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THE
NOTARY'S MANUAL:

✓ 5-848

SHOWING THE

RIGHTS, DUTIES, AND LIABILITIES

—OF—

NOTARIES,

ACCORDING TO THE COMMON LAW THROUGHOUT THE
UNION.

DETROIT:
RICHMOND, BACKUS & Co.
1877.

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DETROIT.

There are probably 6,000 notaries under commission in Michigan, and a number proportionally greater or smaller in all the rest of the States, according to their populations. This frequent officer needs a compact and not costly handbook of reference. Heretofore he has had no generally accepted guide, and, when at a loss, has had to explore fatiguing statutes, fugitive chapters in books on business law, and such bulky form-books as Montefiore's, Abbott's, or Wedgwood, and Homan's.

This book is a common law guide to notaries, and may so far be relied on everywhere in the country. Where it refers to specific statutes, as in the first chapter particularly, it exhibits the requirements of the notarial office in Michigan only, unless otherwise declared. It contains a collection of the more common forms that notaries have most frequent occasion to use. It is believed to be safe in its statements of law, and more full in that respect than any similar publication at hand, and it is hoped that it will be a substantial convenience.

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NOTARY'S MANUAL.

THE OFFICE.

1. The notary public is the most common functionary of the law. His duties are ministerial, and it is as an agent for the due performance of certain formalities under the law merchant that he is chiefly important. His principal and most frequent duty in that regard is to protest commercial paper. But by tradition and statute he is invested with the character of a public witness, and as such he takes acknowledgments, administers oaths and attests writings. He should be qualified also to draw up contracts, deeds, and all the ordinary instruments of agreement or transfer needed in every-day business.

2. No qualifications as to sex or profession are prescribed as a condition to holding the office of notary public. It is not necessary, therefore, that a candidate should be male, or an attorney at law. But one must be of age, as it is required to give a bond, (a) and a minor's bond would be worthless.

(a) 1 Comp. L. § 600.

3. **Appointments.**—The notary receives his office by appointment of the Governor. (a) The appointment, like all executive appointments, is subject to confirmation or rejection by the legislative Senate, and if made during a session of that body, is submitted to it for its action. But it may also be made when the Legislature is not in session. (b)

(a) 1 Comp. L., § 597

| (b) 1 Comp. L., § 628.

The notary's title is traced to the Latin *notarius*, whose occupation scarcely suggests that of the present notary. He was not a public officer, but a scribe, though he had a *quasi* public position as shorthand writer in the Roman Senate, taking notes (*notae*) of the speeches delivered in that body. It is to Tiro, a freedman in the service of Cicero, and an accomplished *notarius*, that moderns owe the preservation of some of that distinguished statesman's finest legal arguments. By easy and natural additions to the scope of their employment, and

4. Application for appointment should either be made in legible handwriting to the Governor himself, or should be made through a member of the Legislature representing the district where the applicant resides. The latter is the better method when available, as in theory, at least, it makes the member of the Legislature responsible for the character of the applicant, a subject upon which the appointing and confirming powers may need to be advised. In all cases, the applicant must present his full name carefully written out, together with his exact address, including the name of the county in which he lives.

5. There is no prescribed limit to the number of notaries that may be appointed. The statute allows of one or more for each county. (a)

(a) 1 Comp. L. § 587.

6. It is wholly within the discretion of the Governor to grant or refuse an appointment, and it is equally within the discretion of the Senate to confirm or reject it when granted. If the appointment is refused by either authority, the applicant has no remedy. And even after an appointment has been confirmed by the Senate the Governor may withhold the commission, and so render it as ineffective as if it never had been made. He may do this not only for sufficient reasons arising after the appointment, but even by an arbitrary exercise of his authority, and as he is not subject to the direction of any tribunal, the candidate is without remedy so far as concerns his securing the office. (a)

(a) *Sutherland v. Governor*, 29 Mich. 820.

7. Notarial Commissions, signed in blank by the Governor, are constantly kept in the office of the Secretary of State, and when that officer is officially notified of the

because of a marked analogy therein to the duties of the *tabelliones forenses* for whom they seem to have sometimes acted as clerks, the *notarii* came gradually to hold their present relations to the community as legal functionaries recognized all the world over.

The *tabelliones forenses* drew up legal documents and statements that were to be sent to the courts or presented to the different civil authorities. They formed a regular guild, and one of the constitutions of Diocletian prescribed their fees. The government regulated them to the extent of prescribing the terms of admission to their body and of removal from it, and laws were made to define the legal effect of instruments framed by them. It appears to have been one of the duties of the *notarius*, either in an independent capacity or as clerk to a tabel-

appointment of a notary, he causes the latter's commission to be duly filled out and impressed with the Great Seal of the State, and sends it to the county clerk of the county in which the appointee resides. (a) The clerk, on receiving it, must give notice of its arrival to the appointee. Within twenty days after the receipt of this notice, the appointee must "qualify," otherwise he forfeits his commission, since all commissions that remain uncalled for, for the space of thirty days after the county clerk has notified the persons to whom they are issued, are returned by that officer to the Secretary of State (b)

(a) 1 Comp. L. § 598.

(b) 1 Comp. L. § 599.

8. The process of qualifying consists in taking the constitutional oath of office, giving a bond for the faithful discharge of duties, filing both oath and bond with the county clerk, and paying to that functionary one dollar "as a fee to the State." (a) The oath is as follows: "I do solemnly swear [or affirm] that I will support the Constitution of the United States, and the Constitution of this State, and that I will faithfully discharge the duties of the office of *notary public* according to the best of my ability." (b) The bond is drawn to the people of this State, in the penal sum of one thousand dollars, and must be signed by the appointee and by one or more sureties to be approved by the county clerk. It is conditioned upon the due and faithful discharge of the duties of the office. (c) On filing the oath and bond as prescribed, the clerk must deliver the commission to the appointee. (d)

(a) 1 Comp. L. §§ 599-601.

(c) 1 Comp. L. § 100.

(b) Const. Mich. Art. xviii., § 1. (d) 1 Comp. L. § 601.

9. Removal.—The Governor may at any time and upon sufficient cause—of which he is the judge—remove a notary from office. (a)

(a) Comp. L. § 620.

lio, to take notes, in an abbreviated form, of contracts, and that, in fact, was one of his duties in England under Stat. 27, Edw. III., c. 1. In that shape these instruments were not binding. (Just., XLIV. Nov.) To make them so they were taken to the tabellio for safe keeping, and he engrossed or wrote out copies of them at full length and delivered them to the parties to be signed and sealed. The tabellio had to be present at their execution, and affix his signature and the date,—a duty almost precisely like that of the notary of the present. The *notarii* gradually separated from their masters, the tabelliones, and set up offices of their own. They began to act as private secretaries to the Emperors and to imperial ambassadors. Finally they took the

10. Term of office.—In Michigan the notary's term of office is four years from the date of his appointment, when that has been regularly conferred. (b) But when it has been granted between two legislative sessions, and hence without the concurrence of the Senate, the appointment remains in force only until the close of the next succeeding session, (c) whether that is a regular or extra session.

(a) Comp. L. § 597. (b) Comp. L. § 623.

11. Residence.—The notary's residence must be in the county for which he is appointed. (d) He forfeits his office by removal to another county.

(a) Comp. L. § 607.

12. Local Jurisdiction.—The notary may act in his official capacity in any part of the State, whether in or out of the county for which he is appointed, (e) but in attaching his official signature to any certificate, it is always best to add the name of the county for which he was appointed, though this is not necessary where he acts in his own county and the name of the county appears, as it always should, in the caption to the certificate. (e)

(a) Wright v. Wilson, 17 Mich., 192.

13. Records.—It is provided that where a vacancy occurs in the office of any notary, his records, and all the papers relating to his office, shall be deposited in the office of the clerk of the proper county, and that if any notary who has resigned or been removed, or any executor or administrator of a deceased notary shall neglect for three months after the resignation or removal, or appointment as executor, etc., to deposit them with the clerk, shall be liable in any amount from fifty to two hundred

places of the tabelliones, who were suppressed, though, oddly enough, their title seems to have been revived in the French civil law, and their relations to the notary reversed. Robert Navarre was *Notaire Royal* at Detroit in 1760, and he and Baptiste Campau are spoken of in Judge Campbell's History of Michigan (p. 97) as "acting together as notaries, the latter performing apparently the duties of *Tabellion*, or notarial clerk and registrar." But when the notarial office had once been established, it grew in importance, and at length Majesty itself condescended to bestow appointments to it directly. Notaries were commissioned by the Frankish kings, and during the Middle Ages, by the emperors and popes, or under their immediate authority. In 1312 King Philip the Fair of France limited their creation to prelates, barons, and those to whose estates the right of appointment belonged as an ancient appurtenance. After that time the French notary

dollars.(a) The clerk shall safely keep all notarial records and papers "directed to be deposited" in his office, and when required shall give certified copies of them under his hand and seal, and for these copies he shall receive the legal fees of a notary, and they shall be as valid and effectual as if given by a notary.(b)

(a)1 Comp. L. § 604. (b)1 Comp. L. § 603.

14. And any one who consciously destroys, defaces or conceals any records or papers belonging to the office of a notary public shall be subject to a penalty of not more than five hundred dollars, and shall be liable, besides, to a suit for damages by the party injured.(a)

(a)1 Comp. L. § 605.

had, to some extent, a *quasi* judicial character, and could insert in the memoranda of obligations a clause granting summary execution to the creditors in the case of the non-fulfilment of the contract. This voluntary jurisdiction was taken away by the legislation of the Republic, and he now represents the State instead of the courts, yet he is often employed under the direction of the courts in making out inventories, and in the distribution of estates, and he reports to the court what has been done. He also performs the notarial acts required by law in respect to wills, gifts, marriage contracts and protests. He makes all contracts, mortgages and other deeds and conveyances where the property amounts to more than 150 francs (\$30). He keeps a strict register of all his legal acts, and is responsible to the public for the preservation of it, and, like the old *tabellio*, he keeps the original draft of an agreement, and furnishes copies to the parties concerned; if a contracting party loses his copy of a contract he finds the original with the notary. He holds office for life unless removed by judicial decree. He is a public witness for every one who wants his testimony, and the great witness of government. This, in reality, has been the basis of his official character everywhere, for centuries, and in this capacity he is frequently recognized in literature. Lord Bacon, in his fragmentary sketch of the *New Atlantis*, relates that when those who were in pursuit of it came nigh the shore they were challenged by some of the principal inhabitants, who refused to let them land unless they would swear that they were no pirates. The travelers answered the chief man of the party that they were ready to take that oath. "Whereupon one of those that were with him being (as it seemed) a notary, made an entry of this act." Donne, in an ode to the Countess of Huntingdon, uses the words, "So I but your recorder am in this
* * * * A ministerial notary." When La Salle took possession of Louisiana in the name of Louis XIV., and protested against any future invasion of that territory by any other nation, which he did by solemn oral proclamation in the presence of a party of French and savages, he closed by saying, "Of which, and of all else that is needful I hereby take to witness those who hear me, and demand an act of the notary here present." (Parkman's *Discovery of the Great West*, p. 202.) Throughout the early settlements of the French in America "there was usually in every post which was proprietary and not purely military, that indispensable official in a French settlement, a Public

Notary." (Campbell's History of Michigan, p. 78.) A notary's instruments in France have full authority and no testimony is allowed to contradict them. All documents executed in presence of two notaries, or of one notary and two witnesses, and attested by them, receive full credence in court. Though their certificates are not now absolutely incontestable, they are of great force as evidence notwithstanding, and were so in the Elizabethan era, as the dramatist Massinger indicates in his play entitled "A New Way to Pay Old Debts," wherein he makes Sir Giles Overreach say, in trying to persuade Marfall, one of his hangers-on, to swear through a fraudulent claim of his,

"and for thy master,
Thy liberal master, my good honest servant,
I know thou wilt swear anything to dash
This cunning sleight: besides, I know thou art
A public notary, and such stand in law
For a dozen witnesses." Act V.

Shakspeare illustrates the notary's function as a public witness as well as a public draughtsman of legal documents, in the Merchant of Venice, where Shylock says to Antonio, "Go with me to a notary; seal me there your single bond." Act I., scene iii.

In England there were notaries before the Conquest. They were well established in the fourteenth century, and in 1347 they were mentioned in the petition of the Commons to King Edward III. They are officers of the civil and canon law and the prerogative of appointing them was given by a statute of 25 Henry VIII., c. 21, § 4, to the Archbishop of Canterbury, and has been exercised until lately by the court of faculties of that spiritual lord. But they have not always been created as readily as they now are in this country. At the beginning of this century it was declared by 41 Geo. III., c. 7, that unless one served seven years as a lawyer's clerk or apprentice, he could not be made a public notary, nor could he do any notarial act, unless enrolled as notary, without incurring a penalty of £50. An appointment evidently cost a good deal, as the certificate of the admission of a notary had to be on a £30 stamp, and every notarial act on a 5s. stamp. The time has been in the United States when notaries were scarce enough to make the office one of some importance. The city and county of Philadelphia in 1791 had only six, under an act of the Pennsylvania Assembly authorizing the Governor to appoint a competent number for the Commonwealth, to hold their commissions during good behavior. Three others were added for the county of Philadelphia by succeeding acts.

