taken and subscribed before a justice of the peace in the city or county where he resides, well and faithfully to execute the duties of his office. Before acting, and the same to be filed with the Secretary of this State, who will record and issue the commission and certify the appointment to the clerks of the superior courts, who shall record the same. Clerks of courts of records in other states have power as commissioners of affidavits and deeds. The clerk of the superior court having jurisdiction, shall adjudge deed or instrument acknowledged or proved by other State commissioners. FEES—Affidavit, 40 cents; affixing seal, 25 cents; acknowledgments, 25 cents.

§ 472. N. D.—FORMER STATUTES AS FOLLOWS, but now there is no statute. APPOINTMENT by the Governor (Fee $3.00). TERM—At the Governor's pleasure. POWERS—To take acknowledgments and proofs of instruments, administer oaths, take and certify depositions. SEAL to be procured for authenticating his official acts having engraved on "Commissioner of N. Dakota," with his surname and at least the initials of his Christian name, also the name of his State or country. Acts to be as effectual in law as those of any officer so authorized in this State, when certified under his seal of office. OATH of office to be taken and subscribed to before a judge or clerk of a court of record having a seal in his State or country, well and faithfully to perform all the duties of his office by virtue of the laws of this State. File with signature and an impression of seal with the Secretary of this State.

§ 473. Ohio.—APPOINTMENT by the Governor. (Fee, $3.00.) TERM, three years. ELIGIBILITY—Governor to determine. AUTHORITY, to take affidavits, depositions, and acknowledgments for

record in Ohio. SEAL to be procured for authenticating his acts. OATH of office to be taken and subscribed to before a judge of a court of record or some Ohio commissioner within the State or country. Same with signature thereto and an impression of his seal of office shall be transmitted to the Governor and filed in the office of the Secretary of State. FEES—Swearing witnesses, 25 cents; deposition, each 100 words, and certificate or affidavit, 10 cents; authenticating, sealing up, and directing same, $1.00; taking acknowledgment, $2.00. Excess of these charges, dishonesty or unfaithfulness in office subjects him to removal by the Governor and public notice.

§ 474. **Okla.**—APPOINTMENT by the Governor. (Fee, $1.00.) TERM, at the Governor's pleasure. DUTIES, to take acknowledgments, or any writings under seal for use in this territory. To administer oaths, take depositions. SEAL, to provide an official seal, having engraved on the words Commissioner of the Territory of Oklahoma, with his name, also the name of his State. OATH of office to be taken and subscribed to, before acting, before a judge or clerk of a court of record. FEES—No statute.

§ 475. **Ore.**—APPOINTMENT by the Governor (Fee, $2.50). TERM—Four years. Jurisdiction where appointed for. POWERS—To take acknowledgments, affidavits, depositions. SEAL of office to be provided, having the arms of this State, in its center, surrounded by "Commissioner for Oregon," with his State name. OATH to be taken and subscribed to before a judicial officer. Oath and impression of his seal to be filed with the Secretary of State.

§ 476. **Pa.**—APPOINTMENT, by the Governor. (Fee, $5.00.) TERM, five years. POWERS, to take acknowledgments, oaths, for use in this State, and certify same under their hand and seal. Oath of office to be taken before a justice of the peace of his county. Same to be filed with the secretary of this State, all before acting. FEES—Acknowledgments, $1.00. FOREIGN COMMISSIONERS—TERM, at governor's pleasure. OATH to be taken before a judge or clerk of a court of record, where resident. SEAL to be procured to authenticate their official acts. Impression of seal, signature and oath to be filed with the Secretary of this State. FEES, same as other commissioners.

§ 477. **R. I.**—APPOINTMENT, by the Governor. (Fee, $2.00.) TERM, five years. OATH of office to be taken before an authorized officer, and filed with the Secretary of State before acting, within six months. POWERS, to take depositions, acknowledgments, affidavits and oaths for record in this State. SEAL, to provide an official seal with which to authenticate his acts. FEES—No statute.

§ 478. **S. C.**—APPOINTMENT by the Governor. (Fee, $2.21.) TERM—At the Governor's pleasure. OATH of office to be taken and subscribed to, before acting; any authorized officer in his city or county can take it. Same with the commission, to be filed with the Secretary of State, who shall give notice of such in one or more gazettes of the State. POWER, to take renunciation of dower, acknowledgments, or any writing under seal, to be used or recorded in this State, when certified under his hand and seal. Also power to administer oaths. Verifications of pleadings, affidavits and proofs of claims made before

notaries public in other states shall have the same effect as if made before a commissioner of deeds for this State. To use his official seal. SEAL of office to be provided for authenticating his official acts. FEES—Same as notaries.

§ 479. **S. D.**—APPOINTMENT, by the Governor. (Fee, $2.00.) TERM, at the Governor's pleasure. POWERS—Take acknowledgments of deeds and other instruments for record in this State, oaths, and depositions. OATH of office to be taken and subscribed to before a judge or clerk of a court of record having a seal. File with the State Secretary, also copy of seal. SEAL to be procured having on "Commissioner of South Dakota," his surname, and at least the initials of his Christian name, the name of the State commissioned for. To authenticate his official acts with same. FEES—No statute regulating.

§ 480. **Tenn.**—APPOINTMENT, by the Governor. (Fee, $5.00.) TERM, four years. POWERS, to take acknowledgments, depositions, affidavits, powers of attorney, probate deeds, etc., for record in this State. Same to conform to Tennessee statutes. OATH of office to be taken. SEAL of office to be procured to authenticate his official acts with.

§ 481. **Texas.**—Appointment by the Governor, on the recommendation of the executive of the State or county of applicant. (Fee, $1.00.) TERM, two years, or his successor qualified. POWERS, to take acknowledgments and proofs, oaths, depositions, same to be as effective as if made in this State. OATH of office to be taken before a clerk of a court of record of his county, subscribed and sworn to under the hand and official seal of the clerk, and filed with the Secretary of this State. SEAL of office to be procured to authenticate all his official acts with, having in the center, "A star of five points," and "Commissioner of the State of Texas" engraved thereon. His acts have no effect unless so certified. FEES, not regulated.

§ 482. **Utah.**—APPOINTMENT by the Governor. (Fee, $5.00.) TERM—At the Governor's pleasure. POWERS—To administer oaths, take depositions, affidavits and acknowledgments, for use or record in this State. The same when certified under his hand and seal are as effectual in law for all intents and purposes as if done by a justice of the peace in the State. OATH to be taken and subscribed to before a judge or clerk of a court of record, in the State of the commissioner, certified by the person taking, under his hand and seal of the court. The oath, certificate, and signature on paper, and a clear impression of his seal to be filed with the Secretary of this State before acting. SEAL of office to be procured, to authenticate his acts with. His signature and seal has the same force, as evidence, as a notary's. FEES, the same as allowed for like services where he acts. Those appointed by other States to act in this State, have the same authority as a justice of the peace; to issue subpœnas for witnesses to depositions or affidavits, and to administer in any matter required or permitted by their State. False swearing is subject to the laws of this State relating to perjury. FEES—Oaths, 10 cents; acknowledgments, 25 cents; hearing and deciding a criminal charge, per day, $5.00; examination for discharge of convict, per day, $5.00; attending to reference by order of court, per

day, $3.00; taking and certifying a deposition, per folio, 25 cents; copy, per folio, 10 cents; issuing a writ, 25 cents; same under French or British treaty for criminals, $2.00.

§ 483. **Vt.**—APPOINTMENT by the governor. (Fee, $5.00.) The applicant must have the endorsement of the Governor or a member of the supreme bench of his State. TERM, five years. POWERS, to take depositions, affidavits, oaths and acknowledgments, for use in this State. OATH of office to be taken before a magistrate of his locality. BOND required for $5,000, approved by the Governor, before acting, and filed with the Secretary of State. SEAL, to procure an official seal with which to authenticate their official acts. FEES allowed, not regulated by statute.

§ 484. **Va.**—APPOINTMENT by the Governor. (Fee, $5.00.) TERM at the pleasure of the Governor for two years. OATH of office required, can be taken before a justice of the peace or other commissioner or one authorized to take oaths. SEAL of office to be procured to authenticate their acts with. POWERS—To take acknowledgments, depositions, oaths.

§ 485. **Wash.**—APPOINTMENT, by the Governor. (Fee, $5.00.) TERM of office, four years. POWERS, to administer oaths, take depositions and affidavits, to be used in this State, also acknowledgments for record. OATH, before acting, they shall subscribe to an oath before any officer having an official seal and so authorized, a certificate of which, to be filed with the Secretary of State. SEAL of office to be procured having on his name and the words "Commissioner of deeds for the State of Washington," and the name of the State for which he is commissioned, with date of expiration of his commission.

§ 486. **W. Va.**—APPOINTMENT, by the Governor. (Fee, $6.00.) TERM OF OFFICE, four years, Governor to notify the Legislature. POWERS, to administer oaths, take affidavits, depositions and acknowledgments for use in this State. SEAL to be procured designating his name, residence, and the words (either full or intelligently abbreviated), "Commissioner for West Virginia," and name of his State. An impression of his seal and signature to be filed with the Secretary of this State. Certificate of his to be authenticated by his signature and official seal. OATH for faithfulness in office to be taken before a justice of the peace, notary, court or judge of the county in which he resides, or where his duties are to be performed, and certified to by the officer. Not to act until qualified, under penalty, and to qualify within 60 days, otherwise office is vacant. FEES—Oaths, 25 cents; affidavits, 25 cents; depositions, per hour, 75 cents; acknowledgments, 50 cents; testimonials, $1.50; copy of any paper for one sheet, $1.00; each additional sheet, 75 cents.

§ 487. **Wis.**—APPOINTMENT by the Governor. (Fee, $5.00.) TERM four years. OATH of office to be taken before a judge or clerk of a court of record where the applicant resides. SEAL of office to be procured with which he shall authenticate his acts. An impression of same, with his oath of office, to be filed with the Secretary of this State. POWERS to take acknowledgments and oaths, certify same with his hand and official seal. FEES allowed, same as other officers.

§ 488. **Wyo.**—APPOINTMENT by the Governor. (Fee, $5.00.) The applicant must have the recommendation of the Governor of his State. TERM, at the Governor's pleasure. POWER, to take depositions, acknowledgments, affidavits and oaths, for use in this State. SEAL of office to be procured, with which all his official acts shall be authenticated. OATH of office to be taken and subscribed to before an authorized officer having an official seal, where applicant resides, same with signature and official seal impression to be filed with the Secretary of this State. FEES allowed, same as notaries.

§ 489. **Canada.**—APPOINTMENT by the Governor in council. (Fee, $10.00.) DUTIES—To take acknowledgments, releases of dower, attestations under oath, affidavits.

CHAPTER VII.

FORMS.

§ **481.** The following forms are presented as a guide. It is the substance which the statutes require more than a literal copy.

Observe carefully the preceding chapters for the full requirements, as to witnesses, seals, personal appearance and separate examinations for acknowledgments, deeds, etc.

Depositions vary so much for each case that it is hardly necessary to enumerate for each State. Also affidavits.

Follow carefully the requirements of the chapter on Negotiable Instruments and the statutory requirements of each State.

NOTARIAL.

No. 1. NOTARY PUBLIC'S BOND. (Ill.)

Know all Men by these Presents, That we, ..., ..., ..., of the County of ....., in the State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the penal sum of one thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals, this ..... day of ....., 189..

The condition of the above obligation is such, that whereas, the said ..... has been appointed notary public in and for the County of ....., residing in the ..... of .....