But a later Act of the Michigan legislature, approved Feb. 7th, 1877, makes it unlawful for lawyers who are notaries to administer oaths in cases in which they are professionally engaged.

AFFIDAVITS.

15. Affidavits.—Notaries are authorized by statute in many of the States to take affidavits. They have always assumed the power to do so in England. (a) The amendatory bankrupt act of 1874 allowed them to take proof of debts against the estate of a bankrupt. (b) By a singularly ill-drawn act of Congress of August 15, 1876, they are now authorized, wherever the federal jurisdiction extends, to exercise the same power as United States Circuit Court Commissioners in respect of taking depositions, affidavits and acknowledgments, and doing all other acts relating to taking testimony to be used in the courts of the United States. (c) In Michigan their powers comprise all that may be exercised by notaries by the law of nations, commercial usage, or the laws of any other State, government, or country, and it is specifically declared that they may “administer oaths and take affidavits in any matter or cause pending, or to be commenced or moved in any court of this State.” (d)

(a) Appleton's Cyc., Art. “Notary Public.”

(b) 18 U. S. Stat. at L., C. 390 § 20.

(c) 19 U. S. Stat. at L., C. 304.

(d) 1 Comp. L. § 602; 2 Comp. L. § 5964.

16. Form of Affidavit.—An affidavit is usually written out in due form, and signed by the person who is to swear to the facts which it is to set forth. This person is called the affiant, or, in case of a deposition, the deponent. The officer taking the affidavit then administers the oath to the affiant, that is, “swears” him, and having done so, signs the *jurat*, or official certificate that the affidavit has been sworn to. The formal parts of an affidavit are as follows, the title of the case in which it is taken, if it relates to a matter in litigation, being given first :

JAMES JONES	}	<i>In the Circuit Court for the County of Baraga.</i>
<i>vs.</i>		
THOMAS ROBINSON.	}	
STATE OF MICHIGAN,		
County of Baraga.	}	ss.

Jacob Smith, being duly sworn, deposes and says that [set forth clearly and briefly the necessary facts].

JACOB SMITH.

Subscribed and sworn to before me this }
fourth day of December, A. D. 1876. }

GEORGE BROWN,

Notary Public, Baraga County, Michigan.

If there are several affiants, the affidavit should read "being severally duly sworn, each for himself [or herself, respectively] deposes."

17. Administering an Oath.—The process of swearing the affiant consists in repeating to him, while he and the officer alike hold their right hands uplifted, (a) the following form of words: "You do solemnly swear that the contents of the affidavit subscribed by you are true, so help you God," to which the affiant must say "I do," or bow affirmatively. If, however, he is a Quaker, or for other reasons conscientiously opposed to taking an oath, the form may be varied as follows: "You do solemnly and sincerely affirm under the pains and penalties of perjury, that the contents of the affidavit subscribed to by you are true." (b) But if he does not object to being sworn, his mere affirmation is not enough. (c) And, indeed, if the officer taking the affidavit is satisfied that the affiant has any particular mode of swearing which he thinks more solemn or obligatory, he may adopt that mode. (d) Very curious and divers methods (e) have been recognized in courts, and are doubtless available in making affidavits wherever the authority that permitted them is in force. It is customary, of course, to administer and receive an oath with the head bare, but a Jew may keep his hat on and be sworn on the Five Books of Moses; (f) a Mahomedan on the Koran; (g) a Gentoo on the foot of a Brahmin; (h) and an Irish Roman Catholic upon a testament with a crucifix or cross upon it. (i) But it is forbidden in Michigan to question a witness as to his opinions on religion either before or after he is sworn, or to reject him as a witness on account of them. (k) He cannot therefore be excluded from the witness stand, as he can in some States and countries, for atheistical or heterodox ideas.

(a) 2 Comp. L. § 5960.

(b) 2 Comp. L. § 5962

(c) Williamson v. Carrol, 1 Harrison, 271.

(d) 2 Comp. L. § 5961.

(e) Roscoe's Crim. Ev. 119.

(f) Omichund v. Barker, Willes, 543.

(g) Rex v. Morgan, 1 Leach, 54.

(h) Omichund v. Barker, 1 Atk. 21.

(i) Roscoe's Crim. Ev. 119.

(k) Const. Art. VI. § 34; 2 Comp. L. § 5963; People v. Jenness, 5 Mich. 319.

18. Authority and jurisdiction.—If a paper is not sworn to before any officer at all, it is of course not an affidavit. (a) And when it is sworn to, the face of the paper should show that the affidavit was taken before a proper officer and that it complied with all legal requirements. (b) The only safe rule, especially for affidavits to be used in another State, is that they should clearly show that they were taken before a competent officer and within his jurisdiction for administering oaths. (c) It has been held that the absence of a venue or caption to the affidavit was not fatal, (d) and that it was unnecessary to state the notary's place of residence so as to show that he acted within the county for which he was appointed; (e) that the essential fact was that an authorized person administered it, and that it was presumed that he acted within his jurisdiction, (f) at least, if it did not appear that it was sworn to elsewhere. (g) But it has also been held that there must be a venue; that it is *prima facie* evidence of the place where the affidavit is taken; (h) that when no place at all is mentioned there can be no presumption that it was taken at any particular place; that in New York it is inadmissible if it appears by the venue to have been taken inside of the county where the officer is authorized to administer the oath; (i) or, in Georgia, that if taken out of the jurisdiction it cannot be recognized unless the authorized and official character of the magistrate is authenticated. (k) In Illinois an affidavit taken before a notary in another State is not admissible as evidence unless it is shown that the notary was authorized by the law of his own State to administer oaths. (l) In South Carolina an affidavit taken by a foreign notary and certified under his notarial seal will not hold to bail.

(a) *McDermald v. Russell*, 41 Ill. 490.

(b) *State v. Green*, 15 N. J. L. (3 Green) 85; *Ladew v. Groom*, 1 Den. (N. Y.) 429.

(c) *Lane v. Morse*, 6 How (N. Y.) Pr. 394.

(d) *Young v. Young*, 18 Minn. 90.

(e) *Mosher v. Heydrick*, 45 Barb. (N. Y.) 549; 1 Abb. (N. Y.) Pr. N. S. 258; 30 How. (N. Y.) Pr. 161.

(f) See notes d and e.

(g) *Parker v. Baker*, 8 Paige (N. Y.) 428; *Barnard v. Dorking*, 1 Barb. (N. Y.) Ch. 218.

(h) *Cook v. Staats*, 18 Barb. (N. Y.) 407.

(i) *Davis v. Rich*, 2 How. (N. Y.) Pr. 86; *Sandland v. Adams*, 2 How. (N. Y.) Pr. 127; *Snyder v. Olmstead*, 2 How. (N. Y.) 181.

(k) *Behn v. Young*, 21 Ga. 207.

(l) *Keefer v. Mason*, 36 Ill. 406.

(m) *Sprague v. Bruno*, 1 Mill (S. C.) Const. 280.

19. Title of affidavit.—An affidavit relating to a matter in litigation must give the title of the suit or proceedings accurately, either in the beginning or in the body of it. (a) The names of all the actual parties must be stated, and of them only. Affidavits have been rejected by the Supreme Court of Michigan as nullities for being entitled thus: "Hiram Arnold v. Nelson B. Nye, et al.," (b) and the same court held that where one of two plaintiffs-in-error had been allowed to proceed severally, an affidavit in the case, that was entitled in the name of both, could not be used. (c) If a woman who is party to a suit marries while it is pending the title of the cause remains as it was notwithstanding the change in her name. (d) Of course, after an appeal is taken, the name of the appellate court must be substituted in the affidavit for that of the court below. (e)

(a) *Saunders v. Erwin*, 3 Miss. (2 How.) 732.

(b) *Arnold v. Nye*, 11 Mich. 456.

(c) *Whipple v. Williams*, 1 Mich. 116.

(d) *Roosevelt v. Dale*, 2 How. (N. Y.) 581.

(e) *Clickman v. Clickman*, 1 N. Y. (1 Comst.) 611.

20. Description of deponent.—If an affidavit is required by law to be made by an attorney or agent, it is not enough for it to simply describe the deponent as such attorney or agent,—it must explicitly set forth the fact; (a) so, also, if it is material to show his place of residence, the deponent must swear that he resides at such a place, and cannot mention the place merely by way of description. (b) Under such requirements an affidavit beginning "Ignatz Huydekopfer, of Sinnemahoning, Pennsylvania, attorney for Abner Young, being duly sworn, deposes and says," etc., would be defective; it should run "Ignatz Huydekopfer, being duly sworn, deposes and says that he resides at Sinnemahoning, in the State of Pennsylvania, and that he is attorney for Abner Young," etc., it being also necessary to set forth his principal's relations to the proceedings.

(a) *Exp. Bank of Monroe*, 7 Hill (N. Y.) 177; *Exp. Aldrich*, 1 Den. (N. Y.) 662; *Cunningham v. Gaelet*, 4 Den. 71; *Exp. Shumway*, 4 Den. 258; *People v. Perrin*, 1 How. (N. Y.) Pr. 75.

(b) *Staples v. Fairchild*, 3 N. Y. (3 Comst. 41); *Payne v. Young*, 8 N. Y. (4 Seed.) 158.

21. **Allegations.**—It is plain that an affidavit is not good for much if its statements are not exact and positive. It has nevertheless been held in Pennsylvania that where an act required affiants to swear to a statement as true, it was enough to swear that they were “true to the best of their knowledge and belief.”(a) But this is a disputed principle,(b) and it ought not to be relied on, except perhaps in such instances as swearing to a legal inference, as the plea of *non est factum*.(c) though in Mississippi a notary’s affidavit that his record is true “to the best of his knowledge and belief” has been held sufficient,(d) and that is the form used by a prosecuting attorney in swearing to an information, a formality required by law merely to secure care and good faith in the execution of his duties.(e) Where a statement was made with the added words “as deponent has since learned,” it was regarded as positive, and not on information and belief.(f)

(a) Election cases, 65 Pa. St. 20 ;
Gibbons v. Sheppard, 2
Brewst. (Pa.) 1.

(b) Campbell v. Hall, McCahon
(Kans.) 53.

(c) Jackson v. Webster, 6 Mumf.
(Va.) 462.

(d) Harris v. Heberton, 6 Miss.
(5 How.) 576.

(e) Washburn v. People, 10 Mich.
386.

(f) Cummings v. Woolley, 16
Abb. (N. Y.) Pr. 297.

22. **Signature.**—The regular course is for the affiant to sign the affidavit, and it is a wise precaution always to insist upon his doing so. There have been decisions in various States that except some statute or court rule required an affidavit to be signed, it need not be, if it was in writing and certified to have been duly sworn,(a) and the Supreme Court of New York held that if it began with the deponent’s name it need not be signed,(b) but Chancellor Walworth declared that if that was good law in the Supreme Court, it was not in his, and said that the rule requiring affidavits in a court of chancery to be signed at the foot, dated back to 1661.(c) The reason of the more rigid practice is plain enough ; affidavits are generally drawn, but never signed, by some one else than the affiant ; where the latter signs, his signature, taken with the notary’s certificate, is an additional authentication of the affidavit, while if he does not sign, it cannot be told, except by outside evidence, whether the name in the beginning of the affidavit was written by himself or some one else.

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| <p>(a) <i>Hittsman v. Garrard</i>, 1 Harr. (Del.) 124; <i>Millins v. Shafer</i>, 3 Den. (N. Y.) 60; <i>Soule v. Chase</i>, 1 Robt. (N. Y.) 222; 1 Abb. (N. Y.) Pr. N. S. 48; <i>Shelton v. Berry</i>, 19 Tex. 154.</p> | <p>(b) <i>Haff v. Spicer</i>, 3 Cai. (N. Y.) 190; Col. & C. (N. Y.) Cas. 495; <i>Jackson v. Virgil</i>, 3 Johns. (N. Y.) 540.</p> <p>(c) <i>Hathaway v. Scott</i>, 11 Paige (N. Y.) 173.</p> |
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A partnership name cannot be signed to an affidavit (a); the affiants must sign separately.

(a) *Gaddis v. Durashy*, 13 N. J. L. (Green) 324.

23. The jurat of an affidavit must show that it was taken before the officer whose name is signed, and must give the date on which it was subscribed and sworn to. The date has been held non-essential, however, and open to correction if wrongly stated. (a) It has been sometimes required to show where the affidavit was taken, (b) but this seems hardly necessary if it appears to have been taken within the notary's jurisdiction. A jurat in the words "subscribed and sworn to before me" has been held sufficient. (c) The omission of the words "before me" is generally fatal, (d) though not, if the affidavit is taken to be used before the officer who administers the oath, (e) nor in the case of a sworn complaint where the body of the complaint showed that it was sworn to before a proper officer. (f) The jurat is invalid if not authenticated by the notary's signature, and in Iowa, by his seal also. (g) But in signing, it is enough if he gives the initials only of his Christian names. (h) He ought to add his official title, although it has been several times held that his neglect to do so did not impair the affidavit. (i) But these appear to have been cases where the officer was a justice of the peace, and there were presumptions supporting the validity of the affidavit or making it *prima facie* valid, that might be disputed in the case of a less responsible officer. It is not worth while to test the question by failure to give the official title.

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| <p>(a) <i>Frear v. Jones</i>, 15 N. J. L. (3 Greenl.) 20.</p> <p>(b) 1 Tidd's Prac. 494; <i>Parkins v. Collins</i>, 3 N. J. Eq. (2 Greenl.) 482.</p> <p>(c) <i>Sargent v. Townsend</i>, 2 Disney (Ohio) 472.</p> <p>(d) <i>Smart v. Howe</i>, 3 Mich. 590.</p> <p>(e) <i>Re Teachout</i>, 15 Mich. 346.</p> | <p>(f) <i>Cross v. People</i>, 10 Mich. 24.</p> <p>(g) <i>Tunis v. Withrow</i>, 10 Iowa, 305. <i>Chase v. Street</i>, 10 Iowa, 593.</p> <p>(h) <i>Rice v. People</i>, 15 Mich. 9.</p> <p>(i) <i>Hunter v. Le Contes</i>, 6 Cow. (N. Y.) 723; <i>People v. Rensselaer</i>, 6 Wend. 543.</p> |
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24. Amended affidavit.—When an affidavit is amended it must be re-sworn to after the amendment is made, or it is not good. (a)

(a) *Atlantic Bank v. Wanford*, Phill. (N. C.) L. 199.

25. Verification of sworn statements.—The notary's general authority to administer oaths and take affidavits in any pending cause (a) extends to all oaths which he may properly take out of court to be used in court. And where the parties have stipulated that the statements made by their witnesses may be sworn to before a notary for the purpose of being used in evidence, it is within his authority to verify these statements, which are on the same footing as affidavits which the parties have agreed may be used in evidence. It makes no difference that they are written down in the form of questions and answers, instead of the more customary form of affidavits. (b)

(a) 2 Comp. Laws, § 602.

| (b) *Crone v. Angell*, 14 Mich. 340.

26. Depositions.—When a notary takes a deposition he first administers an oath to the witness that in the proceedings pending [giving the title of the court in which the proceedings are pending] between the parties to the cause entitled [giving the title of the cause] he will tell the truth, the whole truth and nothing but the truth; and then, having recorded under the caption of the cause, that the witness has been duly sworn, he writes down his testimony either by giving it in the first person as a continuous narrative, or by recording the questions as asked by the examiner, and the answers made by the witness. When the testimony is all recorded, he reads it carefully to the witness, who must sign it, and the notary must attach his jurat to the document.

27. Affidavit to bill of complaint.—In swearing a complainant in chancery to the statements in his bill of complaint, the notary or other officer uses the following form: "You do solemnly swear that the contents of this bill of complaint, subscribed by you are true of your own knowledge, except as to the statements therein made upon information and belief, and as to those that you believe them to be true, so help you God."

ACKNOWLEDGMENTS.

28. Certificate of Acknowledgment.—The simplest notarial duty is to certify an acknowledgment. The certificate accompanies deeds or mortgages, and its purpose is to authenticate such instruments and entitle them to be recorded by the Register of Deeds, or admitted in evidence without further proof of their execution. The formal parts of it have usually been printed at the end of every conveyancing blank in two separate forms, of which the shorter was meant for one or more individual grantors, whether male, female, partnership or corporation, and the longer was for the joint acknowledgment of a husband and wife, and provided for the due release of the latter's right of dower, which otherwise would remain as a lien upon the property. But under Act 104 of 1875, which allows a married woman to acknowledge as if she were unmarried, there is no need of a separate clause to show this release. The following is a suitable form for the certificate, the italics showing how it may be filled out by the notary:

STATE OF MICHIGAN, }
County of *Wayne*. } ss.

On this *second* day of *January*, in the year one thousand eight hundred and seventy-seven, before me, *Charles Aubrey*, a Notary Public in and for said county, personally appeared *Xavier Schweinsberger and Teresa Schweinsberger, his wife*, to me known to be the same persons described in and who executed the within instrument, who severally acknowledged the same to be their free act and deed.

CHARLES AUBREY,
Notary Public, Wayne County, Michigan.

29. Who may take acknowledgments.—The acknowledgment of a deed must never be taken by the grantee, (a) and it has even been held that a trustee is disqualified from taking the acknowledgment of a trust-deed, by reason of his commissions. (b) But as the act is ministerial and not judicial there is nothing to prevent it from being done by a relation of the parties to the deed, (c) and one who owns one interest in a piece of land

can take the acknowledgment of a deed that conveys a separate and distinct interest in it. (d) If in deeding land there should be any valid agreement that the title is to be held for the use of another person than the grantee, an acknowledgment taken by the beneficiary would be a fraud. But there is a Michigan case in which such an acknowledgment was not disturbed because the acknowledging officer in fact received no benefit, as a statute forbade the creation of resulting trusts in favor of those who furnished the consideration money, and parol trusts in land were void. (e) And even a bad acknowledgment, if valid on its face, will generally hold as against the parties, and in favor of those who do not know the facts that impeach it.

- (a) *Beaman v. Whitney*, 20 Maine, 413; *Groesbeck v. Seeley*, 13 Mich. 329.
- (b) *Brown v. Moore*, 39 Tex. 645.
- (c) *Lynch v. Livingstone*, 6 N. Y. (2 Seld.) 422.

- (d) *Dussaume v. Burnett*, 5 Iowa, 95.
- (e) *Groesbeck v. Seeley*, 13 Mich. 329.

30 Not part of the deed.—The acknowledgment is no part of the deed so far as the transfer of property goes (a) nor is it necessary, except in some of the States, (b) to the validity of the conveyance. (c) An impeachment of the certificate, therefore, does not necessarily affect the deed. An interlineation or erasure in it, for instance, may affect the proof of execution, but not the validity of the deed. (d) Still, it is the acknowledgment that authenticates the instrument, and it is not impeached by the circumstances that the deed is of a date later than that of the acknowledgment. (e)

- (a) *Brown v. McCormick*, 28 Mich. 215.
- (b) 8 Washb. Real Property, 321 (57); *Smith v. Hunt*, 13 Ohio, 268.
- (c) *Harrington v. Fish*, 10 Mich. 420.

- (d) *Devinney v. Reynolds*, 1 Watts & S. (Pa.) 328.
- (e) *Munroe v. Eastman*, 31 Mich. 283.

31. Interpreters.—There is no statute authorizing an acknowledgment to be taken through a sworn interpreter when the acknowledging officer does not understand the language of the grantor, and it cannot be so taken. (a) Those who cannot speak English will therefore have to acknowledge their deeds before officers under-

standing their own language. Indeed, a notary has no right to certify anything that he does not know of his own knowledge through intelligent conversation, and without relying on the statements of others than the person whose acknowledgment he means to take. He must get what he certifies directly from the party, and in the case of a woman be fully assured of the freedom of her action. (b)

(a) *Dewey v. Campau*, 4 Mich. 565. ! (b) *Fisher v. Meister*, 24 Mich. 447.

32. Essentials of the acknowledgment—Regularity.—In Michigan the certificate of acknowledgment must show that the acknowledging officer was legally authorized to take the acknowledgment and that the grantor named in the conveyance was personally known to him and had personally appeared before him and acknowledged the deed to be free and voluntary. (a) Aside from this no form of words is prescribed by the statute. It is enough if such requirements are fully complied with in substance; where that is done it is the policy of the law to uphold the certificate, and not let the conveyance be defeated by merely technical objections. (b) The presumption of law is in favor of the regularity of an acknowledgment taken before a reputable acknowledging officer, and the burden of proof is with those who assail the instrument to which it belongs to show misconduct in the officer or negligence in detecting irregularities in the instrument. (c) A deed by husband and wife had two certificates attached,—one of the husband's acknowledgment and the other of the wife's: the latter was immediately below the former, but only the lower one was signed. It was held that they should be regarded as one certificate and that the signing was sufficient. (d)

(a) 2 Comp. L. § (4252).

(b) *Morse v. Hewett*, 23 Mich. 481.

(c) *Hourtienne v. Schnoor*, 33 Mich. 274.

(d) *Wright v. Wilson*, 17 Mich. 192.

33. Identity of Grantor.—But the fact of acknowledgment and the identity of the party are essential and must be stated. (a) The certificate is worthless if it does not show that the party acknowledging was personally known to the officer, or identify him somehow. (b) The right to take the acknowledgment does not depend,

however, on the length of the acquaintance between the two, nor on the manner in which the officer's knowledge of the party's identity was obtained (c) One who is interested in sustaining the deed is not competent to identify the grantor to him; (d) legal proof of the identity should be satisfactory sworn evidence. A mere introduction at the time is not enough, (e) though an introduction by a mutual friend would be, if it satisfied the officer's conscience. It will not do for the officer to simply state in his certificate that he is "satisfied" of the identity, (f) and his omission to say anything whatever about it is absolutely fatal, as in the following instances of defective certificates: "Personally appeared before me, R. S. L., signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed before me;" (g) "Before me personally appeared A—— to be the individual described in," etc. (h) It is fatal if the word "known" is omitted and a blank left there in the clause that should state that the acknowledging party was "personally known to" the officer. (i) But the omission of the word "personally" is unimportant. (k) And where the word "appeared" was left out after the words "before me personally," it was held a clerical error and not fatal. (l) But an unsealed certificate by a commissioner of deeds that the grantor appeared before him "and acknowledged that ——— executed the said deed" was held essentially defective, not entitled to record, and inadmissible in evidence. (m)

(a) Bryan v. Ramirez, 8 Cal. 461; Henderson v. Grewell, 8 Cal. 581.

(b) Fogarty v. Finlay, 10 Cal. 239; Brinton v. Seevers, 12 Iowa, 309.

(c) Wood v. Bach, 54 Barb. (N. Y.) 134.

(d) Goodhue v. Berrien, 2 Sand. Ch. (N. Y.) 630.

(e) Jones v. Bach, 48 Barb. (N. Y.) 568.

(f) Shephard v. Carriel, 19 Ill. 813.

(g) Stuller v. Link, 2 Thomp. & C. (N. Y.) 86.

(h) Wolf v. Fogarty, 6 Cal. 224.

(i) Tully v. Davis, 30 Ill. 103.

(k) Brown v. McCormick, 28 Mich. 215; Rosenthal v. Griffin, 23 Iowa, 263; Todd v. Jones, 22 Iowa, 146; Alexander v. Merry, 9 Mo. 510; Hopkins v. Delaney, 8 Cal. 85; Welch v. Sullivan, 8 Cal. 511; Jackson v. Harrow, 11 Johns. (N. Y.) 434. But see Gould v. Woodward, 4 Green (Iowa) 82.

(l) Scharfenburg v. Bishop, 35 Iowa, 60.

(m) Buell v. Irwin, 24 Mich. 145.

These principles need to be stringently applied, because the identity of the acknowledging party must be absolutely certain. The signer of a deed is the only one who can acknowledge it as grantor, (a) though if it appears with reasonable certainty from the whole instrument that it was really acknowledged by the grantor himself, the defective statement of his name in the certificate will not be a fatal error. (b) But where, according to the record, a deed was signed "Harmon Sherman," but was certified to have been acknowledged by "Hiram Sherman," and there was no preliminary proof that Hiram was also known as Harmon, the record was excluded from evidence.

(a) *Boothroyd v. Engles*, 28 Mich. 19. | (b) *Chandler v. Spear*, 22 Vt. 388.

34. Wife's acknowledgment.—The provisions heretofore made to secure a wife's voluntary assent to her husband's conveyance so that her right of dower shall be canceled, have been so exacting as to be sometimes embarrassing. It was required that her acknowledgment should be taken separately and apart from her husband, and that she should acknowledge that she executed the deed freely, and without any fear or compulsion from any one. (a) This requirement is now repealed, and the acknowledgment of any married woman may now be taken in the same way as if she was sole. (b)

(a) 2 Comp. L. § (4214). | (b) Act 104 of 1875.