Now, therefore, if the said ..... shall perform and discharge all the duties required of him by law, as such notary public, to the best of his skill and ability, then this bond to be void, otherwise to remain in full force.

..... (Seal.)
..... (Seal.)
..... (Seal.)

Approved: .....
Governor.

State of Illinois, } ss.
County of ..... }

I, ..., hereby certify that ....., ..., ..., who are each personally known to be the same persons whose names are subscribed to

the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal, this ..... day of ....., 189..

.....,

No. 2. OATH.

State of Illinois, } ss.
..... County. }

I, ..., do solemnly swear that I will support the constitution of the United States, and the constitution of the State of Illinois, and that I will faithfully discharge the duties of notary public according to the best of my ability. .....

Subscribed and sworn to before me, this ..... day of ....., 189...

.....,

.....

N. B.—The appointee must sign both bond and oath, and return to the Secretary's office, with official signature, impression of seal (if he has one) at the place indicated, P. O. address, etc. A strict compliance with Sections 2, 4 and 7 of Chapter 99, Hurd's Revised Statutes, 1889, is required to secure the appointment of a notary public.

No. 3. (Ill.) PETITION.

State of .....,
..... County.
..... of .....,
....., 189..

To His Excellency,

.....,..
Governor of .....

The undersigned, legal voters of the ..... of ....., in the County of ....., respectfully petition that Your Excellency will appoint ..... to be a notary public in and for said county.

Have this petition filled out and signed in ink by fifty legal voters of the city or town in which you reside.

No. 4. (Ill.) CERTIFICATE OF NOTARYSHIP.

State of Illinois, } ss.
County of ..... }

I, ..., Clerk of the County Court, in and for said county, do hereby certify that ....., whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing was, at the time of taking such proof or acknowledgment, a notary public in and for said county, duly commissioned, sworn and acting as such, and authorized to take the same; and further, that I am well acquainted with his handwriting, and verily believe that the signature to the said proof

or acknowledgment is genuine; and further, that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at ....., in ..... County, this ..... day of ....., A. D. 18... ....., Clerk.

No. 5. NOTARIAL REGISTER.

Date of Demand and How	Holder	Copy of Paper	Endorsers	Date of Notice and How	Expenses

No. 6. JURAT.

Sworn and subscribed to before me, on the ..... day of ....., 18..
Signature of Officer,
Title of Office.

No. 7. MARINE PROTEST.

THE UNITED STATES OF AMERICA.

State of ....., } ss.
County of ..... }

To all People to whom these Presents shall Come or may Concern:

I, ..., a notary public, in and for the County of ....., in the State aforesaid, by letters patent, under the great seal of the said State, duly commissioned and sworn, dwelling in ....., send greeting: Know ye, that on the ..... day of ....., in the year of our Lord one thousand eight hundred and ninety ....., before me, the said notary, appeared ....., master of the vessel called the ....., of ....., burthen ..... 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 ..... aforesaid, again comes the said ....., master, and requires me to extend his protest, and together with the said master, also comes ....., mate and ....., ..., ..., ..., 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 ..... day of ....., 189.., at ..... o'clock ....M., the said vessel left ....., in the State of ....., bound thence to the port of ....., in the State of ....., laden with .....; 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 can not, 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 ....., this ..... day of ....., 18..

....., Master.

....., Mate.

.....,

.....,

.....,

.....,

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 Public.

State of ....., } ss.
..... County. }

I, ..., 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 ....., master of the ....., said protest having been noted on the ..... day of ....., 18.., and extended before me on the ..... day of ....., 18..

In witness whereof, I have hereunto set my hand and notarial seal, this ..... day of ....., 18..

.....,

Notary Public.

No. 8. MARINE NOTE OF PROTEST BY MASTER.

THE UNITED STATES OF AMERICA.

State of ....., County of ....., ss.

Be it known, that on this ..... day of ....., 18.., before me, ..., a notary public for and in the County of ....., and State of ....., personally appeared ....., master of the ....., or vessel called the ....., of the burthern of ..... tons, or thereabouts, who declares that he sailed last in the vessel under his command, laden with a cargo of ....., on the ..... day of ....., 18.., from the port of ....., and bound for the port of ....., in the State of ..... 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.

.....

Subscribed and sworn to before me, this ..... day of ....., 18...

....., Notary Public.

No. 9. NOTARY PUBLIC'S SUBPŒNA.

State of Illinois, } ss. The People of the State of Illinois.
..... County. }

To .....:

You are hereby commanded to appear before me, a notary public in and for said county, at my office, No. .., ... Street, in the ....., in said County, on ..... the ..... day of ....., A. D. 18.., at ..... o'clock .... M., then and there to testify the truth in a suit now pending in the ..... Court of ..... County aforesaid, wherein ....., plaintiff.., and ....., defendant.., and this you shall in no wise omit, under the penalty of the law.

Given under my hand, and notarial seal, this ..... day of ....., A. D. 18..

....., Notary Public.

ACKNOWLEDGMENTS.

FORMS RECOMMENDED BY THE AMERICAN BAR ASSOCIATION.

No. 10. In CASE OF NATURAL PERSONS.

On this ..... day of ....., 18.., before me personally appeared ....., to me known to be the person.. described in and who executed the foregoing instrument, and acknowledged that ..he.. executed the same as ..... free act and deed.

No. 11. ACTING BY ATTORNEY.

On this ..... day of ....., 18.., before me personally appeared ....., to me known to be the person who executed the foregoing instrument in behalf of ....., and acknowledged that ..he.. executed the same as the free act and deed of said .....

No. 12. A CORPORATION.

On this ..... day of ....., 18.., before me appeared ....., to me personally known, who, being by me duly sworn (or affirmed) did say that he is the president (or other officer) of (describe corporation), and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said ..... acknowledged said instrument to be the free act and deed of said corporation (or association.)

No. 13. (Ala.) HUSBAND AND WIFE.

State of ..... } ss.
County of ..... }

I, ..., hereby certify that C. B. and A. B., whose names are signed to the foregoing instrument, known to me, personally appeared, and being made acquainted with the contents thereof, acknowledged the same this day to be their free act and deed, for the purposes therein expressed; said A. B., wife of the said C. B., was examined separate and apart from her husband.

Given under my hand and seal of office, this ..... day of ....., A. D. 18..

No. 14. (Ala.)

State of ....., } ss.
County of ..... }

I., M. N. (give officer's title), hereby certify that A. B., whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that being informed of the contents of the conveyance he executed the same voluntarily on the day the same bears date. Given under my hand, this ..... day of ....., 18..

No. 16. (Ariz.)

Territory of ....., } ss.
County of ..... }

Before me, ..., on this day, personally appeared ....., known to me (or proved to me on the oath of) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office, this ..... day of ....., A. D. .....

No. 17. MARRIED WOMAN.

Territory of ....., } ss.
County of ..... }

Before me, ..., on this day, personally appeared ....., wife of ....., known to me (or proved to me on oath of .....) to be the person whose name is subscribed to the foregoing instruments, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said ....., acknowl-

edged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office, this ..... day of ....., A. D. .....

No. 13. (Ark.)

State of ....., } ss.
County of ..... }

On this ..... day of ....., 18.., before me, a notary public in and for said county, duly authorized by the laws of Arkansas, personally appeared C. D., to me personally known (or proved by the subscribing witnesses) to be the person whose name appears as grantor to the foregoing instrument, and stated that he executed the same for the consideration and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal, as such notary public in and for said county, on this ..... day of ....., 18..

No. 19. (Cal.) CERTIFICATE.

State of ....., } ss.
County of ..... }

On this ..... day of ....., in the year ....., before me (officer's name and quality of officer), personally appeared ....., known to me (or proved to me on the oath of .....)* to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or they) executed the same.

No. 20. CORPORATION.

The name of the president or secretary must be inserted, together with the name of the company, viz., same as above to then follow: (*) to be the president (or secretary) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

No. 21. MARRIED WOMAN.

Begin (*) to be the person whose name is subscribed to the within instrument described as a married woman, and upon an examination without the hearing of her husband I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same and that she does not wish to retract such execution.

No. 22. ATTORNEY IN FACT.

Begin (*) to be the person whose name is subscribed to the within instrument as the attorney in fact of ....., and acknowledged to me that he subscribed the name of ..... thereto as principal, and his own name as attorney in fact.

No. 23. (Colo.)

State of Colorado, } ss.
County of ..... }

..... appeared before me this ..... day of ....., 18.., in person and acknowledged the foregoing instrument to be his act and deed for the uses specified therein.

Witness my hand and official seal. .....,
.....

No. 24. (Conn.) BY HUSBAND AND WIFE.

State of ....., } ss.
County of ..... }

....., A. D. 18.., then and there before me, ..., within and for the county and State aforesaid, duly commissioned and acting as such, personally appeared ..... and ....., his wife, signers and sealers of the foregoing instrument, and severally acknowledged the same to be their free act and deed, before me.

Witness my hand and seal of office, on this ..... day of ....., A. D. 18..

No. 25. (Del.)

State of ....., } ss.
..... County. }

Be it remembered, that on this ..... day of ....., A. D. 18.., personally came before me, ..., a notary public for the State of Delaware, ..., and ....., his wife, parties to this indenture, known to me personally (or proved upon the oath of .....) to be such, and severally acknowledged this indenture to be their deed; and the said ..... being at the same time privately examined by me, apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion, or threat, or fear of her husband's displeasure.

Given under my hand and seal of office the day and year aforesaid.

No. 26. (D. C.)

..... County (or city, etc.) to wit:

I, ..., a (official title) in and for the county (or city, etc.) aforesaid in the State of ....., do hereby certify that ....., a party to a certain deed, bearing date on the ..... day of ....., and hereunto annexed, appeared before me in the county (or city) aforesaid, the said ..... being personally well known to me, as (or proved by the oaths of credible witnesses before me to be) the persons.. who executed the said deed and acknowledged the same to be his (her or their) act and deed.

Given under my hand and seal this ..... day of .....
.....

No. 27. (D. C.) WIFE.

..... County (or city) to wit:

I, ... (officer's title), in the county aforesaid, in the State of ....., do hereby certify that ....., the wife of ....., party to a

certain deed bearing date on the ..... day of ..... and hereunto annexed, personally appeared before me in the county (or city) aforesaid, the said ..... being well known to me (or proved on the oaths of credible witnesses before me to be) the person who executed the said deed, and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said ....., acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and seal this ..... day of .....

.....,

No. 28. (Fla.)

State of ....., } ss.
County of ..... }

Before me personally came C. F., to me well known as the person who executed the foregoing deed, and acknowledged that he executed the same for the purposes therein expressed, and prays that it may be admitted to record.

In witness whereof I have hereunto set my hand and seal, this ..... day of ....., A. D. 18..

No. 29. (Ga.) MARRIED WOMAN.

I, A. B., the wife of C. D., do declare that I have freely and without any compulsion signed, sealed and delivered the above instrument of writing, passed between D. E. and C. D., and I do hereby renounce all title or claim to dower that I might claim or be entitled to, after the death of C. D., my said husband, to or out of the lands or tenements therein conveyed. In witness whereof, I have hereunto set my hand and seal.

Before me, John Smith, a notary public, personally came A. B., the wife of C. D., to me known to be the person whose signature is attached to the foregoing deed, and did declare that she did freely and voluntarily and without compulsion from her husband sign, seal and deliver the said deed for the purposes therein mentioned.

Sworn to and subscribed before me this ..... day of ....., 18..

No. 30. (Idaho.)

State of Idaho, } ss.
County of ..... }

On this ..... day of ....., in the year of ....., before me (officer's name and office) personally appeared ....., known to be (or proved to me on the oath of .....) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or they) executed the same.

No. 31. (Ill.)

State of ....., } ss.
County of ..... }

I, ..., hereby certify that ....., ..., who are each personally known to me to be the same persons whose names are subscribed to the

foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand ..... seal, this ..... day of ....., A. D. .....

No. 32. (Ill.) PARTY PERSONALLY KNOWN TO THE OFFICER.

State of Illinois, } ss.
County of Cook. }

I, John Doe, a notary public in and for said county and State, do hereby certify that Richard Smith (and if acknowledged by wife, her name, and add "his wife"), personally known to me to be the same person.. whose name is (or are) subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he (she or they) signed, sealed and delivered the said instrument as his (her or their) free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this sixteenth day of January, A. D. 1896.

JOHN, DOE,
Notary Public.

No. 33. (Ill.) PARTY NOT KNOWN.

State of Illinois, } ss.
County of Cook. }

I, John Doe, a notary public in and for said county and State, do hereby certify that Richard Smith (proved by James Jackson, the subscribing witness), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this sixteenth day of January, A. D. 1896.

JOHN DOE,
Notary Public.

JAMES JACKSON (Seal),
Subscribing Witness.

No. 34. (Ill.) WITH HOMESTEAD WAIVER.

State of ....., } ss.
County of ..... }

I, ..., a notary public in and for the said ....., in the State aforesaid, do hereby certify that ....., personally known to me to be the same person.. whose name.. .... subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that ..he.. signed, sealed and delivered the said instrument as ..... free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, the ..... day of ....., A. D. 18..

....., Notary Public.

No. 35. (Ill.) FOR CORPORATION.

State of Illinois, } ss.
County of ..... }

I, ..., a notary public in and for the county and State aforesaid, do hereby certify that ....., president, and ....., secretary of the ....., who are personally known to me to be the same persons whose names are subscribed to the foregoing ..... as such ..... president and secretary, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, and as the free and voluntary act of the said ..... for the uses and purposes therein set forth, and caused the corporate seal of said company to be thereto attached.

Given under my hand and notarial seal, this ..... day of ....., 18..

.....,
Notary Public.

No. 36. (Ill.) ACKNOWLEDGMENT TO CHATTEL MORTGAGE BY A NON-RESIDENT.

This chattel mortgage was acknowledged before me my Richard Smith, this 15th day of July, 1895.

Witness my hand and seal.

JOHN DOE,
Notary Public.

No. 37. (Ind.)

Before me, E. F. (a judge or justice as the case may be), this ..... day of ....., A. D. ....., in and for said county, duly authorized, personally appeared A. B. and acknowledged the execution of the annexed deed.

Witness my hand and official seal, this ..... day of ....., 18..

(Signature and title.)

No. 38. (Iowa.)

State of ....., } ss.
County of ..... }

On this ..... day of ....., A. D. 18.., personally appeared before me (name and title of officer), in and for said county, A. S., known to me to be the person who executed the foregoing instrument and acknowledged that he executed the same freely and voluntarily and for the purposes therein set forth.

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

No. 39. (Kas.) WARRANTY DEED.

A. B. conveys and warrants to C. D. (here describe premises) for the sum of .....

Same to be dated, signed and acknowledged by the grantor.

No. 40. QUIT CLAIM DEED.

A. B. quit claims (describe the premises) for the sum of .....
Same to be dated, signed and acknowledged by the grantor.
The word "heirs" and other terms of inheritance are not necessary.

(Kas.) SEE IOWA.
(No special form required.)

No. 41. (Ky.) MARRIED WOMAN OUT OF THE STATE.

Commonwealth (or .....), solicit.
County (or) of ....., solicit.

I, ... (title of officer), do certify that this instrument of writing from ..... and wife, ..., was this day produced to me by the parties, and the contents and effect of the instrument being explained to the said ..... by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same, to be her act and deed and consented that the same might be recorded.

(Seal.) Given under my hand and seal of office.

If the husband join in the deed and acknowledge before the officer, his acknowledgment may be certified with that of the wife, following the word "parties," thus "which was acknowledged by C. D. to be his act and deed."

(Ky.) MARRIED WOMAN IN THE STATE.

Officer to simply certify that it was acknowledged before him and where.

No. 42. (La.)

State of ....., } ss.
County of ..... }

Be it remembered, that on this ..... day of ....., 18.., before me, a notary public in and for said county duly authorized, personally appeared A. B., to me known to be the party who executed the within instrument, and acknowledged to me that he did sign, seal and deliver the same, as his free act and deed for the uses and purposes therein stated.

In witness whereof, I have hereunto set my hand, and affixed my official seal and signature this ..... day of ....., 18..

No. 43. (Maine.)

State of ....., } ss.
County of ..... }

..... day of ....., 18.., personally appeared C. F. and acknowledged the foregoing instrument to be his free act and deed.

.....

(Md.)

About the same as Maine.

No. 44. (Md.) DEED.

This deed, made this ..... day of ....., in the year ....., by me (name of grantor), witnesseth, that in consideration of (consideration), I, the said ....., do grant unto (name of grantee), all that (describe property).

Witness my hand and seal.

Test., ...

No. 45. MARRIED WOMAN A PARTY.

This deed, made this ..... day of ....., in the year ....., by us, ... and ....., his wife, witnesseth, that in consideration of ....., we, the said ..... and his wife, do grant unto .....

Witness our hands and seals.

Test., ... (Seal.)

No. 46. (Mass.) ACKNOWLEDGMENT.

State of Mass., } ss.
County of ..... }

....., on this ..... day of ....., 18.., before me personally appeared A. B., to me known to be the person.. described in and who executed the foregoing instrument, and acknowledged that ..he.. executed the same as ..... free act and deed.

No. 47. BY ATTORNEY.

On this ..... day of ....., 18.., before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of said C. D.

No. 48. CORPORATIONS.

On this ..... day of ....., 18.., before me appeared A. B., to me personally known, who being by me duly sworn (or affirmed) did say that he is the president (or what officer) of (name of corporation) and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said A. B. acknowledged said instrument to be the free act and deed of said corporation.

If the corporation has no seal omit the words "the seal affixed to said instrument is the corporate seal of said corporation and that," and add, at the end of the affidavit clause, the words "and that said corporation has no corporate seal." In all cases add signature and title of the officer taking the acknowledgment.

(Mich.) SAME FORMS AS MASSACHUSETTS.

(Minn.) SAME FORMS AS MASSACHUSETTS.

No. 49. (Miss.)

Caption.

Personally appeared before me, ... (officer's name and office), the within named A. B., who acknowledged that he signed and delivered the foregoing instrument on the day and year therein mentioned.

Given under my hand, this the ..... day of ....., A. D. .....

No. 50. A WITNESS.

Caption.

Personally appeared before me, ..., C. D., one of the subscribing witnesses to the foregoing instrument, who being duly sworn, deposeth and saith that he saw the within named A. B., whose name is subscribed thereto, sign and deliver the same to the said E. F. (or that he heard the said A. B. acknowledge that he signed and delivered the same to the said E. F.); that he, this affiant, subscribed his name as a witness thereto in the presence of the said A. B.

In all cases add signature and title of the officer taking, and attach his official seal if he have one.

No. 51. (Miss.) DEED.

State of ....., } ss.
County of ..... }

In consideration of ....., I convey and warrant to ..... the land described .....

Witness my signature, the ..... day of ....., A. D. .....

If only a special warranty is intended, add the word "specialty" to the word warrant in the conveyance.

(Mo.) SEE MASSACHUSETTS.

(Mont.) SEE MASSACHUSETTS.

(Neb.) SEE IOWA.
(Add one witness.)

(Nev.) SEE IOWA.

(N. H.) SEE MASSACHUSETTS.

No. 52. (N. J.)

State of ....., } ss.
County of ..... }

Be it remembered that on this ..... day of ....., 18.., before me, a notary public in and for said county, being duly authorized, personally came C. F. and M. F., his wife, who I am satisfied are the grantors in the foregoing deed, and I having made known to them the contents thereof, they each acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed for the uses and purposes therein mentioned.

(N. M.) SAME AS MISSOURI.

No. 53. (N. Y.) BY A CORPORATION AND CERTIFICATE.

State of New York, } ss.
County of ..... }

On the ..... day of ....., in the year ....., before me personally came ....., to me known, who, being by me duly sworn, did depose and say that he resided in .....; that he is the (president or other officer) of the (name of corporation), the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(Signature and office of officer.)

If such corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

No. 54. (N. C.)

State of ....., } ss.
..... County. }

I, A. B. (title of officer), do hereby certify that (name of grantor, and if acknowledged by wife, her name, and add his wife), personally appeared before me this day and acknowledged the due execution of the foregoing (or annexed) deed of conveyance (or such instrument as it is), and (if the wife is a signer) the said (here give wife's name), being by me privately examined separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same, freely and voluntarily, without fear or compulsion of her said husband, or any other person, and that she doth still voluntarily assent thereto. Witness my hand and seal (private or official), this ..... day of ....., A. D. ...., (Seal.)

(N. D.) SAME AS MISSOURI.

No. 55. (Ohio.) BY HUSBAND AND WIFE.

State of ....., } ss.
County of ..... }

Be it remembered that on the ..... day of ....., before me, a notary public in and for said county, personally appeared A. B. and C. B., his wife, the grantors in the foregoing deed, personally known to me, and acknowledged the signing and sealing of the same to be their act and deed for the purposes therein mentioned. And the said C. B., wife of the said A. B., being examined separate and apart from her husband, and the contents having been made known to her by me, declared that she did voluntarily sign and acknowledge the same and is satisfied therewith as her act and deed.

In testimony whereof, I have hereunto set my hand and affixed my official seal. .....

Two witnesses.

No. 56. (Okla.)

Territory of Oklahoma, } ss.
..... County. }

Before me, ..., in and for said county and territory, on this ..... day of ....., 18.., personally appeared ..... and ....., to me known to be the identical person.. who executed the within and foregoing instrument, and acknowledged to me that ..... executed the same as ..... free and voluntary act and deed for the uses and purposes therein set forth. .....

No. 57. (Ore.)

State of Oregon, }
County of ..... }

Before the undersigned, a justice of the peace for the precinct of ....., in the county and State aforesaid, personally appeared the within named A. B., and C. D., his wife, to me known to be the individuals described in and who executed the within conveyance, and the said A. B. acknowledged that he executed the same, and the said C. D., being by me examined separate and apart from her said husband, then and there acknowledged that she executed such conveyance freely and without fear or compulsion from any one, this ..... day of ....., 18..

E. F., Justice of the Peace.

No. 58. (Pa.)

State of ....., } ss.
County of ..... }

Be it remembered that on this ..... day of ....., before me, a notary public in and for said county, duly authorized, personally came C. D., and A. D., his wife, personally known (or proved) to me, and acknowledged the signing and sealing of the within instrument to be their act and deed, that the same might be recorded as such. And the said A. D., being of lawful age, was examined by me separate and apart from her husband and the contents made known to her, she declared that she did voluntarily and of her own free will and accord and as her own free act and deed, without any compulsion from her husband, deliver the same.

In witness whereof, I have hereunto set my hand and official seal, this ..... day of ....., A. D. .....

(One witness.)

No. 59. (R. I.) HUSBAND AND WIFE.