The purpose of having the wife's signature to a deed of her husband's property is to secure the release of her dower right therein. The separate examination of the wife in taking her acknowledgment of her signature was to make sure that she signed without fear or compulsion of her husband. Act 104 of 1875 has the apparent effect of dispensing with this ridiculous and humiliating ceremony, but where the system is in force the courts require it to be very rigidly observed. There have been several explicit declarations of the law on that subject in Michigan, that now, of course, have no application to acknowledgments taken since July, 1875. Act 108 of 1840 (Sess. Laws, 1840, p. 167), provided that the dower right should not be conveyed unless by deed executed by the wife and on acknowledgment by her "on a private examination separate and apart from her husband, that she executed the deed without fear or compulsion from *any one*." It was held that a certificate drawn in accordance with Rev. Stat. 1838, p. 263, § 7, and certifying that she acknowledged the execution without any fear or compulsion of *her husband* was insufficient to bar dower under the act of 1840. *Barstow v. Smith*, Wal. Ch. 394. A certificate was also held

35. Caption or "Venue" of acknowledgment.—The certificate of acknowledgment should be so headed as to show the State, and at all events the county in which it was made. It is not enough that the county is shown by the impression of the notarial seal, (a) and the name of the county alone with nothing in the body of the deed to indicate the State is not enough either. (b)

36. Signature of acknowledging officer.—The name of the acknowledging officer must be subscribed to the certificate; it is not enough that it be inserted in the body of it. (c) It has been held that his signature, together with a seal inscribed with his name and the words "Commissioner N. J.," all appended to the acknowledgment, are sufficient proof that it was executed under his hand and seal, without a statement to that effect in the paper. (d) But he must give his official title either in the certificate, or attached to his signature: his qualifications to take acknowledgments cannot be proved by parol (e) He need not, however, certify that he is authorized to take acknowledgments; it is enough if he describes himself in his official character, and it appears otherwise that he is entitled to do so. (f)

37. Seal.—The obligation to use a seal depends upon statute. Where a deed of Michigan lands is executed in Michigan, the law does not require the certificate of acknowledgment to be sealed, (g) and so in Massachusetts. (h) But the statute does require that acknowledgment taken abroad before a commissioner for Michigan must be authenticated by his seal, (i) and in such a case it cannot be dispensed with.

(a) *Willard v. Cramer* 36 Iowa 22. But see 3 Washb. Real Property, 326 (62); *Graham v. Anderson*, 42 Ill. 514.

(b) *Hardin v. Kirk*, 49 Ill. 153.

(c) *Marston v. Brashaw*, 18 Mich. 81.

(d) *Harrington v. Fish*, 10 Mich. 415.

(e) *Johnston v. Haines*, 2 Ohio, 55.

(f) *Livingston v. McDonald*, 9 Ohio 168.

(g) 2 Comp. Laws § 4210.

(h) *Farnum v. Buffum*, 4 Cush. 260. *Buell v. Irwin*, 24 Mich. 145.

(i) 1 Comp. Laws, § 427.

void for not stating the acknowledgment to have been on a private examination. (*Sibley v. Johnson*, 1 Mich. 380.) Even where the statute required the certificate to show that separately and apart from her

37. Place of the Acknowledgment.—The acknowledgment should be on the same sheet of paper as the deed, though it is immaterial where. In one instance in which the certificate referred to the "subjoined deed," it was held that there was no significance in the use of the word "subjoined" so long as the acknowledgment was somewhere on the same sheet. (a) In one case where the statute required the certificate to be endorsed on the conveyance, a certificate that was subjoined instead was held sufficient. (b) But it has also been declared that where the statute required it to be on the same sheet it was bad if on a separate strip of paper wafered to the deed, even though the officer's seal was stamped on it. (c)

(a) *Munroe v. Eastman*, 31 Mich. 233.

(b) *Thurman v. Cameron*, 24 Wend. (N. Y.) 87.

(c) *Winkler v. Higgins*, 9 Ohio St. 599.

ACKNOWLEDGMENT OF FOREIGN CONVEYANCES.

38. The Law of the Locality Governs.—When a notary has occasion to take the acknowledgment of a conveyance of land that lies in some other State or country, he must, in so doing, follow the laws of the locality where the land is situated, and where, therefore, the deed is to be recorded. The statutes governing the mode of acknowledgment in different localities vary considerably, though the elementary principles heretofore stated are substantially the same everywhere. In applying them, it is better, in all cases of doubt, to fulfill the most stringent requirements; surplus precaution can do no harm.

husband she *acknowledged* that she executed the deed, a certificate that she *stated* that she did so, was held insufficient. (*Dewey v. Campau*, 4 Mich. 565.) And in the same case a certificate was held void for not showing that the acknowledgment was taken "separately," as well as "apart from" the husband. The Married Woman's Act of 1855 (2 Comp. L., p. 1477,) was an approach toward civilization, and it was held that under that (§ 1) an acknowledgment apart from the husband was no longer necessary where the wife conveyed or encumbered her own estate. (*Watson v. Thurber*, 11 Mich. 457.) But in other cases the old rule continued in the fullest force, and in *Fisher v. Meister*, 24 Mich. 447, it was explicitly decided that the husband's presence during the wife's acknowledgment was unlawful, and was ground for the presumption that she was coerced; furthermore, that the failure of the acknowledging officer to ascertain to a certainty, before he certified her acknowledgment that she acted freely, was a violation of his official oath. The new law seems to permit the exercise of at least a reasonable discretion in this matter.

39. Strict Compliance with extreme Requirements.—Accordingly, a notary who has an official seal had better affix it to all acknowledgments taken by him that go outside of the State for record. Whenever a deed is executed as well as acknowledged before him, he had better, in all cases of doubt, have it attested by two witnesses. Whatever his jurisdictional rights in his own State may be, he ought, in taking the acknowledgment, to act only in the county for which he was appointed. As a rule, mortgages are executed and acknowledged like deeds. (a) In attending to their execution and acknowledgment, he will do well to see that the rules which would govern the execution and acknowledgment of deeds be faithfully applied to them also.

(a) They are executed alike in Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, New York, Pennsylvania, Rhode Island and Wisconsin.

40. Commissioners of Deeds.—Deeds of lands lying in Arizona, Delaware, Georgia, Idaho, Louisiana, North Carolina or South Carolina, cannot be acknowledged in Michigan before a notary at all, but must be acknowledged before a commissioner of deeds appointed to act here in that behalf by the Governors of those States. If the land lies in New Mexico, the acknowledgment must be taken by the judge or clerk of some court of record; if in North Carolina, it appears that it may be taken also before the judge of a court of supreme or superior jurisdiction, or under a commission issued by the probate judge, or before a commissioner of affidavits.

41. Certificate of Regularity.—An acknowledgment taken for use in Dakota, Florida, Illinois, Nebraska, New York, Ohio, Oregon, Wisconsin, Wyoming, or Lower Canada may be taken according to the laws of Michigan, as the laws of those localities recognize acknowledgments that conform to the rules of the State where they are taken. But in such cases there must be firmly attached to the certificate of acknowledgment a certificate signed by the county clerk and impressed with the seal of the circuit court, certifying that the acknowledging officer is what he assumes to be; that he has authority by the laws of the State to certify the acknowl-

edgment; and that the signature attached to the acknowledgment is his signature. The county clerk's certificate is in the following form :

STATE OF MICHIGAN,
County of Wayne.

[Seal of the court.]

} ss. I, RAY HADDOCK,
Clerk of said County, and
Clerk of the Circuit Court for
the county of Wayne, which is
a court of record, having a seal,
DO HEREBY CERTIFY,
That ———, whose name
is subscribed to the jurat of the
annexed instrument, and there-

in written, was at the time of taking such jurat, a notary public, in and for said county, duly commissioned and qualified, and duly authorized to take the same. *And Further,* That I am well acquainted with the handwriting of such notary public, and verily believe that the signature to said jurat is genuine.

In Testimony Whereof, I have hereunto set my hand, and affixed the seal of said court and county, at Detroit, this — day of —, A. D. 187 .

—, Clerk.

A similar document, certifying to the notary's official character and authority, has to be added also when the acknowledgment is taken for use in Massachusetts, New Jersey, or Pennsylvania; or in Minnesota, unless the notary has attached his official seal. If taken for Massachusetts, the certificate may be signed by the Secretary of State as well as the county clerk. For these States, however, the acknowledgment itself is to be taken according to their own laws, as hereafter shown. The notary public must not act outside of his own county in taking an acknowledgment for Minnesota.

42. **Witnesses.** — A deed that is acknowledged needs no witnesses in Alabama, California, Dakota, Indiana, Tennessee or West Virginia. Nor are any needed in Iowa, Kansas or Missouri; nor in Nevada, unless the grantor signs by his mark, and then only one is required. One witness is needed for deeds executed in Maine, Maryland, Massachusetts, New Jersey, Pennsylvania, and Upper Canada, and two in Connecticut, Kentucky, Michi-

gan, Minnesota, Texas, Vermont, Washington, Wisconsin and Lower Canada, in which last-named country they must add to their names their residence and occupation.

43. The grantor's identity may be established in Arkansas by an affidavit endorsed on the conveyance. In New York it must be either positively known or satisfactorily proved to the acknowledging officers. In Arkansas the deed must be signed by the grantor or an agent of his provided with written authority ; in Indiana, the grantor, or his attorney acting under a power, must sign it.

44. The wife signs every conveyance of her husband's lands in Alabama, Arkansas, Connecticut, the District of Columbia, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, Washington, and Upper Canada. In Colorado, Dakota and Wyoming, where dower is abolished, she need not sign unless the deed conveys the homestead title.

45. The husband joins in the wife's conveyance of her own separate property in Alabama, Arkansas, Indiana, Minnesota, New Hampshire, New Jersey, Ohio, Rhode Island, Tennessee, Texas, Virginia and Washington. In Maine, he joins only when the wife conveys land which he or his relations had deeded to her, or which had been paid for with his money. But he need not join in Colorado, Iowa, Kansas, Michigan, Wyoming or Upper Canada, nor in Dakota, unless the homestead title is conveyed.

46. Wife's examination.—An examination of the wife, separate and apart from her husband, to see that her concurrence with him in every deed that she signs is perfectly voluntary, and does not result from fear or coercion, is necessary in Arkansas, California, the District of Columbia, Kentucky, Mississippi, Missouri, Nevada, New Jersey, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia ; also in Alabama and Dakota where title is granted to any homestead exempted by the laws of the State. But is not nec-

essary in Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New York, Vermont, Wisconsin, and Upper Canada.

47. Wife's acknowledgment.—In California a wife's conveyance is invalid if not acknowledged by her. She must also acknowledge in Minnesota. In Kentucky, before she acknowledges, the certifying officer shall explain to her the effect of the act, apart from her husband. In Arkansas the acknowledgment must show her relinquishment of her dower right in the lands which her husband conveys. In Alabama and Maine, if she does not relinquish it by joining in her husband's deed, she may do so afterwards by a written instrument executed and acknowledged by herself. In Maine and Massachusetts a deed may be acknowledged by any one of the grantors. In Rhode Island the husband alone need acknowledge unless the land sold is the wife's, when both do so. But in Indiana, Iowa, Michigan and Utah a married woman's acknowledgment is to be taken as if she was single.

46. Grantor's Seal.—There must be an actual seal attached to the grantor's name in deeds acknowledged for Maine, New Hampshire, Rhode Island, Vermont, Washington and Upper Canada. Such a seal is an impression upon wax or a wafer, or upon paper attached by a wafer to the deed. But a scrawl, politely termed a "scroll," may be substituted for the seal, for Colorado, Connecticut, Dakota, Indiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Oregon, Pennsylvania, Utah, Virginia, West Virginia, Wisconsin and Wyoming. A scrawl is a scrambling circle surrounding the word "seal," or the letters "L. S." or the initials of the signer. Neither actual seals nor any device to represent them are needed for Arkansas, Iowa, Kansas, or Texas.

47. Notary's Seal.—The notary must attach his own official seal to acknowledgments that are to be used in the District of Columbia, Mississippi, Texas and Upper Canada, and it is better to attach it to all deeds that are to be recorded outside of his own State, even though in a few cases it may not be required. The notarial seal is everywhere recognized, (a) and it is said that a scrawl cannot be substituted for it. (b)

(a) *Wright v. Barnard*, 2 Exp. 700. *Yeaton v. Fry*, 5 Cranch, 335; *Brown v. Philadelphia Bank*, 6 Serg. & R. (Pa.) 484; *Chanoine v. Fowler*, 3 Wend. 173; *Porter v. Judson*, 1 Gray, 176; *Bouvier Dic. tit. Seal*.

(b) *Kinckley v. O'Farrell*, 4 Blackf. (Ind.) 186.

48. The following forms of Acknowledgment may be used for deeds to be recorded in the States designated. They should always open with the statement of the locality in which they are taken, in the form of a venue, in this manner :

STATE OF MICHIGAN, }
County of Baraga, } ss.

Acknowledgments for Upper Canada substitute for ss. its meaning, "To wit." With a proper change of venue these acknowledgments are the same as used in the respective States themselves. In Alabama, however, the venue is stated thus: The State of Alabama, _____ County : ss., followed by the date; in Massachusetts—Commonwealth of Massachusetts, Essex County : ss.; in Connecticut the date follows the venue, and in the District of Columbia it is—District of Columbia, County of Washington : ss. The acknowledgment is the same as is used in Michigan when taken for either of the States whose statutes provide that the law of the locality shall govern the mode of execution and acknowledgment, These States and Territories, as already shown, are Dakota, Florida, Illinois, Nebraska, New York, Ohio, Oregon, Wisconsin, Wyoming, and Lower Canada. In giving the following forms the signature will be omitted to save space, but it should always be added with the official title, thus : JEREMY WOLCOTT, Notary Public, Baraga County, Michigan.

Alabama. — Venue and date. I, *Reginald Smallpiece*, notary public, hereby certify that *Lucas Knibbs*, 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 15th day of April, 1876.