State of Rhode Island, } ss.
County of ..... }

In the town of ....., in the said county and State, on this ..... day of ....., A. D. 18.., personally appeared before me the within named C. D., and acknowledged the within instrument by him signed to be his free, voluntary act and deed.

And at the same time came A. D., wife of the said C. D., being by me examined separate and apart from her husband, acknowledged and declared the said instrument by her signed, to be her free act and deed, and that she did not wish to retract it.

No. 60. (S. C.) MARRIED WOMAN.

State of South Carolina, } ss.
..... County. }

I, F. G. (officer's title), do hereby certify unto all whom it may concern that E. B., the wife of the within named A. B., did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named C. D., his heirs and assigns, all her interests and estate, and also all her right and claim of dower, of, in or to all and singular the premises within mentioned and released.

Given under my hand and seal, this ..... day of ....., A. D. .....

(L. S.) Signed, F. G. E. B.

Official seal of officer to be attached.

(S. D.) SAME AS MISSOURI.

No. 61. (Tenn.)

State of Tennessee, } ss.
..... County. }

Personally appeared before me, clerk of the court of said county, the within named bargainer, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand, at office, this ..... day of ....., 18..

No. 62. (Texas.)

State of ....., } ss.
County of ..... }

Before me, ..., on this day personally appeared ....., known to me (or proved to me on the oath of .....) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this ..... day of ....., A. D. .....

(Seal.) .....

No. 63. (Utah.)

State of Utah, } ss.
County of ..... }

On the ..... day of ....., A. D. ....., personally appeared before me, ..., the signer of the above instrument, who duly acknowledged to me that he executed the same. .....,

.....

This properly executed by an authorized officer and attached to the instrument, is sufficient.

No. 64. (Vt.)

State of ....., } ss.
County of ..... }

The ..... day of ....., A. D. 18.., personally appeared C. G., and A. G., his wife, to me known, and severally acknowledged the within instrument, signed and sealed, to be their free act and deed, before me.
(Two witnesses.)

No. 65. (Va.)

County of ....., to wit:
I, ... (officer's name and title), for the county aforesaid, in the State of ....., do certify that E. F., whose name is signed to the writing above, bearing date on the ..... day of ....., has acknowledged the same before me in my county aforesaid. Given under my hand, this ..... day of .....

COMMISSIONER OF DEEDS' CERTIFICATE.

State of ....., } to wit.
..... }

I, ..., a commissioner appointed by the Governor of Virginia for the said State of ....., do certify that E. F., whose name is signed to the writing above, bearing date on the ..... day of ....., has acknowledged the same before me, in my State aforesaid. Given under my hand, this ..... day of ....., A. D. 18..

No. 66. (Wash.)

State of Washington, } ss.
County of ..... }

I, ..., do hereby certify that on this ..... day of ....., 18.., personally appeared before me ..... (and his wife if she joins), to me known to be the individuals described in and who executed the within instrument, and acknowledged that ..he.. signed and sealed the same as ..... free and voluntary act and deed, for uses and purposes therein mentioned. Given under my hand and official seal, this ..... day of ....., A. D. 18..

No. 67. (W. Va.)

County of ..... } ss.
State of ....., }

I, ..., a commissioner, appointed by the Governor of the State of West Virginia, for the said State of ....., do certify that ....., whose name is signed to the writing above, bearing date on the ..... day of ....., has this day acknowledged the same before me, in my said .....
Given under my hand, this ..... day of .....

No. 68. (W. Va.) CORPORATION.

State of ....., } ss.
County of ..... }

I, ..., a notary of the said County of ....., do certify that ..... personally appeared before me in my said ....., and being by me duly sworn (or affirmed), did depose and say that he is the president of (or other officer) the corporation described in the writing above, bearing date the ..... day of ....., 18.., authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said ..... acknowledged the said writing to be the act and deed of said corporation.

If the corporation has no corporate seal, omit the words "seal affixed to said writing is the corporate seal of said corporation" and say "said corporation has no seal," and in such case omit the word "sealed" after the words "signed and," and insert in lieu of it the words "executed."

No. 69. (Wis.)

State of Wisconsin, } ss.
..... County. }

Personally came before me this ..... day of ....., 18.., the above (or within) named ....., and ....., his wife, to me known to be the persons who executed the foregoing (or within) instrument, and acknowledged the same.

CERTIFICATE TO BE ATTACHED TO AN ACKNOWLEDGMENT TAKEN OUTSIDE THIS STATE.

State of ....., } ss.
County of ..... }

I, ..., clerk of the ....., in and for said county, which is a court of record, having a seal (or I, ..., the Secretary of State of ..... State), do hereby certify that ....., by and before whom the foregoing acknowledgment (or proof) was taken, was, at the time of taking the same, a notary public (or other officer) residing (or authorized to act) in said county, and was duly authorized by the laws of said State (or territory) to take and certify acknowledgments or proofs of deeds in said State, and further that I am well acquainted with the handwriting of said ....., and that I verily believe that the signature to said certificate of acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court (or State), this ..... day of ....., 18..

CANADA.

No. 70. MAKER OF A DEED.

I hereby certify that ....., personally known to me, appeared before me and acknowledged to me that ....., the person.. mentioned in

the annexed instrument as the maker.. thereof, and whose name ..... subscribed thereto as part ..... that ..... know.. the contents thereof, and that ..... executed the same voluntarily.

In testimony whereof, I have hereto set my hand and seal of office, at ....., this ..... day of ....., in the year of Our Lord one thousand eight hundred and ninety .....

No. 71. FOR WITNESS.

I hereby certify that ....., personally known to me, appeared before me and acknowledged to me that ....., the person whose name is subscribed to the annexed instrument as witness, and having been duly sworn by me, did prove to me that ..... did execute the same in his presence voluntarily.

In testimony whereof, I have hereto set my hand and seal of office, at ....., British Columbia, this ..... day of ....., in the year of our Lord one thousand eight hundred and ninety .....

No. 72. AGREEMENT FOR WARRANTEE DEED.

Articles of agreement, made this ..... day of ....., in the year of our Lord one thousand eight hundred and ninety ....., between ....., party of the first part, and ....., party of the second part; witnesseth, that if the party of the second part shall first make the payments and perform the covenants hereinafter mentioned on ..... part to be made and performed, the said party of the first part hereby covenants and agrees to convey and assure to the said party of the second part, in fee simple, clear of all incumbrances whatever, by a good and sufficient warranty deed, the lot.., piece.., or parcel of ground, situated in the County of ....., and State of ....., known and described as ....., and the said party of the second part hereby covenants and agrees to pay to the said party of the first part the sum of ..... dollars in the manner following: ....., with interest at the rate of ..... per centum per annum, payable ..... annually, on the whole sum remaining from time to time unpaid, and to pay all taxes, assessments or impositions that may be legally levied or imposed upon said land, subsequent to the year ..... And in case of the failure of the said party of the second part to make either of the payments, or any part thereof, or perform any of the covenants on ..... part hereby made and entered into, this contract shall, at the option of the party of the first part, be forfeited and determined, and the party of the second part shall forfeit all payments made by ..... on this contract, and such payments shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by ..... sustained, and ..... shall have the right to re-enter and take possession of the premises aforesaid.....

It is mutually agreed, by and between the parties hereto, that the time of payment shall be the essence of this contract and that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

..... (Seal.)
..... (Seal.)
..... (Seal.)

Sealed and delivered in presence of .....
.....

No. 73. BOND FOR DEED.

Know all men by these presents, that ....., of the County of ....., and State of ....., ... held and firmly bound unto ....., of the County of ....., and State of ....., in the penal sum of ..... dollars, to be paid unto the said ..... heirs, executors, administrators or assigns, to which payment, well and truly to be made ..... bind ..... heirs, executors, administrators, and every of them, firmly by these presents.

Sealed with ..... seal.., and dated the ..... day of ....., A. D. 189..

The condition of the above obligation is such, that, whereas, the above bounden ..... ha.. this day sold to the said ....., heirs and assigns, for the sum of ..... dollars, all the following described lot.., piece.., or parcel.. of land, to wit: ..... which sum of ..... dollars is to be paid in the manner following: ....., with interest at the rate of ..... per cent. per annum payable ..... annually on the whole sum remaining from time to time unpaid.

Upon the payment of the said sums being made at the time and in the manner aforesaid, and of all taxes, assessments, or impositions that may be legally levied or imposed upon said land subsequent to ....., A. D. 189.., the said ....., ... heirs, executors, and assigns, covenant.. and agree.. to and with the said ....., ... heirs, executors, administrators and assigns to execute a good and sufficient deed of conveyance, in fee simple, free from all incumbrance, with full covenants of warranty for the above described premises.

Now, if the said ..... shall well and truly keep, observe, and perform ..... covenants and agreements herein contained on ..... part, to be kept and performed, then this obligation to be void; otherwise to remain in full force and virtue. It is expressly understood and agreed by and between the parties hereto, that time is of the essence of this contract, and, that in the event of the non-payment of said sum of money, or any part thereof, or the interest thereon, at the time or times herein named for its payment, that then the said ..... absolutely discharged at law and in equity from any and all liability to make and execute such deed.

..... (Seal.)
..... (Seal.)

Sealed and delivered in the presence of
.....
.....

No. 74. CONTRACT.

CONTRACT FOR SALE OF REAL ESTATE.

Chicago, ..., 189..

Received of ....., ... dollars, as part payment towards the purchase of the following described real estate: ....., which is hereby bargained and sold to the said ..... for the sum of ..... dollars, ... dollars more to be paid on the delivery of a good and sufficient warranty deed of conveyance for the same within ..... days from this date, or as much sooner thereafter as the deed is ready for delivery, after the title has been examined and found good, and the balance to be paid as follows: .....
To be secured by trust deed or mortgage on the property above described. Should the title to the property not prove good, then this $..... to be refunded. But should the said ..... fail to perform this contract on his part promptly at the time and in the manner above specified (time being of the essence of this contract), then the above ..... dollars shall be forfeited by ..... as liquidated damages, and the above contract shall be and become null and void.

..... (Seal.)
..... (Seal.)
..... (Seal.)
..... (Seal.)

No. 75. WARRANTY DEED—BY CORPORATION.—LONG FORM.

This indenture, made this ..... day of ....., in the year of our Lord one thousand eight hundred and ....., between ....., a corporation created and existing under and by virtue of the laws of the State of ..... and doing business in the State of ....., party of the first part, and ....., a corporation created and existing under and by virtue of the laws of the State of ....., having its principal office in the ..... of ..... and State of ....., party of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the sum of ..... dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom has granted, bargained, sold, remised, released, conveyed, aliened and confirmed, and by these presents does grant, bargain, sell, remise, release, convey, alien and confirm, unto the said party of the second part, and to its successors and assigns forever, all the following described lot.., piece.., or parcel.. of land, situated in the ..... of ....., County of ....., and State of ....., and known and described as follows, to wit: .....

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim or demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances: To have and to hold the said premises

above bargained and described, with the appurtenances, unto the said party of the second part, its successors and assigns, forever.

And the said ....., party of the first part, for itself and its successors, does covenant, grant, bargain and agree, to and with the said party of the second part, its successors and assigns, that at the time of the ensealing and delivery of these presents, it is well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and encumbrances, of what kind or nature soever; and the above bargained premises, in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.....

This deed is executed pursuant to authority given by the board of ..... of said company.

In testimony whereof, the said ..... company hath hereunto caused its corporate seal to be affixed, and these presents to be signed by its ..... president, and attested by its ..... secretary, the day and year first above written. .....

By ....., President.

Attest: ....., Secretary.

Signed, sealed and delivered in presence of

.....

.....

County of ..... } ss.
State of ....., }

I, ..., in and for said county, in the State aforesaid. do hereby certify that ....., personally known to me to be the ..... president of the ..... company, and ....., personally known to me to be the ..... secretary of said company, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such ..... president and ..... secretary, they signed and delivered the said instrument of writing as ..... president and ..... secretary of said company, and caused the corporate seal of said company to be affixed thereto, pursuant to authority given by the board of ..... of said company as their free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

Given under my hand and ..... seal this ..... day of ....., A. D. 18.. .....

.....

No. 76. QUIT-CLAIM DEED.—LONG FORM.

This indenture, made this ..... day of ....., in the year of our Lord one thousand eight hundred and ninety ....., between ....., of the ....., in the County of ....., and State of ....., party of the first

part, and ....., of the ....., in the County of ....., and State of ....., party of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the sum of ..... dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, ha.. remised, released, sold, conveyed, and quit-claimed, and by these presents do.. remise, release, sell, convey, and quit-claim, unto the said party of the second part, ... heirs, and assigns, forever, all the right, title, interest, claim, and demand, which said party of the first part ha.. in and to the following described lot.., piece.., or parcel.. of land, situated in the County of ....., and State of ....., and known and described as follows, to wit: .....

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining; and all the estate, right, title, interest, and claim whatever, of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, ... heirs, and assigns, forever.

And the said party of the first part hereby expressly waive.. and release.. any and all right, benefit, privilege, advantage, and exemption, under or by virtue of any and all statutes of the State of Illinois, providing for the exemption of homesteads from sale on execution or otherwise.

In witness whereof, the said party of the first part ..... hereunto set ..... hand.. and seal.. the day and year first above written.

..... (Seal.)
..... (Seal.)
..... (Seal.)
..... (Seal.)

A. D. 189.. .....

Signed, sealed, and delivered, in the presence of

.....
.....

County of ..... } ss.
State of ....., }

I, ..., in and for the said county, in the State aforesaid, do hereby certify, that ....., personally known to me to be the same person.. whose name.. ..... subscribed to the foregoing instrument appeared before me this day in person, and acknowledged that ..he.. signed, sealed, and delivered the said instrument as ..... free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and ..... seal, this ..... day of ....., A. D. 189..

No. 77. QUIT-CLAIM DEED.—LONG FORM.

This indenture, made this ..... day of ....., in the year of our Lord one thousand eight hundred and ninety ....., between ....., of the ....., in the County of ....., and State of ....., party of the

first part, and ....., of the ....., in the County of ....., and State of ....., party of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the sum of ..... dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, ha.. remised, released, conveyed and quit-claimed, and by these presents do.. remise, release, convey and quit-claim, unto the said party of the second part, ... heirs and assigns, forever, all the right, title, interest, claim and demand which said party of the first part ha.. in and to the following described lot.., piece.., or parcel.. of land, situated in the County of ....., and State of ....., and known and described as follows, to wit: .....

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining; and all the estate, right, title, interest and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, ... heirs and assigns forever.

And the said party of the first part hereby expressly waive.. and release.. any and all right, benefit, privilege, advantage and exemption, under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

In witness whereof, the said party of the first part ..... hereunto set ..... hand.. and seal.., the day and year first above written.

..... (Seal.)
..... (Seal.)
..... (Seal.)
..... (Seal.)

Signed, sealed and delivered in the presence of

.....
.....

(Certificate follows.)

No. 78. LEASE.—SHORT FORM.

This agreement made the ..... day of ....., in the year one thousand eight hundred and ninety ....., between ....., of the first part, and ....., of the second part,

Witnesseth, that the said part.. of the first part ha.. agreed to let, and hereby do.. let to the said part.. of the second part, and the said part.. of the second part ha.. agreed to take, and hereby do.. take from the said part.. of the first part, ... for the term of ....., to commence on the ..... day of ....., A. D. 189.., and to end on the ..... day of ....., A. D. 189..

And the said part.. of the second part hereby covenant.. and agree.. to pay unto the said part.. of the first part, the ..... rent or sum of ..... payable .....

And to quit and surrender the premises, at the expiration of the said term, in as good state and condition as they were in at the commence-

ment of the term, reasonable use and wear thereof and damages by the elements excepted.

And the said part.. of the second part further covenant.. that ..... will not assign this lease, nor let or underlet the whole or any part of the said premises, nor make any alteration therein without the written consent of the said part.. of the first part, under the penalty of forfeiture and damages; and that ..... will not occupy or use the said premises, nor permit the same to be occupied or used for any business deemed extra-hazardous on account of fire or otherwise, without the like consent, under the like penalty.

And the said part.. of the second part further covenant.. that ..... will permit the said part.. of the first part, or ..... agent, to show the premises to persons wishing to hire or purchase, and on and after the first day of February next preceding the expiration of the term, will permit the usual notice of "to let" or "for sale" to be placed upon the walls or doors of said premises, and remain thereon without hindrance or molestation.

And also, that if the said premises, or any part thereof, shall become vacant during the said term, the said part.. of the first part, or ..... representative, may re-enter the same, either by force or otherwise, without being liable to any prosecution therefor; and re-let the said premises as the agent of the said part.. of the second part, and receive the rent thereof, applying the same first to the payment of such expenses as ..... may be put to in re-entering, and then to the payment of the rent due by these presents; and the balance (if any) to be paid over to the said part.. of the second part, who shall remain liable for any deficiency.

And the said part.. of the second part hereby further covenant.. that if any default be made in the payment of the said rent, or any part thereof, at the times above specified, or if default be made in the performance of any of the covenants or agreements herein contained, the said hiring, and the relation of landlord and tenant, at the option of the said part.. of the first part shall wholly cease and determine; and the said part.. of the first part shall and may re-enter the said premises and remove all persons therefrom; and the said part.. of the second part hereby expressly waive.. the service of any notice in writing of intention to re-enter, notice to terminate the tenancy, notice to quit or demand for possession.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

..... (Seal.)
..... (Seal.)
..... (Seal.)

Sealed and delivered in the presence of
.....

No. 79. LEASE.—CHICAGO FORM.

This indenture, made this ..... day of ....., in the year of our Lord one thousand eight hundred and ....., between ....., party of the first part, and ....., party of the second part, Witnesseth, that the said party of the first part, for and in consideration of the covenants

and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, ... executors, administrators and assigns, has demised and leased to the said party of the second part, all those premises situate, lying and being in the City of Chicago, in the County of Cook, in the State of Illinois, known and described as follows, to wit: .....
To have and to hold the said above described premises, with the appurtenances, unto the said party of the second part, ... executors, administrators and assigns, from the ..... day of ....., in the year of our Lord one thousand eight hundred and ninety ....., for and during and until ....., eighteen hundred and .....

And the said party of the second part, in consideration of the leasing of the premises aforesaid by the said party of the first part to the said party of the second part, does covenant and agree with said party of the first part, ... heirs, executors, administrators and assigns, to pay the said party of the first part, as rent for said premises, the sum of .....
Said party of the first part shall have the right to put up notices to rent, and show the premises at reasonable hours, for thirty days prior to the expiration of this lease.

And the said party of the second part further covenants with the said party of the first part, that said party of the second part has received said demised premises in good order and condition, and that at the expiration of the time in this lease mentioned, or sooner determination thereof by forfeiture, ..he.. will yield up the said premises to the said party of the first part in as good condition as when the same were entered upon by the said party of the second part, loss by fire or inevitable accident or ordinary wear excepted; and also will keep the said premises in good repair during this lease, at ..... own expense.

It is further agreed by the said party of the first part, that neither ..he.. nor ..... legal representatives, will underlet said premises or any part thereof, or assign this lease, without the written assent of the said party of the first part had and obtained thereto.

And the said party of the second part, for ..... executors, administrators and assigns, agree.. further to pay (in addition to the rents above specified), all water rents taxed, levied or charged on said premises, for and during the time for which this lease is granted, and save said premises and the said party of the first part harmless therefrom, and that ..he.. will keep said premises in a clean and wholesome condition, in accordance with the ordinances of the city and directions of the health officers. And it is further agreed that all plumbing, water-pipes, gas-pipes, and sewerage, shall be at the risk of the said party of the second part.

And, provided the said party of the first part shall pay for any water rent, or for repairs of hydrants, supply or waste pipes, or sewers on said premises which may be ordered by the board of public works, or for the removal of any night-soil removed by the order or direction of the board of health or any of its officers, the amount so paid shall be considered as additional rent, and the said party of the first part may collect the same of the said party of the second part in the same manner as other rents under this lease.

It is expressly understood and agreed by and between the parties

aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day of payment whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants or agreements herein contained, to be kept by the said party of the second part, ... executors, adminstrators and assigns, it shall and may be lawful for the said party of the first part, ... heirs, executors, administrators, agent, attorney or assigns, at ..... election, to declare said term ended, and into the said premises, or any part thereof, either with or without process of law, to re-enter; and the said party of the second part, or any other person or persons occupying, in or upon the same to expel, remove and put out, using such force as may be necessary in so doing, and the said premises again to re-possess and enjoy as in ..... first and former estate, and to distrain for any rent that may be due thereon upon any property belonging to said party of the second part, whether the same be exempt from execution and distress by law or not; and the said party of the second part in that case hereby agree.. to waive all legal rights which ..he.. now ha.. or may have to hold or retain any such property, under any exemption laws now in force in this State, or in any other way, meaning and intending hereby to give to the said party of the first part, ... heirs, executors, administrators or assigns, a valid and first lien upon any and all goods and chattels and other property belonging to the said party of the second part, as security for the payment of said rent, in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, ... heirs, executor, administrators or assigns, as aforesaid, or in any other way, the said party of the second part, ... executors, administrators and assigns, do hereby covenant and agree to surrender and deliver up the said above described premises and property peaceably to said party of the first part, ... heirs, executors, administrators or assigns, immediately upon the determination of the said term, as aforesaid; and if ..... shall remain in possession of the same ..... after ..... such default, or after the termination of this lease, in any of the ways above named, ... shall be deemed guilty of a forcible detainer of said premises under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated. And the said party of the second part hereby waives ..... right to any notice from said party of the first part of ..... election to declare this lease at an end, under any of its provisions, or any demand for the payment of rent or the possession of the premises leased herein; but the simple fact of the non-payment of the rent reserved, shall constitute a forcible detainer as aforesaid.

And it is further covenanted and agreed by and between the parties, that the party of the second part shall pay and discharge all costs, attorneys' fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

No. 80. MORTGAGEE'S DEED.—LEGAL NEWS FORM—CITY.

This indenture, made this ..... day of ....., in the year of our Lord, one thousand eight hundred and ninety ....., between ....., of the ....., in the County of ....., and State of ....., party of the first part, and ....., of the ....., in the County of ....., and State of ....., party of the second part:

Witnesseth that, whereas, ..., of the ....., in the County of ....., and State of ....., by a certain indenture of mortgage, dated the ..... day of ....., A. D. 18.., did bargain, sell, and convey unto ....., ... heirs and assigns forever, all the premises hereinafter described, to secure the payment of the sum of ..... dollars and interest, according to the conditions of ....., certain ....., hearing date on the ..... A. D. 18.., ... which said mortgage was afterwards on the ..... day of ....., A. D. 18.., at ..... o'clock in the ..... noon, duly recorded in the recorder's office of Cook County, in the State of Illinois, in Book ..... of mortgages, on pages .....