For a wife's acknowledgment: Venue. I, *Reginald Smallpiece*, notary public, hereby certify that on the *fifteenth* day of *April*, 1876, came before me the within named *Lucile Knibbs*, known or made known to me to be the wife of the within named *Lucas Knibbs*, who being by me examined, separate and apart from her husband, touching the signature of the within deed (or mortgage), acknowledged that she signed the same of her own free will and accord, and without fear, constraint, or persuasion of her husband. In witness whereof I hereunto set my hand this *15th* day of *April*, 1876.

Arkansas.—Deeds of husband's and wife's lands separately. Venue. This day came before the undersigned *Zebulon Penhallow*, a notary public within and for the county aforesaid, duly commissioned and acting, *Peter Mowbray* [and *Petronilla Mowbray*, his wife] to me well known as the grantor[s] in the foregoing deed, and [the said *Peter Mowbray*] stated that he had executed the same for the consideration and purpose therein mentioned and set forth. [And on the same day also voluntarily appeared before me *Petronilla Mowbray*, wife of the said *Peter Mowbray*, to me well known, and in the absence of her said husband, declared that she had of her own free will signed and sealed the relinquishment of dower in the foregoing deed for the purposes therein contained and set forth, without compulsion or undue influence of her said husband.]

Witness my hand and seal as such notary public on this *twenty-fourth* day of *January*, 1877.

Where the husband and wife convey the latter's land, insert the bracketed clauses, and substitute for the second sentence the following form :

And the said *Petronilla Mowbray*, in the absence of her said husband, voluntarily declared that she had of her own free will executed the same for the purposes therein contained and set forth, without compulsion or undue influence of her said husband.

California: Utah.—Venue. On this *fifth* day of *October*, in the year 1876, before me, *Cæsar Kircheloe*, a

notary public, personally appeared *Barnabas Bulldozer*, known to me (proved to me on the oath of *Samson Slammer*)

to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

OR, as the attorney in fact of *Sharon Jones*, and acknowledged that he subscribed the name of *Sharon Jones* thereto as principal and his own name as attorney in fact.

AND, where the grantor is a married woman, add after the word "instrument" the clause

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.

[SEAL.]

(Signature and title.)

Colorado.—Venue. I [*a notary public*], within and for the county and State aforesaid, do hereby certify that *Diggory Doak*, who is personally known to me (OR, who was proven to me by the oath of *Aristobulus Murchison*, a credible witness), to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, appeared before me this day in person, and acknowledged that he executed the same for the uses and purposes therein set forth.

[SEAL] Witness my hand and notarial seal this *fifth* day of *October*, A. D. 1876.

If the grantor signs as the chief officer of a corporation he should add a qualification to the acknowledgment in this form

for and as the act and deed of the *Cheyenne Civilization Company*.

Connecticut.—Venue. *Hartford, July 16, 1875.* Then and there, before me, a *notary public* within and for the county and State aforesaid, duly commissioned and acting as such, personally appeared *Reuben Pierce and Rebecca Pierce, his wife*, signers and

sealers of the foregoing instrument, and severally acknowledged the same to be their free act and deed before me.

OR, Jabez Wheelock, agent of the *Naugatuck Leather Company*, and acknowledged the same to be its free act and deed before me.

[SEAL] Witness my hand and seal of office on this sixteenth day of July, 1875.

District of Columbia.—Venue. I, a notary public in and for the county of *Baraga* aforesaid, in the State of *Michigan*, do hereby certify that *Anthony Perkins and Rosalia Perkins, his wife*, parties to a certain deed bearing date on the fourth day of *May*, A. D. 1873, and hereto annexed, personally appeared before me in the county aforesaid, the said *Anthony Perkins and Rosalia Perkins* being personally well known to me, (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 their free act and deed; and the said *Rosalie Perkins*, wife of the said *Anthony Perkins*, being by me examined privily and apart from her said husband, and having the deed aforesaid fully explained to her, 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 notarial seal this fourth day of *May*, A. D. 1873.

PENZANCE MOUNTSTEPHEN, [SEAL]
Notary Public, Baraga County, Michigan.

Indiana.—Venue. Be it remembered that on this twentieth day of *January*, A. D. 1877, before me, *Arche-laus Simmons*, a notary public in and for the county and State aforesaid, duly commissioned and qualified, personally appeared *Mortimer Howe and Elfreda Howe, his wife*, the grantors in the foregoing deed, and severally acknowledged the execution of the same.

[SEAL.] In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

Iowa.—Venue. On this *sixth* day of *October*, A. D. 1876, before me, a *notary public* in and for the county and State aforesaid, personally came *Jeduthun Trott* and *Edith Trott*, his wife, to me personally known (OR, proved by *Anchises Smith*, known to me to be a credible witness) to be the identical persons whose names are affixed to the above deed as grantors, and acknowledged the execution of the same to be their voluntary act and deed.

[SEAL.] Witness my hand and seal the day and year first aforesaid.

Kansas.—Venue. Be it remembered that on this *sixteenth* day of *February*, A. D. 1877, before me, a *notary public*, duly commissioned in and for the county and State aforesaid, came *Jonathan C. Hornblower* and *Marian Hornblower*, his wife, who are personally known to me to be the same persons who executed the foregoing instrument of writing as grantors, and they duly acknowledged the execution of the same.

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

Kentucky.—Venue. I, *Eratosthenes Jones*, a *notary public* in and for the county and State aforesaid, do certify that this instrument of writing from *Hugh De Bardelaban* and wife (OR from *Roxana De Bardelaban*, wife of *Hugh De Bardelaban*) was this day produced to me by the parties, and which was acknowledged by the said *Hugh De Bardelaban* to be his act and deed, and the contents and effect of the instrument being explained to the said *Roxana De Bardelaban* by me, separate and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same to be her free act and deed, and consented that the same might be recorded.

[SEAL.] Given under my hand and seal of office this *fourth* day of *November*, 1876.

Maine.—Venue. On this *seventeenth* day of *January*, 1877, personally appeared the above named grantors and acknowledged the foregoing instrument by them signed to be their free act and deed. Before me,

HERBERT ELLISON,

Notary Public.

Maryland.—Venue. I hereby certify that on this *fifth* day of *March*, A. D. 1877, before me, a *notary public* in and for the county aforesaid, personally appeared *Toby Follansbee and Phæbe Follansbee, his wife*, and did each severally acknowledge the foregoing deed to be their act.

In testimony whereof I have hereunto sub-
SEAL.] scribed my name and affixed my official seal the day and year above written.

Massachusetts.—Venue. Be it remembered that on this *twentieth* day of *January*, 1877, before me, the undersigned, personally appeared *Samuel Hollister and Judith Hollister, his wife*, to me known to be the individuals named in and who executed the foregoing conveyance, and severally acknowledged the same to be their free act and deed before me.

In witness whereof I have hereunto set my
[SEAL.] hand and affixed my official seal the day and year aforesaid.

Michigan.—Venue. On this *eleventh* day of *January*, in the year one thousand eight hundred and seventy-seven, before me, *Eliakim Podgkin*, a notary public in and for said county, personally appeared *Bernard Morley [and Lilian Morley, his wife]* to me known to be the same person[s] described in and who executed the within instrument, who [severally] acknowledged the same to be his [their] free act and deed.

Minnesota.—Venue. Be it known that on this *eighth* day of *February*, 1877, before me personally appeared *Vortigern Wigglesworth, and Kate Wigglesworth, his wife*, to me known to be the individual persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same freely and voluntarily for the uses and purposes therein expressed.

Witness my hand and official seal the day and year before written.

Mississippi.—Venue. Personally appeared before me, *Genseric Tuthull, a notary public* in and for the county and State aforesaid, the within named *Holofernes Thompson and Eudocia Thompson, his wife*, who acknowledged

that they signed, sealed and delivered the foregoing deed, and the within named *Eudoxia Thompson*, wife of the said *Holfernes Thompson*, on a private examination apart from her said husband, acknowledged that she signed, sealed and delivered the foregoing deed freely, without any fear, threats or compulsion of her said husband on the day and year therein mentioned.

Given under my hand and seal this *ninth* day of *June*,
A. D. 1876.

Missouri.—*Venue.* Be it remembered that on this *seventh* day of *August*, A. D. 1876, before me, the undersigned, a *notary public* of *Baraga county*, duly commissioned and qualified at the county aforesaid, came *Jerome Grosjean* [and *Nannette Grosjean*, his wife] who is [are] personally known to me (OR, was [were] proven before me by the testimony on oath of *Timothy Banks*, at *Hickory Knoll*, in *Baraga county* aforesaid, and *Sardinapalus Corcoran*, residing at *Coppermills*, in *Baraga county* aforesaid, two good and credible witnesses), to be the same person[s] whose name[s] is [are] subscribed to the foregoing instrument of writing as a party [parties] thereto, and he [they] acknowledged the same to be his [their] act and deed for the purposes therein mentioned; [and she], the said *Nannette Grosjean*, wife of said *Jerome Grosjean*, having been by me first made acquainted with the contents of said instrument, acknowledged upon an examination separate and apart from her said husband, that she executed said instrument and relinquished her dower in the real estate therein conveyed, freely and without compulsion or undue influence on the part of her said husband.

In witness whereof I do hereto set my hand and affix my official seal the day and year last above written.

Montana.—*Venue.* On this *twenty-fourth* day of *August*, 1876, personally appeared before me, a *notary public*, in and for said county, *Andronicus Mullinax*, personally known to me (OR, satisfactorily proven to me by the oath of *Nathan Bustwig*, a competent and credible witness for that purpose, by me duly sworn) to be the person described in, and who executed the foregoing instrument and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

[SEAL.] Witness my hand and seal. Digitized by Google

Nevada.—Venue. On this *eighteenth* day of *May*, A. D. 1876, personally appeared before me, *Simon Grewgious*, a notary public, in and for said county, *Lewis Culverwell*, and *Anne Culverwell*, his wife, whose names are subscribed to the conveyed instrument as parties thereto, personally known to me (OR, satisfactorily proven to me by the oath of *Thomas Darmouth*, a competent and credible witness for that purpose, by me duly sworn) to be the individuals described in, and who executed the said annexed instrument as parties thereto, who each acknowledged to me that they and each of them respectively, executed the same freely and voluntarily, and for the uses and purposes therein mentioned. And the said *Anne* wife of the said *Lewis Culverwell*, having been by me first made acquainted with the contents of said instrument, acknowledged to me on examination apart from and without the hearing of her said husband, that she executed the same freely and voluntarily without fear or compulsion or undue influence of her said husband, and that she does not wish to retract the execution of the same.

[SEAL.] In witness whereof I have hereunto set my hand the day and year first above written.

New Hampshire.—Venue. Personally appeared the above named *Roderick Hamilton*, and *Lucretia Hamilton*, his wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me, this *fifth* day of *May*, 1877.

New Jersey.—Venue. Be it remembered that on this *fifteenth* day of *January*, A. D. 1877, before me the subscriber, *Beauclerc Quartemas*, a notary public in and for the county and State aforesaid, personally appeared *Anthony Poppenhusen*, and *Emily Poppenhusen*, his wife, who, I am satisfied, are the grantors named in, and who executed the within instrument of conveyance, and I, having first made known to them the contents thereof, they did thereupon severally acknowledge before me that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

And the said *Emily Poppenhusen*, wife of the said *Anthony Poppenhusen*, being by me privately examined, separate and apart from her said husband, did farther

acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threat or compulsion of or from her said husband.

[SEAL.] In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

Pennsylvania.—Venue. Be it remembered that on the *second* day of *June*, A. D. 1877, before me, *Matthew Dixon*, a notary public duly commissioned in and for said county, came *Simeon Broadacres*, and *Huldah Broadacres*, his wife, and acknowledged the foregoing indenture to be their free act and deed, and desired the same to be recorded as such. She, the said *Huldah*, being of lawful age, and by me examined separate and apart from her said husband, and the contents of said deed being first fully made known to her, did thereupon declare that she did voluntarily and of her own free will and accord, sign and seal, and as her act and deed, deliver the same without any coercion or compulsion of her said husband.

[SEAL.] Witness my hand and seal the day and year aforesaid.

Rhode Island.—Venue. Be it remembered that on this *fifteenth* day of *June*, A. D. 1877, before me, *Daniel Parker*, a notary public in and for the county and State aforesaid, personally appeared *Richard Shuttlewiggins*, and *Mary Shuttlewiggins*, his wife, and the said *Richard Shuttlewiggins* acknowledged the foregoing instrument by him signed, to be his free and voluntary act and deed, and the said *Mary Shuttlewiggins*, being by me examined privily and apart from her said husband, and having said instrument shown and explained to her by me, declared to me that it is her voluntary act, and that she does not wish to retract the same.

[SEAL.] In witness whereof I have set my hand and seal at *Barkhamlet*, the day and year above written.