And whereas, the said mortgage contained a power of sale, among other things, authorizing and empowering the said party of the second part in said mortgage, ... heirs, executors, administrators, attorneys or assigns, if default should be made in the payment of the said ..... in said mortgage mentioned, or any part thereof, or the interest thereon, or any part thereof, according to the tenor and effect of said ..... or in case of waste, or non-payment of taxes or assessments, or neglect to procure or renew insurance, or in case of the breach of any of the covenants or agreements in said mortgage contained, after publishing a notice in the Chicago Legal News or in any newspaper published in the City of Chicago, in said Cook County, for ..... successive weeks before the day of such sale, to sell the said mortgaged premises or any part thereof at public auction to the highest bidder for cash, and to make, execute and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds of conveyance in the law for the same .....

And whereas, also, default having been made in the payment of ....., and whereas, in pursuance of said power of sale in said mortgage contained and above recited, and of the statute in such case made and provided, ..., the undersigned, ..., party of the first part, on tne ..... day of ....., A. D. 189.., caused due notice to be published in the Chicago Legal News, a newspaper published in the said City of Chicago, that said premises hereinafter described would, on the ..... day of ....., A. D. 189.., at the hour of ..... o'clock in the ..... noon of said day, be sold at public auction, at the ....., in said County of Cook, to the highest bidder for cash, by virtue of the power and authority in ..... vested by said mortgage; which said notice was duly published weekly for ..... successive weeks in the said Chicago Legal News, and that the date of the first paper containing the same was the ..... day of ....., A. D. 189.., and of the last the ..... day of ....., A. D. 189..

And whereas, also, the said premises having been by the said party of the first part, on the ..... day of ....., A. D. 189.., at ..... o'clock in the ..... noon of said day, in the manner prescribed in and

by said mortgage, and at the place last aforesaid, in pursuance of said notice, offered for sale at public auction, to the highest bidder, for cash, and the said party of the second part having been the highest bidder therefor, and having bid for the tract ..... hereinafter named, the sum of ..... dollars, ... duly declared the purchaser thereof.
.....

Now, therefore, this indenture witnesseth, that the said party of the first part, by virtue of the authority in ..... vested by said mortgage as aforesaid, and of the statute in such case made and provided, for and in consideration of the sum so bid as aforesaid, to ..... in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, ha.. sold, conveyed, aliened, remised, released, and confirmed, and by these presents do.. sell, convey, alien, remise, release, and confirm unto the said party of the second part, and to ..... heirs and assigns forever, all the following described lot.., piece.., or parcel.. of land, situate in the County of Cook, and State of Illinois, known and described as follows, to wit:.....
Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, as the same are described and conveyed in and by the said mortgage; and also all the estate, right, title, interest, property, claim, and demand whatsoever, both in law and equity, of the said ....., as well as of the said party of the first part, of, in and to the above described premises, with the appurtenances, as fully, to all intents and purposes, as the said party of the first part hath power and authority to grant, sell, and convey the same by virtue of the said mortgage and of the statute in such case made and provided, to have and to hold the said above granted premises, with their appurtenances, and every part thereof, unto the said party of the second part, ... heirs and assigns, forever.

In witness whereof, the said party of the first part has hereunto set ..... hand.. and seal.., the day and year first above written.

..... (Seal.)
..... (Seal.)

No. 81. RELEASE DEED.

Know all men by these presents, that ....., of the County of ....., and State of ....., for and in consideration of one dollar, and for other good and valuable considerations, the receipt whereof is hereby confessed, do hereby remise, convey, release and quit-claim, unto ....., of the County of ....., and State of ....., all the right, title, interest, claim, or demand whatsoever ..... may have acquired in, through, or by a certain trust deed, bearing date the ..... day of ....., A. D. 189.., and recorded in the recorder's office of ..... County, in the State of ....., in Book ..... of ....., page ....., to the premises therein described, as follows, to wit:.....
Together with all the appurtenances and privileges thereunto belonging or appertaining.

Witness ..... hand.. and seal.., this ..... day of ....., A. D. 189..

..... (Seal.)
..... (Seal.)

State of ....., } ss.
..... County. }

I, ..., in and for the said county, in the State aforesaid, do hereby certify, that ....., personally known to me to be the same person.. whose name.. ..... subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged, that ..he.. signed, sealed, and delivered the said instrument as ..... free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and ..... seal, this ..... day of ....., A. D. 189..

.....,
.....

No. 82. RELEASE OF CHATTEL MORTGAGE.

Know all men by these presents, that ....., of the County of ....., and State of ....., do hereby certify, that a certain indenture of mortgage, bearing date the ..... day of ....., A. D. 189.., made and executed by ..... of the first part to ..... of the second part, conveying certain personal property therein mentioned as security for the payment of ..... dollars and ..... cents as therein stated and recorded in the recorder's office of ..... County, in the State of ....., in Book ....., of ....., on page ....., on the ..... day of ....., A. D. 189.....
is, with the note.. accompanying it, and the aforementioned debt fully paid, satisfied, released, and discharged.

Witness, ... hand.. and seal.., this ..... day of ....., A. D. 189..

Certificate follows.

AFFIDAVITS.

No. 83. AFFIDAVIT OF ACCOUNT.

State of ....., } ss.
..... County. }

I, William Smith, of the firm of Smith, Brown & Co., do solemnly swear that the several items mentioned in the annexed account are just and true; that the articles were furnished, as therein charged, and that the amount claimed, to wit, the sum of fifty dollars, is due and unpaid, after allowing all just credits.

.....

Subscribed and sworn to before me, this ..... day of ....., 18..

.....,
Notary Public.

No. 84. LOSS OF NOTES.

State of ....., } ss.
County of ..... }

I, ..., on oath, depose and say: That on the ..... day of ....., A. D. 18.., I, ..., together with ....., made a certain deed of trust to ....., to secure the payment of the ..... certain principal promissory note of that date, for ..... dollars, payable in ..... years from said date, to the order of ....., with interest at ..... per cent.

per annum, payable in semi-annual installments of $..... each, which semi-annual payments were evidenced by ..... coupon interest notes, as in said deed described. That said coupons were numbered from 1 to ....., inclusive, and in the order they respectively became due, that said deed was filed in the office for the registry of deeds for ..... County, State of ....., on the ..... day of ....., A. D. 18.., and recorded in Book ....., of ....., page .....; that all of said notes have been paid and canceled, and are herewith produced, excepting coupons numbered ....., which, although diligent search has been made therefor, cannot be found; that said missing notes have been either mislaid, lost or destroyed, and therefore cannot now be produced; that this affidavit is made to obtain the release of the aforementioned deed of trust. .....

Subscribed and sworn to before me, at ....., this ..... day of ....., A. D. 18... Witness my hand and official seal.

....., Notary Public.

MEMORANDA.

For reason of the statements contained in the foregoing affidavit, I have this ..... day of ....., A. D. 18.., executed a release of the aforementioned deed of trust. ....., Trustee.

No. 85. (Ga.) AN ACTION ON A CONTRACT.

You, A. B., do swear (or affirm) that the foregoing defense is true, to the best of your knowledge and belief, so help you God.

Where material words are omitted by accident or mistake in an affidavit to appeal in forma pauperis, such omission is amendable.

Affidavits of illegality are, upon motion and leave of court, amendable instanter by the insertion of new and independent grounds; provided, the defendant will swear that he did not know of such grounds when the original affidavit was filed.

All affidavits for the foreclosure of liens, including mortgages, and all affidavits that are the foundation of legal proceedings, and all counter affidavits, shall be amendable to the same extent as ordinary declarations, and with only the restrictions, limitations, and consequences now obtaining in the case of ordinary declarations and pleas. In all civil cases founded on unconditional contracts in writing, where there is an issuable defense, and where the defendant does not reside in the county where suit is pending, the agent or attorney of the defendant may make oath to the plea and swear it to be true according to the best of his knowledge and belief. Where claimants are unable to give bond and security as required, it shall and may be the privilege of such claimants to file, in addition to the oath required, an affidavit as follows:

I, A. B., do swear that I do not interpose this claim for delay only; that I bona fide claim the right and title to the same; that I am advised and believe that the claim will be sustained; and that from poverty I am unable to give bond and security as now required by law. When said affidavit shall have been made and delivered to the

levying officer, the same shall suspend the sale in the same manner as if bond and security had been given.

Attorneys cannot take affidavits required of their clients, unless specially permitted by law.

Oath includes affirmation.

No. 86. (N. M.)

I do solemnly swear (or affirm) that the within and before mentioned account is true and correct, and that the services have been rendered (or articles have been furnished) as stated, and that no part thereof has been paid.

No. 87. AFFIDAVIT IN ATTACHMENT.

Territory of New Mexico, } ss.
County of ..... }

This day personally appeared before me the undersigned, clerk of the ..... court, A. B. (or C. D., agent for A. B.), and, being duly sworn, says that E. F. is justly indebted to the said A. B. in the sum of ..... after allowing all just off-sets, and that the said E. F. is (..... set forth the cause of attachments).

A. B. .....,

Or C. D., Agent for A. B., ...

Sworn and subscribed before me, this ..... day of ....., A. D. .....

....., Clerk.

No. 88. (Vt.) TO A MORTGAGE.

We severally swear that the foregoing mortgage is made for the purpose of securing the debt specified in the conditions thereof, and for no other purpose, and that the same is a just debt, due and owing from the mortgagor to the mortgagee. Which affidavit, with the certificate of the oath signed by the authority administering the same shall be appended to such mortgage and recorded therewith.

When a corporation is a party it may be made and subscribed by a director, trustee, cashier, or treasurer, or by a person authorized by the corporation.

When a partnership is a party one of its members may subscribe to it.

OFFICIAL OATHS.

No. 89. OATH OF GOVERNMENT OFFICERS.

I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or con-

stitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, 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 obligation 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. .....

No. 90. OATH OF GOVERNMENT OFFICERS FORMERLY PARTICIPANTS IN THE REBELLION.

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 obligation 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.

.....

No. 91. NOTARY'S OATH.

I do solemnly swear that I will support the constitution of the United States and the constitution of the State of ....., so long as I continue a citizen thereof, and that I will faithfully discharge, according to law, the duties of the office of ..... to the best of my ability, so help me God.

No. 92. OATH REQUIRED TO BE TAKEN BY ALL PERSONS BEFORE ENTERING UPON THE DUTIES OF THEIR OFFICE IN KENTUCKY.

FORM.

I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this commonwealth, and be faithful and true to the commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of ..... according to law, and I do further swear (or affirm) that since the adoption of the present constitution, I being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.

No. 93. OATH OF OFFICE IN NEVADA.

I, ..., do solemnly swear (or affirm) that I will support, protect, and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign; and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution, or law of any State convention or legislature to the contrary notwithstanding;

and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever, and I do further solemnly swear (or affirm) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance, since the adoption of the constitution of the State of Nevada, and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel, during my continuance in office; and further, that I will well and faithfully perform all the duties of the office of ....., on which I am about to enter (if an oath) "so help me God," (if an affirmation), under the pains and penalties of perjury.

No. 94. IN NORTH CAROLINA.

Party to lay his hand on the holy evangelists of Almighty God, in token of his engagement to speak the truth, as he hopes to be saved in the way and methods of salvation pointed out in that blessed volume; and in further token, that, if he should swerve from the truth, he may be justly deprived of all blessings of the gospel and made liable to that vengeance which he has imprecated on his own head; and he shall kiss the holy gospel, as a seal of confirmation to the said engagements.