Tennessee.—Venue. Before me, *Richard Swiveller*, a notary public in and for the county and State aforesaid, personally appeared *Eugene Creedmoor*, the within named grantor, with whom I am personally acquainted, and who acknowledged that he executed the within deed for the

purposes therein contained, and the said *Catharine Creedmoor*, wife of said *Eugene Creedmoor*, with whom I am personally acquainted, having appeared before me privately and apart from her said husband, acknowledged the execution of said deed to have been done by her freely, voluntarily and understandingly, without compulsion or constraint of her said husband, and for the purposes therein expressed.

[SEAL.] Witness my hand and seal of office this *fourth* day of *January*, A. D. 1877.

Texas.—Venue. Before the undersigned, *Tobias Buckminster*, a notary public in and for the county and State aforesaid, duly commissioned and qualified, personally appeared *Iglesias Pacheco*, and *Julia Pacheco*, his wife, to me well known to be the individuals described in and who executed the above and foregoing conveyance from *Iglesias Pacheco* and *Julia Pacheco* and in favor of *Gonzales Matamorán*; and they acknowledged to me that they executed the same for the uses, purposes and considerations therein stated, and that the same is their act and deed; and the said *Julia Pacheco*, wife of the said *Iglesias Pacheco*, having been examined by me privily and apart from her said husband, and having the said deed fully explained to her, she, the said *Julia Pacheco*, acknowledged the same to be her act and deed, and declared that she had willingly signed and delivered the same, and that she wished not to retract it.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of my office at *Stump Meadows*, this *eighteenth* day of *April*, A. D. 1876.

Vermont.—Venue. At *Manchester*, this *eightth* day of *November*, 1876, personally appeared *Erastus Harding*, and *Isabella Harding*, his wife, the signers and sealers of the above written instrument, and acknowledged the same to be their free act and deed.

Before me.

Virginia and West Virginia.—Venue. I, *Philip Fairfax*, a notary public of the county aforesaid, in the State of *Michigan*, do certify that *Chester Dinwiddie*, and *Elizabeth Dinwiddie*, his wife, whose name[s] is [are] signed to the writing above, bearing date on the *seventh*

day of *August*, 1876, has [have] acknowledged the same before me in my county aforesaid, [and that the said *Elizabeth Dinwiddie*, wife of the said *Chester Dinwiddie*, being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said *Elizabeth Dinwiddie*, acknowledged the said writing to be her free act, and declared that she had willingly executed the same and does not wish to retract it.]

Given under my hand this *tenth* day of *August*, 1876.

Washington.—Venue. On this *sixth* day of *October*, A. D. 1876, before me, the undersigned authority, personally came *Alfred Curtis*, and *Belinda Curtis*, his wife, who are personally known to me to be the same *Alfred Curtis* and *Belinda Curtis*, whose names are subscribed to the within deed of conveyance as parties thereto, and severally acknowledged the execution of the said deed for the uses and purposes therein mentioned. And I certify that I did examine the said *Belinda Curtis*, wife of the said *Alfred Curtis*, separately and apart from her husband, and that I did make known to her the contents of the said deed.

AND, if the instrument is a mortgage deed, insert here, [and fully apprise her of her rights of homestead under the laws of this Territory, and of the effect of signing the said mortgage.]

And she thereupon, then and there acknowledged to me that she did execute the same voluntarily and of her own free will, and without any fear of, or coercion from her husband.

In witness whereof I have hereunto set my [SEAL.] hand and affixed my official seal the day and year above written.

Upper Canada.—Venue. (Witness' attestation.) I, *Ferdinand Wilks*, of *Sleepy Hollow*, a cordwainer, make oath and say :

1. That I was present and did see the within deed and a duplicate thereof duly executed, signed, sealed and delivered by *Baptiste St. Quentin*, and *Eugenie St. Quentin*, his wife, the parties thereto ;
2. That the said instrument and duplicate were executed at *Sleepy Hollow*, in the county and State aforesaid ;

3. That I knew the said parties so executing the said instrument;

4. That I am a subscribing witness to the said execution of the said instrument and duplicate.

FERDINAND WILKS.

(Notarial Certificate.) I, *Rupert Doone*, a notary public in and for *Baraga* county, Michigan, (or whatever the venue is), do hereby certify that the above named affidavit was duly taken, subscribed and sworn to before me by the above named *Ferdinand Wilks*, on the *sixteenth* day of *August*, A. D. 1876, at the village of *Sleepy Hollow*, in the State of Michigan.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

If there are different witnesses to the signatures of different parties to the deed, each witness must make a similar affidavit.

Lower Canada.—Venue. On the *fifth* day of *September*, A. D. 1876, before me, *Algernon Ridd*, of *Hemlock Hill*, a notary public duly appointed and sworn for *Baraga* county, personally came and appeared *Anthony Barnet*, the person who executed the foregoing deed, and to me well known as such, and who then and there acknowledged that he had executed the same.

[SEAL.] Witness my hand and seal at *Hemlock Hill* on the day and year first above written.

COMMERCIAL PROTESTS.

48. The Notary's Commercial Office.—It is only as a public witness, again, that the notary performs his principal duty of protesting commercial paper. This consists in certifying to the fact that the paper was not accepted or paid on proper demand. But it is a task so delicate and responsible that for any blunder in the performance of it, the notary risks a liability in damages. It demands not only precision but promptness, and it should never be left to one who does not clearly understand his rights and duties in attempting it. It is really an every-day formal preliminary for the purpose of fixing a contingent liability that would otherwise be released altogether, risking, if not losing outright, the entire debt according to the original debtor's degree of responsibility. Every notary should be prepared to execute the formality, but no notary should ever try it without a thorough understanding of the legal principles which govern collections on such commercial paper as bills of exchange and promissory notes. These are frequently made payable at some designated bank, and as banks are constantly receiving commercial paper for collection, there are usually notaries among their clerks to protest it when unpaid.

49. Days of Grace.—In demanding payment of bills and notes, the rule of commercial law, and the statutes or usages of the locality must be observed as to allowing three days of grace, and excluding Sundays and legal holidays in allowing them. The holidays generally recognized in the United States are Christmas (Dec. 25), and New Year's (Jan. 1), Washington's Birthday (Feb. 22), and the Fourth of July, Thanksgiving Day (usually the last Thursday in November), and in some States, as in Michigan and New York, Decoration Day, (May 30). (*a*) When the exclusion covers the last day or two of grace, demand must be made on the day before the day or days exempted; *e. g.* if the last day of grace falls on Sunday, the 5th of July, that day and the Fourth must both be excluded, and as the holder must then present his paper on the 3rd, he has really only one day of grace. In Michigan grace

is allowed on bills payable within the State at sight or at a day certain, unless it is expressly otherwise stipulated, but it is not allowed on bills, notes, or drafts, made payable on demand. (b)

(a) Act 163 of 1875; Laws of New York (1875), p. 25. | (b) 1 Comp. L., §§ 1554, 1555.

50. What is Subject to Protest.—By the common law neither promissory notes nor inland bills of exchange are subject to protest, but that formality has become so convenient a method of fixing the liability on commercial paper, that by general usage, and often by statute, they have come to be classed with foreign bills as protestable. In *Burkham v. Trowbridge* (a), Judge Campbell says that “the common usage of making protest, as well of notes and inland bills as of foreign bills * * is certainly nearly or quite as old as the negotiability of promissory notes.” It will be assumed, then, in treating of protests, that they apply equally to promissory notes and to foreign and inland bills of exchange, drafts and checks; and in any case the States are foreign to each other, so far as bills of exchange are concerned. Even when the drawer and drawee live in the same State, but the bill is payable in another, it is a foreign bill. (b)

(a) 9 Mich, 211. | (b) 1 Parsons, Notes and Bills, 642.

51. Acceptance.—Bills of exchange are protested either for non-acceptance or non-payment. Acceptance is necessary to make the drawee liable on the paper. It is shown by his writing the word “accepted” with his signature across the face of the bill. (a) If this is not done within twenty-four hours, the acceptance is understood to be refused, and protest must be made at once to bind the drawer and indorsers. (b) But if the drawee while not refusing to accept, desires time to look into the state of his accounts before deciding, he is entitled to twenty-four hours for that purpose. (c) The bill must be presented expressly for acceptance, however; it is not enough to simply show it to the drawee. (d)

(a) 1 Pars., Cont. 223. | (c) Case v. Burt, 15 Mich., 82.
(b) Chitty on Bills, 212, 217. | (d) Mitchell v. Degrand, 1 Mas. 176.

52. Who Makes the Protest.—It is everywhere an official duty of notaries to make protests. But a protest need not be made by a notary to be valid. (a) It may in many cases be made by other functionaries, and even by merchants. (b) Nor does the law merchant require the notary to do more than make the protest itself; the subsequent duty of notifying indorsers may be performed by the holder of the note. Still, it is common usage for the notary to make the demand for payment, and in case of refusal, protest the paper and give notice of non-payment to all prior parties. (c) Indeed, in some places, statutes empower him to give this notice, but if they did not, he might properly do so. An indorser cannot insist on having notice directly from the holder of the paper; it may be given by a notary or by any other agent, (d) only an agent who gives notice of the dishonor of the paper has not the benefit of the rule which allows an actual party who has an interest in the paper, a whole day in which to give notice to the party to whom he looks for payment. (e) And as the notary is, in fact, only the holder's agent, the son of the holder, if a notary is not prevented by relationship from protesting paper for his father. (f) But, generally speaking, the notary must make the protest himself; he should not leave it to his clerk. (g) And where two notaries are partners, one of them cannot protest paper as the other's agent. (h)

(a) *Munroe v. Woodruff*, 17 Md. 159.

(b) *Burke v. McKay*, 2 How. 66.

(c) 1 Pars., Notes and Bills, 645.

(d) *Harris v. Robinson*, 4 How. 336; *Cowperthwaite v. Sheffield*, 1 Sandf. (N. Y.) 416; *Tunno v. Lague*, 2 Johns (N. Y.) Cas. 1; *Chanoine v. Fowler*, 3 Wend. 179; *Mead v. Engs*, 5 Cow. 303; *Stanton v. Blossom*, 14 Mass. 116.

(e) *United States v. Barker*, 2 Paine, 340.

(f) *Eason vs. Isbell*, 42 Ala. 456.

(g) 1 Parsons, Notes and Bills, 641.

(h) *Commercial Bank v. Barksdale*, 36 Mo., 563.

53. Demand of Payment.—Paper must be duly presented for payment, however, before it can be protested. The demand for payment should be made during business hours on the day when the paper falls due, at the place, if any, designated on the paper, and if no place is designated, at the residence or place of business of the ac-

ceptor or maker, or upon him personally, wherever he is found. It is not absolutely needful that the presentation or demand be made by a notary; (a) it may be made by any other agent of the holder, (b) acting on nothing stronger than parol authority, (c) or by the holder himself. But if a notary is intrusted with the duty, he cannot leave it to be performed by a deputy or agent of his own, unless he is authorized to do so by statute. (d) The person making the presentation and demand must actually make them; he should have the note with him, present it, and demand its payment. (e) If there is no evidence to the contrary the demand on a draft is presumed to be that it be paid in the currency in which it appears on its face to be made payable, and if payable in currency, a demand that it be paid in gold will not charge the drawer. (f) When the maker's residence is known, a notice sent to him through the post-office that his note is overdue and unpaid, is insufficient to charge the indorser as a demand. (g)

(a) *Burkham v. Trowbridge*, 9 Mich., 209; *Smith v. Ralston*, 1 Morr. (Ia.) 87; *Blaffer v. Herman*, 7 La. An. 659.

(b) *Taylse v. Davidson*, 2 Cr. C. C., 434.

(c) *Shedd v. Brett*, 1 Pick. 401; *Bank of Utica v. Smith*, 18 Johns. (N. Y.) 230.

(d) *Cribbs v. Adams*, 13 Gray, 597; *Carmichael v. Pennsylvania Bank*, 5 Miss. (4 How.) 567; *Milttenberger v. Spaulding*, 33 Mo. 426.

(e) *Freeman v. Boynton*, 7 Mass. 483; *Hildeburn v. Turner*, 5 How. 69.

(f) *Lenzenberger v. Kroeger*, 43 Cal. 147.

(g) *Stuckert v. Anderson*, 3 Whart. (Pa.) 116.