If conscientiously opposed to taking the book, he may stand with his right hand uplifted and say: "I, ..., do appeal to God, as a witness of the truth and the avenger of falsehood, as I shall answer the same at the great day of judgment when the searcher of all hearts shall be known," etc.

No. 95. FORM OF OATH REQUIRED OF AN OFFICER OF THE STATE OF VIRGINIA.

I, ..., do declare myself a citizen of the commonwealth of Virginia, and do solemnly swear that I will support and maintain the constitution and laws of the United States, and the constitution and laws of the State of Virginia; that I recognize and accept the civil and political equality of all men before the law; and that I will faithfully perform the duty of ..... to the best of my ability. So help me God.

No. 95½.

OATH OF COMMISSIONER APPOINTED BY THE GOVERNOR IN ANOTHER STATE.

I, ..., swear (or affirm) that I will faithfully perform the duties of commissioner to the best of my ability. So help me God.

No. 96. OATH ALLOWED TO OFFICE HOLDERS.

I swear (or affirm) that I have not since the removal of my disabilities by an act of the general assembly, approved the ..... day of ....., eighteen ....., fought in a duel, the issue of which was or might have been the death of either party; nor have I been know-

ingly the bearer of any challenge or acceptance to fight a duel actually fought; nor have I been otherwise engaged or concerned, directly or indirectly, in a duel actually fought since said time; nor will I during my continuance in office be so engaged, directly or indirectly. So help me God.

No. 97. OATHS GENERALLY.

Should be administered while standing with the head uncovered and the right hand raised.

1. You do solemnly swear, that you will true answers make to such questions as shall be put to you, touching the execution of this conveyance. So help you God.

2. You do solemnly, sincerely and truly declare and affirm that you will true answers make to such questions as shall be put to you, touching the execution of this conveyance.

TO A WITNESS.

3. You do solemnly swear, that you will true answers make to such questions as shall be put to you, touching the identity of the parties (or, the subscribing witness) to this conveyance. So help you God.

4. You do solemnly swear by the ever-living God, that the contents of this affidavit by you subscribed to are true.

5. You do solemnly swear, that the evidence which shall be given by you, touching the matters in controversy between C. D. and G. B., shall be the truth, the whole truth, and nothing but the truth. So help you God.

6. You do solemnly swear by the ever-living God, that the statement herein set forth and subscribed to by you is the truth.

FORM OF AFFIRMATION.

7. You do solemnly, sincerely and truly declare and affirm.

No. 98. (Ind.) OATH.

Swear to tell the truth, the whole truth, and nothing but the truth.

OATH.

Shall be most consistent with and binding upon the conscience of the party taking it.

No. 99. TO WITNESS IN MINNESOTA.

You do solemnly swear that the evidence you shall give relative to the cause now under consideration shall be the truth and nothing but the truth. So help you God.

AFFIDAVIT.

You do solemnly swear, that the contents of this affidavit, by you subscribed to, are true, as therein stated. So help you God.

No. 100. FORM FOR AN INFIDEL.

You do honestly and sincerely promise and declare that the testimony you shall give relative to the cause now under consideration shall be the truth, the whole truth, and nothing but the truth, and this under the pains and penalties of perjury.

No. 101. CANADA.

Canada,
Province of British Columbia. } to wit:

I, A. B., solemnly declare that (state facts), and I make this solemn declaration, conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the "Canada Evidence Act, 1893."

Declared before me, ..., at ....., this ..... day of ....., A. D. .....

No. 102. AFFIRMATION FORM.

I, A. B., do solemnly, sincerely and truly affirm and declare that the taking of an oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely and truly affirm and declare, etc.

No. 103. DEPOSITION TAKEN BEFORE NOTARY BY AGREEMENT OR NOTICE.

In the ..... Court of ..... County.
Of ..... Term, A. D. 189..

.....
.....
.....
vs.
.....
.....
.....

.....

State of ....., } ss.
..... County. }

Be it remembered, that on this ..... day of ....., A. D. 189.., personally appeared before me, ..., a notary public in and for the ....., and State of Illinois, ...
to testify on the part of ....., in the above entitled cause.

And the said ....., having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did depose and say as follows, to wit:

.....

State of ....., } ss.
..... County. }

I, ..., a notary public in and for the ....., of ....., and State of Illinois, do hereby certify that on the ..... day of ....., A. D. 189.., by agreement of ..... and ....., personally appeared before me, at the office of ....., Illinois, ... witness to testify on the behalf of the ..... in a certain cause now pending in the ....., wherein ..... and .....

And I do hereby further certify, that the aforesaid witness.. w.... first duly sworn to testify the truth in relation to the matter in controversy in the cause aforesaid, so far as ..he.. should be interrogated, and that the testimony of said witness.. w.... reduced by me to writing, and first carefully read to said witness.., and the same subscribed to by said witness.. in my presence.

....

In testimony whereof, I have hereunto set my hand, and affixed my notarial seal, this ..... day of ....., A. D. 189..

....., Notary Public.

Notary's Fee, $.....

No. 104. NOTICE TO TAKE DEPOSITION—COURT IN BLANK.

State of Illinois, } ss.
..... County. }

In the ..... Court
of ..... County, State of Illinois.
..... Term, 189..

.....
..... } Mr. .....
vs. } The above named.....
..... } Sir,
.....

Please take notice, that, on the ..... day of ....., A. D. 189.., at ..... o'clock, ... M., and to continue from day to day, if necessary, at the ..... of ....., in ....., in the County of ....., and State of Illinois, before ....., a ....., or some other officer authorized by law to take depositions in such cases, ... shall proceed to cause to be taken the deposition.. of ..... of said ..... County, to be read in evidence on the trial of the above entitled cause, on the part of said ....., when and where you may attend, and cross-examine the said witness.., if you shall see fit so to do.

Dated this ..... day of ....., A. D. 189...

....., Attorney for .....

No. 105. (Wis.) DEPOSITION CERTIFICATE.

State of Wisconsin, } ss.
..... County. }

I, ... (name and office), in and for said county, do hereby certify that the above deposition was taken before me, at my office, in the town of ....., in said county, on the ..... day of ....., 18.., at ..... o'clock ..... noon; that it was taken at the request of the plaintiff (or defendant), etc., upon verbal (or written) interrogatories; that it was reduced to writing by myself (or by deponent, or by ....., a disinterested person, in my presence, and under my direction); that it was taken to be used in the action of ....., now pending in ..... court (or as the case may be), and that the reason for taking it was .....; that ..... attended at the taking of such deposition (or that a notice of which the annexed is a copy, was served upon ....., on the ..... day of ....., 18.., or that the deposition was taken in pursuance of the annexed stipulation); that said deponent before examination was sworn to testify the truth, the whole truth, and nothing but the truth, relative to said cause, and that said deposition was carefully read to (or by) said deponent and then subscribed by him. .....

No. 106. PRÆCIPE.

Before .....

.....
.....
.....
.....
vs.
.....
.....
.....
.....

Demand $..... Issue summons returnable on the ..... day of ....., 189.., at .... o'clock, ... M., and give the same to constable ..... Defendant at ..... Credit plaintiff with $..... advance costs.

....., Attorney.

State of ....., } ss.
..... County. }

....., being first duly sworn, on oath says that he is ....., and that the demand of the plaintiff.. in the above entitled cause is for ....., and the amount due to said plaintiff.. from the defendant.. in said cause after allowing to said defendant.. all his just deductions, credits and set off, if any, is ..... dollars and ..... cents.

.....

Subscribed and sworn to before me, this ..... day of ....., 189..

....., Notary Public.

NEGOTIABLE INSTRUMENTS.

No. 107. CHECK.

Chicago, Ill., ..., 189.. No. .....

THE FIRST NATIONAL BANK OF CHICAGO.

Pay to the order of ....., $.....
..... dollars.
.....

No. 108. DRAFT OR INLAND BILL OF EXCHANGE.

No. ..... $..... Chicago, January 1, 1897.

Three months after date pay to the order of Thomas Smith & Co. one hundred dollars, value received, and charge to the account of

To Brown Bros., A. H. JONES.
Centralia, Ky.

No. 109. FOREIGN BILL.

No. ..... Exchange of £100. Chicago, January 1, 1897.

Six months after sight of this first of exchange (second and third unpaid), pay to the order of Mr. Don Carlos, one hundred pounds, value received, and charge the same to account of Messrs. Smith & Co. against your letter of credit No. 1.

To Mr. S. Jackson, JAMES JOHNSON.
London, England.

No. 110. CERTIFICATE OF PROTEST.

State of ....., }
..... County. } ss.
..... }

Be it known, that on this ..... day of ....., in the year of our Lord one thousand eight hundred and ninety ....., I, ..., a notary public, duly commissioned and sworn, and residing in the ....., in said county and State, at the request of ....., went with the original ....., which is above attached, to the office of ....., and demanded ..... thereon, which was refused.....

Whereupon I, the said notary, at the request of the aforesaid, did protest, and, by these presents, do solemnly protest, as well against the ..... of said ..... the endorsers thereof, as all others whom it may or doth concern, for exchange, re-exchange, and all costs, charges, damages, and interest already incurred by reason of the non-..... of the said .....

And I, the said notary, do hereby certify, that, on the same day and year above written, and within forty-eight hours from the time of such protest, due notice of the foregoing protest was put in the postoffice at ....., as follows:

Notice for .....
Notice for .....
Notice for .....
Notice for .....
Notice for .....

Each of the above-named places being the reputed place of residence of the person to whom this notice was directed.

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

....., Notary Public.

No. 111. NOTICE OF PROTEST OF NOTE.

State of .....,
County of ..... } ss.
.....

....., 189...

Sir:—

A ..... for $....., dated ....., payable ..... signed by ....., endorsed by ....., being this day due and unpaid, and by me protested for non-payment, I hereby notify you that the payment thereof has been duly demanded, and that the holders look to you for payment, damages, interest and costs.

Done at the request of ...., Notary Public.

To .....,
.....

No. 112. (Miss.) PROTEST.

Be it known that I, A. B., a justice of the peace of the County of ....., at the usual place of ..... of C. D., presented to him the bill or note of which the annexed is a copy, for payment (or acceptance) which he did not pay (or accept); whereas I did protest the said bill (or note); and immediately thereafter I deposited in the postoffice at ....., postage paid, a written notice of the protest, directed to E. F., at ....., which is his known (or usual) place of abode (or business).

Dated at ....., this ..... day of ....., A. D. .....

No. 113. PROMISSORY NOTE.

$300.00. New York, July 30, 1898.

Four years after date I promise to pay John Doe, or order, three hundred dollars, with six per cent. interest per annum, for value received.

No. 5. THOMAS NOBODY.

No. 114. RECEIPT.

$300.00. Chicago, July 1, 1898.

Received of Thomas Smith, three hundred dollars, in full of account.

THOMAS JACKSON & CO.

No. 115. BILL OF SALE.

Know all men by these presents, that ....., of the ....., in the County of ....., and State of ....., part.. of the first part, for and in consideration of the sum of ..... dollars, lawful money of the United States of America, to ..... in hand paid, at or before the ensealing and delivery of these presents, by ..... of the second part, the receipt whereof is hereby acknowledged, ha.. granted, bargained, sold, and delivered, and, by these presents, do.. grant, bargain, sell, and deliver, unto the said part.. of the second part, all the following goods, chattels, and property, to wit:.....

To have and to hold the said goods, chattels, and property unto the said part.. of the second part, ... heirs, executors, administrators, and assigns, to and for ..... own proper use and behoof, forever.

And the said part.. of the first part do.. vouch ..... to be the true and lawful owner.. of the said goods, chattels, and property, and have in ..... full power, good right, and lawful authority, to dispose of the said goods, chattels, and property, in manner, as aforesaid: And ..... do, for ..... heirs, executors, and administrators, covenant and agree to and with the said part.. of the second part, to warrant and defend the said goods, chattels, and property to the said part.. of the second part, ... executors, administrators, and assigns, against the lawful claims and demands of all and every person and persons whomsoever.

In witness whereof, ... have hereunto set ..... hand.. and seal.., the ..... day of ....., in the year one thousand eight hundred and .... (Seal.)

..... (Seal.)

Sealed and delivered in the presence of

.....

State of ....., } ss.
..... County. }

I, ..., in and for said county, do hereby certify, that this instrument was duly acknowledged before me, by the above named ....., this ..... day of ....., A. D. 18... .....,

.....

No. 116. CHATTEL MORTGAGE FOR RESIDENT.—SHORT FORM.

Know all men by these presents, that ....., of the Town of ....., in the County of ....., and State of ....., in consideration of the sum of ..... dollars, to ..... paid by ....., of the County of ....., and State of ....., the receipt whereof is hereby acknowledged, do.. hereby grant, sell, convey and confirm, unto the said ....., and to ..... heirs and assigns, the following goods and chattels, to wit: ....

To have and to hold all and singular the said goods and chattels, unto the said mortgagee ..... herein, and ..... heirs, executors, administrators and assigns, to ..... and their sole use, forever. And the mortgagor ..... herein, for ..... and for ..... heirs, executors and administrators, do.. hereby covenant to and with the said mort-

gagee...., ... heirs, executors, administrators and assigns, that said mortgagor ..... lawfully possessed of the said goods and chattels, as of ..... own property; that the same are free from all encumbrances, and that ..... will, and ..... executors and administrators shall, warrant and defend the same to ..... the said mortgagee...., ... heirs, executors, administrators and assigns, against the lawful claims and demands of all persons.

Provided, nevertheless, that if the said mortgagor...., ... executors or administrators, shall well and truly pay unto said mortgagee...., ... executors, administrators or assigns, ... then this mortgage is to be void, otherwise to remain in full force and effect.

And, provided, also, that it shall be lawful for the said mortgagor...., ... executors, administrators and assigns, to retain possession of the said goods and chattels, and at ..... own expense, to keep and use the same, until ..... or ..... executors, administrators or assigns, shall make default in the payment of the said sum of money above specified, either in prinicpal or interest, at the time or times, and in the manner hereinbefore stated. And the said mortgagor...., hereby covenant.. and agree.. that in case default shall be made in the payment of the note.. aforesaid, or of any part thereof, or the interest thereon, on the day or days respectively on which the same shall become due and payable; or if the mortgagee...., ... executors, administrators or assigns, shall feel ..... insecure or unsafe, or shall fear diminution, removal or waste of said property; or if the mortgagor.... shall sell or assign, or attempt to sell or assign, the said goods and chattels, or any interest therein; or if any writ, or any distress warrant, shall be levied on said goods and chattels, or any part thereof; then, and in any or either of the aforesaid cases, all of said note.. and sum of money, both principal and interest, shall, at the option of the said mortgagee...., ... executors, administrators or assigns, without notice of said option to any one, become at once due and payable, and the said mortgagee...., ... executors, administrators or assigns, or any of them, shall thereupon have the right to take immediate possession of said property and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the mortgagor...., with or without force or process of law, wherever the said goods and chattels may be, or be supposed to be, and search for the same, and if found, to take possession of, and remove, and sell, and dispose of the said property or any part thereof, at public auction, to the highest bidder, after giving ..... days' notice of the time, place and terms of sale, together with a description of the property to be sold, by notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash or on credit, as the said mortgagee...., ... heirs, executors, administrators or assigns, agents or attorneys, or any of them, may elect; and, out of the money arising from such sale, to retain all costs and charges for pursuing, searching for, taking, removing, keeping, storing, advertising, and selling such goods and chattels, and all prior liens thereon, together with the amount due and unpaid upon said note.., rendering the surplus, if any remain, unto said mortgagor...., or ..... legal representatives.

Witness, the hand.. and seal.. of the said mortgagor.., this ..... day of ....., in the year of our Lord one thousand eight hundred and .... (Seal.)
..... (Seal.)

Sealed and delivered in the presence of
.....
.....

State of ....., } ss.
County of ..... }

I, ..., a justice of the peace in the Town of ....., in and for said county, do hereby certify, that this mortgage was duly acknowledged before me by the above named ....., the mortgagor.. therein named, and entered by me this ..... day of ....., A. D. 189..

Witness my hand and seal. ..... (Seal.)
Justice of the Peace.

State of ....., }
County of ..... } ss.

..... of said ..... County, being duly sworn, deposes and says: That ..... the lawful owner.. of the goods and chattels described in the within chattel mortgage to which this is attached, and made a part thereof; and that said goods and chattels are free and clear of all liens or incumbrances, except the said mortgage to which this paper is attached. And that there are no judgments or executions against ....., the said ....., that affect the title of said goods and chattels named in said mortgage.....

By and under the foregoing representation .... have obtained a loan of ($.....) ..... dollars, which said chattel mortgage is given to secure the payment thereof, and interest. ..... (Seal.)

Subscribed and sworn to before me, this ..... day of ....., 189..
.....,
.....

No. 117. DECLARATION FOR RESTORATION TO THE PENSION ROLLS OF A PERSON WHOSE NAME HAS BEEN DROPPED UNDER THE ACT OF FEBRUARY 4, 1862.

State of ....., } ss.
County of ..... }

On this ..... day of ....., A. D. one thousand eight hundred and eighty ....., personally appeared before me ....., the same being a court of record within and for the county and State aforesaid, ..., aged ..... years, who, being duly sworn according to law, makes the following declaration asking to be restored to the pension rolls; that he is the identical ..... who was pensioned on the rolls of the agency at ....., and whose pension certificate No. ....., is herewith returned; that ..he has resided, since the first day of January, A. D. 1861, as fol-

lows: [1]..... .....
that during this period ..... means of subsistence have been: [2]....
....
that ..... has not borne arms against the government of the United States, or in any manner aided or abetted the rebellion, or those prosecuting the rebellion, or manifested a sympathy with the cause, but on the contrary, did, during the said rebellion, earnestly desire its suppression by force of arms; that ..he was last paid ..... pension to the ..... day of ....., 188.. [3].....
....
that ..... hereby appoints ..... attorney to prosecute the above claim; that ..... residence is at No. ....., in ..... street, in the ..... of ....., County of ....., State of ....., and that ..... post-office address is ....,

(Attest.) (Claimant's signature.)

.....

.....

Also personally appeared ....., residing at No. ....., in ..... street, in ....., and ....., residing at No. ....., in ..... street, in ....., persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say that they were present and saw ....., the claimant, sign ..... name (make ..... mark) to the foregoing declaration; that they have every reason to believe, from the appearance of said claimant and their acquaintance with ..... that ..... is the identical person ..... represents ..... self to be, and that they have no interest in the prosecution of this claim.

.....,

.....,

(Signatures of witnesses.)

Sworn to and subscribed to before me, this ..... day of ....., A. D. 188..; and I hereby certify that the contents of the above declaration, etc., were fully made known and explained to the applicant and witnesses before swearing, including the words ....., erased, and the words ....., added; and that I have no interest, direct or indirect, in the prosecution of this claim. .....,

(Signature.)

(L. S.) .....,

(Official Character.)

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[1] Here name the place or places at which the applicant has resided.

[2] Here name the employment or other means by which a livelihood has been gained.

[3] Here insert, if an invalid, "and that the disability for which he was pensioned still continues in a pensionable degree, and that he has not since re-enlisted or been paid in the military, naval, or marine service of the United States;" if a widow or mother, "and she has not re-married since that date," or if re-married, give date.

No. 118. POWER OF ATTORNEY.

Know all men by these presents, that I, ..., of ....., in the County of ....., and State of ....., do hereby make, constitute, and appoint ....., of ....., in the County of ....., and State of ....., my true, sufficient and lawful attorney, for me and in my name, to ....., and to do and perform all necessary acts in the execution and prosecution of the aforesaid business in as full and ample a manner as I might do if I were personally present.

In witness whereof, I have hereunto set my hand and seal, the ..... day of ....., 18... .....

(Signature.)

Signed, sealed and delivered in presence of

.....

.....

No. 119. PROXY TO VOTE.

Know all men by these presents, that ....., ..., of ....., in the State of ....., do hereby appoint ....., of ....., in the State of ....., to be ..... substitute and proxy, with power of substitution, for ..... and in ..... name ..... and behalf, to vote at any election of the ..... company, and at any meeting of the stockholders of said ..... as fully as ..... might or could were ..... personally present.

In witness whereof, ... have hereunto set ..... hand.. and seal.., the ..... day of ....., 18...

..... (Seal.)

..... (Seal.)

Signed, sealed and delivered in presence of

.....

No. 120. WILL.

I, Thomas Smith, of the County of Kent, and State of Ohio, do make, ordain, and establish this to be my last will and testament, hereby revoking all other wills executed by me. I give and bequeath all my real and personal property unto my beloved wife, Sarah Smith, and I hereby appoint John Jones my sole executor without bonds.

In witness whereof, I have hereunto set my hand and affixed my seal, this 10th day of May, in the year of our Lord, 1898.

THOMAS SMITH. (Seal.)

The above instrument, consisting of one sheet, was at the date thereof signed, sealed and delivered by the said Thomas Smith as and for his last will and testament, in the presence of us, who at his request, and in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

JONATHAN EDWARDS, Carbondale, Ohio.
HENRY JENKINS, Carbondale, Ohio.

No. 121. WILL.

Last will and testament of James Dick, of .....

I bequeath unto my beloved wife, Sarah, all my wearing apparel, to be disposed of in such manner as she may see fit. I also bequeath to her such articles of my household goods and furniture, and such consumable supplies as may be on hand at the time of my death, as she may choose to retain for her own use; and also all the rest and residue of my personal estate, whatsoever, and wheresoever, of what nature, kind, and quality soever the same may be, and not hereinbefore given and disposed of (after paying my debts, legacies, and funeral expenses), I give and bequeath unto my said wife, Sarah, to her own use and benefit absolutely.

And I do hereby constitute and appoint my said wife, Sarah, sole executrix of this my last will and testament without bonds.

In witness whereof, I, James Dick, the testator, have to this, my will, written on one sheet, set my hand and seal, this ..... day of ....., A. D. one thousand eight hundred and .....

JAMES DICK. (L. S.)

Signed, sealed, published, and declared by the above-named James Dick, as and for his last will and testament, in the presence of us, who have hereunto subscribed our names at his request as witnesses thereto, in the presence of the said testator, and of each other. C. D.

B. F.

No. 122. WILL.

I, William Smith, of Chicago, County of Cook, and State of Illinois, declare this my last will and testament.

I will and bequeath unto my beloved wife, Mary Smith, all the personal and real property which I may die possessed of, after the payment of all my just debts.

I hereby appoint my beloved wife my sole executrix, without bond.

In witness whereof, I hereunto set my hand and seal, at Chicago, aforesaid, this sixth day of May, eighteen hundred and ninety-eight.

WILLIAM SMITH. (Seal.)

Signed, sealed, published and declared, etc., as above.

(Two witnesses.)

[The Chicago Legal News Co. and Sharp and Alleman's Lawyers' Directory have kindly contributed, partly, to these forms.]

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[References are to sections unless otherwise stated.]

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