Where paper is made payable at a specified place it is enough to present it there for payment. (a) But where a joint and several note was made payable at the dwelling houses of the makers, a presentment to both in the barnyard of one of them, not being objected to at the time, was held sufficient. (b) Where a note has been made payable at a given bank, it has been held that demand and presentment for payment were properly made of the officers there, and that no personal demand on the maker was necessary. (c) It is supposed that if the maker is not there himself, he will have provided funds to meet the demand, and that the banking officers will examine the accounts to see if he has done so, and if he has, that they will make the pay-

ment. But where a note was made payable "at any bank in the city of Boston" it was decided that a demand at any bank was sufficient to charge endorsers, and that, too without giving previous notice at what bank it would be made. (d) Presentment cannot be made to a bank officer out of business hours, though. (e) But if no place of payment is specified the demand must either be made on the maker of the paper personally, or at his residence or place of business. (f) It is said, too, that it may be made at the place where the note was dated, in the absence of proof that at its maturity the holder knew that the maker lived elsewhere. (g) The notary, however, must make diligent and intelligent attempts to find the parties liable on the paper. There must be similar diligence in seeking endorsers and prior parties, and notifying them of non-payment. It has been held enough of a compliance with his duty in these regards to make the demand on one of the firm in the case of partnership paper; (h) or on the surviving partner, where a bill was drawn on, and accepted by two partners, and one of them died; (j) or on an agent appointed by the acceptor, and empowered by him to make or refuse payment; (k) or on the bookkeeper of drawees who have absented themselves from their place of business without providing for payment, (l) or on the president, cashier or agent of the bank where the paper is payable, if the maker is not present, and the officer is apparently in charge; (m) or on the treasurer of an incorporated manufacturing company, which has drawn on him by its agent, and indorsed the bill; (n) or on only one of two promissors; (o) or on one of several makers of a joint and several promissory note. (p) This, however, is disputed, (q) and it is held insufficient to make the demand on only one of several joint-makers; (r) or on an assignee for the benefit of creditors. (s)

- (a) Tuckerman v. Hartwell, 3 Me. (3 Greenl.) 147; Smith v. Little, 10 N. H. 526; Anderson v. Drake, 14 Johns, (N. Y.) 114.
- (b) Baldwin v. Farnsworth, 10 Me. 414.
- (c) Bank of United States v. Smith, 11 Wheat. 171; Hildeburn v. Turner, 5 How. 69; Central Bank v. Allen, 16 Me. 41; Lee Bank v. Spencer, 6 Metc. 308; Merchants' Bank v. Elderkin, 25 N. Y. 178.
- (d) Langley v. Palmer, 30 Me. 467; Malden Bank v. Baldwin, 13 Gray, 154; Brickett v. Spaulding, 33 Vt. 107.
- (e) Swan v. Hodges, 3 Head (Tenn.) 251.
- (f) Smith v. Little, 10 N. H. 526.
- (g) Smith v. Philbrick, 10 Gray, 252.
- (h) Greatrake v. Brown, 2 Cr. U. C. 541; Crowley v. Barry, 4 Gill (Md.) 194; Hunter v. Hempstead, 1 Mo. 67.
- (j) Cayuga Bank v. Hunt, 2 Hill, (N. Y.) 635.
- (k) Phillips v. Poindexter, 18 Ala. 579.
- (l) Decatur Branch Bank v. Hodges, 17 Ala. 42; Gardner v. Bank of Tennessee, 1 Swan (Tenn.) 420.
- (m) New Orleans R. R. Co. v. McKelvey, 2 La. Ann. 359.
- (n) Com'l Bank v. St. Croix Manuf. Co., 23 Me. 280.
- (o) Shedd v. Brett, 1 Pick. 401.
- (p) Harris v. Clark, 10 Ohio, 5.
- (q) Tayloe v. Davidson, 2 Cr. C. C. 434.
- (r) Arnold v. Dresser, 8 Allen 435; Blake v. McMillen, 22 Iowa 358.
- (s) Armstrong v. Thruston, 11 Md. 148.

But there have been frequent cases in which the notary could not find the drawee, and where the most he could do had to be held sufficient to charge the endorsers; as when a bill was several times taken to the office of the acceptors on the day it was due, and the doors were found closed and no one there to answer the demand, it was held enough, even though one of the firm lived in the place. (a) So where the notary called at the place of business and afterwards at the dwelling of the maker on the last day of grace and could not find him at either; (b) and where he made the presentment at the store recently occupied by the maker, but which he found occupied by another person who could not tell him where the maker could be found, there being no evidence that he had any other place of business, or lived or was in the city at the time; (c) and where he called at the maker's last place of business, and at his late residence from which he had only lately removed, and could not find him; (d) and where he was sent from the makers' last place of business to another place at which he was told he could get information, and was there told that the maker had gone West; (e) and where he asked of both holder and acceptor as to the residence of an in-

dorser, and they both named the place where the bill was dated, at which he addressed the indorser, he was considered to have shown due diligence in making inquiry.(f) But inquiry at the hotel bar-room, and about the post-office and in the streets, is not sufficient.(g) But where the holder of the paper found the maker's last place of business occupied by strangers, and was told that the firm that had made the note had failed and the partners had gone out of town without leaving any funds, it was held not enough without further inquiry, seeing that one of the firm lived in the city, and his name was in the directory.(h) Nor when the note was made payable at the house of R. Y., was it enough to simply demand payment there of R. Y. without inquiring for the maker or inquiring whether he left funds to pay it.(i) And where, sixteen months before the note fell due, the endorser had told the maker where he lived, but had moved away from there five months before it fell due, under circumstances that were notorious, it was not enough to send notice to him there.(j)

(a) *Wiseman v. Chiapella*, 23 How. 368.

(b) *Greatrake v. Brown*, 2 Cr. C. C. 541.

(c) *Peet v. Zanders*, 6 La. Ann. 364.

(d) *Paton v. Lent*, 4 Duer (N. Y.) 231.

(e) *Adams v. Leland*, 5 Bosw. (N. Y.) 411.

(f) *Rawdon v. Redfield*, 2 Sandf. (N. Y.) 178.

(g) *Spencer v. Bank of Salina*, 3 Hill. 520.

(h) *Granite Bank v. Ayers*, 16 Pick. 392.

(i) *Planter's Bank v. Bradford*, 4 Humph. (Tenn.) 39.

(j) *Mechanics' Bank v. Lynn*, 2 Cr. C. C. 217.

Demand is said to be excused by the disappearance of the bank where payment was to have been made;(a) by the discovery that the maker or indorser has no known residence or place of business;(b) and in case of an indorser, by finding his place of business closed and door locked during business hours.(c) And demand need not be made at the house of a party to paper on the day of his funeral,(d) and it is excused where a note falls due after the maker dies, and during the year within which the administrator cannot be sued,(e) and it need not be made at the dwelling of the person liable, when he himself is dead, and his house deserted, and no administrator has been appointed.(f)

- (a) Roberts v. Mason, 1 Ala. 373.
 (b) McKee v. Boswell, 33 Mo. 567; Helme v. Middleton, 14 La. Ann. 484; Moor v. Coffield, 1 Dev. N. C. L. 247; Tunstall v. Walker, 10 Miss. 638.
 (c) Howe v. Bradley, 19 Me. 31.

- (d) Huff v. Ashcroft, 1 Disney (U.) 60.
 (e) Hale vs. Burr, 12 Mass. 86; Burrill v. Smith, 7 Pick. 291.
 (f) Haslett v. Kunhardt, 1 Rice. (S. C.) 189.

54. Protest.—If the presentation and demand for acceptance or payment fail, the protest must be made promptly. It is noted on the spot, and drawn up in a formal certificate immediately afterwards. "Noting the protest" consists simply in marking upon the bill or note itself, usually, the fact of the demand, and the time of making it, the charges of minuting it, and sometimes a statement of the place where, and of the parties on whom the demand was made, this memorandum being signed with the notary's initials. (a) This formality is what is technically meant by protesting, though in its commercial sense the word includes all the steps necessary to charge an indorser, (b) including the demand, protest and the service of notice of protest on the other parties liable. The actual protest "is a formal paper wherein the notary certifies that on the day of its date he presented the original bill attached thereto, or a copy of which is above written, to the acceptor, or the original note to the maker thereof, and demanded payment or acceptance, which was refused, and that thereupon he protests against the drawer and indorsers thereof for exchange, re-exchange, damages, costs and interest." (c) The time of the maturity of the paper being known, the protest should be made according to the law of the locality, since that is where the paper is made payable. (d)

- (a) 1 Parsons, Notes and Bills, 644.
 (b) Townsend v. Lorain Bank, 2 Ohio St. 345.

- (c) 2 Bouv. Dic. tit. Protest, 3
 (d) 1 Parsons, Notes and Bills, 640.

55. Notice of Protest.—As soon as possible after the noting of the protest, the remaining parties liable on the paper should be notified of the demand and protest, (a) and the notary should draw up his certificate of protest. The parties to be notified are the indorsers on a note or the drawer and indorsers of a bill of exchange. The essential facts of notice to an indorser are 1. that the

paper was not paid at maturity, and 2. that it has been protested for non-payment; 3. it must identify the paper as unpaid and protested. (b) The identification is usually by copy, but it is enough if the original of the note is annexed and referred to, or if there is an indorsement on the protest naming the maker and indorsers and stating the amount and date of the protest, therein agreeing in all respects with the note sued on, (c) unless, indeed, there is proof of other notes to which such an indorsement might apply. (d) It should show that the note was presented at the proper time, (e) but it need not state the hour of presentment and protest. (f) And in some States it is said that if delivered directly to the person who is to receive it, it may be either written or oral. (g) At all events it need not be in any particular form of words if it reasonably implies that the paper has been presented for payment, and been dishonored. But if the paper was payable generally, instead of at a specified place, it must state that. (h) It need not state who is the holder; (i) and if it is for non-payment, it need not certify non-acceptance. (j) Neither need it state that the holder looks to the party notified for payment; his giving notice implies that he does. (k) If the maker is shown to be absent from the commonwealth, it need not state that no demand was made except by leaving at his dwelling a written request to pay. (l) And it need not be accompanied by a copy of the protest. (m) It is enough if it states that the notary presented the bill at the proper place and demanded payment, and was answered that it could not be paid. (n) In Massachusetts the following notices have been held sufficient: "The note of A. which you endorsed fell due this day and remains unpaid. Please let me hear from you in regard to it." (o) "April 20, 1846. Mrs. S. L. Wilmarth. Please to take notice that a note signed by George L. Wilmarth for three thousand dollars, indorsed by you, is due this day and by me protested for non-payment. You are requested to pay the same to the holder. E. F. notary public." (p) But in Massachusetts, Michigan and New York, it has been held insufficient to inform the indorsers that the note "had not been paid," or "had not been paid by the drawer thereof," "and that they would be held responsible for its payment." (q) These notices do not say whether payment has been demanded and refused. It is not con-

strued as a notice of a demand of payment from the drawer of a note, and of his failure to pay, when the notary merely informs the indorser that the day of payment has expired and that payment is expected of him. (r)

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| (a) <i>Lindenberger v. Wilson</i> , 1 Cr. C. C. 340. | (k) <i>Cowles v. Harts</i> , 3 Conn. 517; <i>Warren v. Gilman</i> , 17 Me. 860. |
| (b) <i>Artisan's Bank v. Backus</i> , 36 N. Y. 100. | (l) <i>Sanger v. Stimpson</i> , 8 Mass. 260. |
| (c) <i>Fulton v. Maccracken</i> , 18 Md. 528. | (m) <i>Atwater v. Streets</i> , 1 Doug. (Mich.) 455. |
| (d) <i>Youngs v. Lee</i> , 18 Barb. 187. | (n) <i>Hildeburn v. Turner</i> , 5 How. 69. |
| (e) <i>Wynn v. Alden</i> , 4 Den. 163. | (o) <i>Clark v. Eldridge</i> , 13 Metc. 96. |
| (f) <i>Cayuga Bank v. Hunt</i> , 2 Hill (N. Y.) 635. | (p) <i>Wheaton v. Wilmarth</i> , 13 Metc. 422. |
| (g) <i>Merritt v. Woodbury</i> , 14 Iowa, 299; <i>Glasgow v. Pratte</i> , 8 Mo. 336. | (q) <i>Pinkham v. Macy</i> , 9 Metc. 174; <i>Platt v. Drake</i> , 1 Doug. (Mich.) 296; <i>Newberry v. Trowbridge</i> , 4 Mich. 391; <i>Pahquioque Bank v. Martin</i> , 11 Abb. N. Y. Prac. 291. |
| (h) <i>Kilgore v. Bulkley</i> , 14 Conn. 362; <i>Crocker v. Getchell</i> , 23 Me. 392; <i>Renick v. Robbins</i> , 28 Mo. 339; <i>Dole v. Gold</i> , 5 Barb. 490. | (r) <i>Sinclair v. Lynab</i> , 1 Spears (S. C.) 244. |
| (s) <i>Shedd v. Brett</i> , 1 Pick. 401. | |
| (f) <i>Morris v. Foreman</i> , 1 Dall. 193. | |

An unsigned written notice of the dishonor of a bill is not sufficient, (a) but it is enough if it is signed by the notary and not by the party giving notice, (b) and a printed notice of protest with the notary's printed signature is enough if it describes the paper accurately; (c) it should appear also, to be the officer's own act, although his name may be signed by a clerk or in print. It is only necessary that the signature be by his authority. (d) The authentication of the notice should be by the forms of the locality, as they are at the time of making it. (e)

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| (a) <i>Walmsley v. Acton</i> , 44 Barb. 312. | (d) <i>Fulton v. Maccracken</i> , 18 Md. 528. |
| (b) <i>Coffman v. Bank of Kentucky</i> , 41 Miss. 212. | (e) <i>Carter v. Burley</i> , 9 N. H. 558. |
| (c) <i>Spalding v. Krutz</i> , 1 Dill. 414. | |

The need of promptness in carrying or sending the notice of the dishonor of the paper can hardly be overrated. A bill of exchange must be protested, or there must be a noting of the protest on it, on the same day as the presentment and demand. (a) The notice should be given by the earliest available mail after the paper has been pro-

tested—if not on the same day, on the next, though if that should be Sunday, and if Saturday was the proper day for the demand, Monday has been held early enough. (b) But in one case where the note was protested two hours before mail-time, it was regarded as negligence to wait until after the mail had closed. (c)

(a) Commercial Bank v. Barksdale, 30 Mo. 563.

(b) Seventh Ward Bank v. Hanrick, 2 Story 416; Crawford v. Milligan, 2 Cr. C. C. 226; McElroy v. English, Id. 528.

(c) Freeman's Bank v. Perkins, 18 Mo. 292.

The common-law rule is that the notice should be delivered in person if the party to be notified is within easy reach, but may be sent by mail if he lives out of town or at any inconvenient distance. But this may be settled by statute. In Michigan it is enacted that whenever a drawer or indorser has, or is reliably reported to have, his residence or place of business in the same city, village or township where the paper is payable or legally presentable for payment or acceptance, all notices of non-payment or non-acceptance may be served by depositing them with the postage prepaid in the city, village or township postoffice, properly directed to the drawer or indorser at that place; if not payable there, the notice is to be sent prepaid, directed to him at his reputed post-office address as ascertained by diligent inquiry. (a) This is so, too, in Alabama. (b) Notwithstanding this, it is the safer way, and more in accordance with established principles to serve the notice personally if possible. It has been held that the notice ought to be delivered in person and not sent by mail when the holder or his agent, the notary, lives in the same town with the indorser, and that it should either be served on the indorser himself, or at his residence or place of business; (c) so, too, when the two live within two miles of each other. (d) The service is good if the notice is left with one in charge of the indorser's usual place of business; (e) but not if only left at the place of business of a man of the same name as the indorser, the notary not being informed of the indorser's residence. (f) If left at the house or office it must be certain that it was the right place and not some other under the same number, or that it was left with some person in charge. (g) But it was

enough for the notary to call at the house, find it locked, be told by a neighbor that the indorser was out of town with his family on a visit for he did not know how long, and leave the notice next door with the request that it be handed to the indorser when he came back. (*h*) If the notice is given directly to the indorser himself, the service is good wherever it is made. (*i*)

- (a) 1 Comp. L. § 1560.
- (b) Green v. Farley, 20 Ala. 322.
- (c) Bowling v. Harrison, 6 How. 248; Green v. Darling, 15 Me. 141; Peirce v. Pendar, 5 Metc. 352.
- (d) Power v. Mitchell, 7 Wis. 161.
- (e) Lord v. Appleton, 15 Me. 270.

- (f) Lawrence v. Millar, 16 N. Y. 235.
- (g) Davenport v. Gilbert, 4 Bosw. 532; 6 Bosw. 179.
- (h) Williams v. Bank of United States, 2 Pet. 96; Wilson v. Senior, 14 Wis. 380.
- (i) Hyslop v. Jones, 3. McL. 96.

Notice by mail of non-payment may properly be made by a notary, (*a*) acting therein as the holder's agent, just as he does in delivering it personally. But it is not enough for him to mail it to the place of the note's date unless the indorser lives there or the holder has used reasonable diligence to learn his residence. (*b*) It is sufficient if it is sent to the post-office nearest the indorser's residence, (*c*) or to that where he is in the habit of receiving his letters, (*d*) or to that from which he would get notice soonest. (*e*) An indorser living in the wilderness twenty miles from any post-office cannot be served by mail, however, but must be notified in person or by special messenger. (*f*) Where there are several parties to whom notices of protest are to be given, and the notary only knows the residence of the last indorser, he should make out one notice for each and enclose them all to the last indorser. (*g*) Distant parties receiving their own notice from a notary may transmit notice according to the laws of their residence, if that is the place where they signed. (*h*)

- (a) Crisson v. Williamson, 1 A. K. Marsh. (Ky) 456.
- (b) Lowery v. Scott, 24 Wend. 353.
- (c) Nevius v. Bank, 10 Mich. 547.
- (d) Bank v. Lane, 3 Hawks (N. C.) 453.
- (e) Sherman v. Clark, 3 McL. 91; Shaylor v. Mix, 4 Allen 351; Bank of United States v. Carneal, 2 Pet. 551

- (f) Fish v. Jackman, 19 Me. 467.
- (g) Pate v. State Bank of Indiana, 3 Ind. 176; True v. Collins, 3 Allen, 438; Palen v. Shurtleff, 9 Metc. 581.
- (h) 1 Parsons, Notes and Bills, 640.

56. Certificate of Protest.—The notary's certificate should contain the protest, a statement of the time, manner and place of the demand, and the names of the parties of whom the demand is made, and of those at whose request it is made, and of the parties notified. (a) It is not vitiated by mere verbal mistakes, and indeed the notice of protest itself is not, even when it mis-states the amount, as \$175 for \$200, if the indorser is not misled thereby. (b) The certificate must be duly authenticated by a seal.

(a) 1 Parsons, Notes and Bills, 645. | (b) Snow v. Perkins, 2 Mich. 238.

57. National Bank Paper.—"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 and 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, however, satisfactory proof is produced to the notary public that the payment of the notes demanded is restrained by the order of any court of competent jurisdiction, he shall not protest the same. When the holder of any note causes more than one note or package to be protested on the same day, he shall not receive pay for more than one protest. (a) All fees for protesting the notes issued by any National Banking Association shall be paid by the party procuring the protest to be made, and such association shall be liable therefor." (b)

(a) Rev. Stat. of U. S. § 5226. | (b) Rev. Stat. of U. S. § 5238.

58. Damages on Protest.—The regulation of the amount of damages upon protests is by statute. The law in Michigan is that on bills drawn or indorsed within the State, but payable beyond the limits of the United States, the person liable shall, upon notice of protest and demand of payment, pay the bill at the rate of exchange current at the time of the demand, together with five per cent. damages, and interest from the date of the protest, both reckoned in the "contents" of the bill, these charges being in full of all damages and expenses. On bills drawn or indorsed in Michigan, but payable in some other State or Territory, the rate of damages is in addition to the contents of the bill with interest and costs, and is three per cent. for bills payable in the "Territory of Wisconsin," Illinois, Indiana, Pennsylvania, Ohio or New York,—five per cent. if payable in Missouri, Kentucky, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, Virginia, or the District of Columbia, and ten per cent. if payable elsewhere within the jurisdiction of the national government. (a) The law is antiquated enough to need some verbal revision, if nothing more.

(a) 1 Comp. L. §§ 1557, 1558.

MARINE PROTESTS.

59. Shipping Protests.—Notaries who live at ports and harbors are likely to be called on to take shipping or marine protests made by vessel-masters or by the merchants who ship goods in their care or charter the vessels they are intrusted with. The notarial act in this case is simply to authenticate the protest, and is analogous to that performed in attesting an affidavit or receiving an acknowledgment. "The protest is a declaration or narrative by the master of the particulars of the voyage; of the storms or bad weather which the vessel may have encountered, the accidents which may have occurred, and the conduct which in cases of emergency he had thought proper to pursue." It may be evidence against the master or his owners, and so whoever makes it, should carefully supply the facts it must contain from his log-book and the memory of himself or his mate, or of trustworthy mariners. "Protests are also made by the master against the charterers of the ship or the consignees of goods, for not loading or unloading the vessel pursuant to contract or within reasonable or stipulated delays; and by the merchant against the master for misconduct, drunkenness, etc.; for not proceeding to sea with due despatch; for not signing bills of lading in the customary form, and other irregularities." (a) It is, in the United States, a precaution resorted to "in extraordinary cases involving loss or damage, or which are likely to arouse suspicion or to become the subject of litigation." (b) But it has become so customary to take such protests upon the occurrence of anything in the course of a voyage that is at all unusual and may by any possibility affect claims for marine insurance or furnish a basis for claims against the ship-owners, that a vessel-master who omits under such circumstances, to make a protest immediately upon his reaching a place where he can do so, is considered gravely delinquent. Montefiore's Commercial Precedents (page 455) contains a collection of protests like those that may be used in almost any serious emergency, as of the destruction of a ship by fire, or its shipping heavy seas (called a protest "against the seas") or its capture by the ships of an enemy, or the capture of a neutral ship; also

in case of demurrage, or refusal to sign the bill of lading for goods shipped at the freight contracted, or breach of the charter-party, or refusal to execute the charter-party according to the memorandum of agreement, or abandonment and against underwriters for non-payment of insurance.

(a) Abbott on Shipping, p. 465,
cited in Conkling's Admiralty,
p. 688.

(b) Conkling's Admiralty, p. 685.

60. Form of Protest.—The following protest given at length in a Pennsylvania case, (a) indicates what matters may be set down in such a document. This was offered in evidence in a suit on an insurance policy, but was rejected because, although it had been noted within twenty-four hours after mooring the vessel on her arrival, it had not been extended, or made out in full, until some days afterward. It runs as follows:

“By this public instrument of protest, be it known and made manifest to all whom it doth, may or shall concern. That on the day of the date hereof, before me, S. M. Rodney, Consular Commercial Agent of the United States for the City of Havana, personally came and appeared Henry Lively, master of the brig Seneca, belonging to the port of New York, in the State of New York, of the burthen of 305 66-95 tons or thereabouts; also Edward Monteith, mate of said brig, and William Hunt, of and belonging to the brig aforesaid—who being severally sworn, did declare and depose that the said brig, being laden with a cargo of furniture and dry goods, they, the said appearers, made sail in and upon the said brig from the port of New York, bound to the Havana, on the 30th day of January, in the year 1827. That in the prosecution of the voyage nothing material occurred until the 31st day of January last past, which commenced with thick, hazy weather; at half-past one the pilot left us; middle part light airs and clear, latter part heavy gales; took in all sail except the close-reefed main-topsail and fore-topmast-staysail. And that on the first day of February last past begins with stormy gales from the northwest; at 2 P. M. set the reefed foresail and close-reefed fore-topsail; at 6 A. M. more moderate; at 7 let the double reef out of the top sails; latter part fine and pleasant weather. And that on the third day of said month of February commenced with thick cloudy weather; at 1 P. M. fresh breezes, take in the light sails and main

sail, double-reefed the fore and main topsail, and reefed the try-sail; latter part fresh gales from the south and westward. And that on the fourth day continues with strong gales; latter part more moderate. And that on the sixth day of said month, begins with strong breezes from the south and westward; at 8 P. M. double reefed the fore and main topsails, took in the jib and reefed the foresail. Midnight strong gales and clear weather; latter part more moderate. And that on the eighth day commences with fine breezes. Midnight fresh breezes and clear; at 3 A. M. the breeze increasing, took in top gallant sail, mainsail and jib; latter part the gale increasing, close reefed the fore-topsail and handed it, double reefed the main topsail, and balanced reefed the trysail. And that on the 19th day of said month, at 10 A. M., came to with the stern anchor off the Moro. And that on the 20th day of February reached the city of Havana, where the first named deponent came on shore within twenty-four hours thereafter, and noted protest to be extended as is now done.

"And the said appearers did further severally declare that the said brig at the time of her departure from New York aforesaid, was tight, staunch and strong; had her hatches well and sufficiently calked and covered, was well and sufficiently manned, provided and furnished with all things needful and necessary for said voyage; and during the said voyage the said appearers and ship's company used their utmost endeavors to preserve the said brig and the goods of her loading from damage. And therefore the said Henry Levely did declare to protest as by these presents he doth solemnly protest against all and every person or persons whomsoever it may or shall concern, and doth declare that all damages, losses and detriments that have happened to the said brig, and the goods of her loading are and ought to be borne by the merchants and freighters interested, or by whomsoever else it may or shall concern (by way of average or otherwise); the same having occurred, as before set forth, and not by or through the insufficiency of the vessel; the neglect of him, the said appearer or appearers, or either of the other mariners or seamen belonging to the said brig.

"All which matters and things were declared, alleged and affirmed before me the said Consular Commercial Agent; and therefore, I have hereunto set my hand and affixed

the seal of my office, being requested to certify and testify the premises.

"Thus done and protested at the city of Havana, this 9th day of March, 1827."

(a) *Fleming v. Mar. Ins. Co.*, 3 W. & S. 144.

61. Protests as Evidence.—While the making of protests is a mere precaution, having for its object the preservation of evidence, the protests themselves whenever the question has been tested in the courts, have not been allowed much weight in favor of those who made them, because they are made by parties directly interested. To be admissible as evidence they must be made as soon as possible after reaching a place where there is an authority empowered to receive them. A vessel-master who had been picked up at sea reached Newburyport, August 12, 1786, and passed through Philadelphia to Alexandria, where on September 22, he made his protest, his reason for not making it before being that he had not money enough to pay the protest-fee. The court declared the reason a flimsy one and refused to admit the protest in evidence, saying that it should have been made at the first port, and if it could not be made there, at the next. (a) A protest has been held inadmissible as evidence unless made within twenty-four hours after the vessel is moored at her port of destination. (b) In the earliest reports, however, the rule was much less strict. (c) But these facts do not affect the notary, except as showing that the taking of the protest must not be put off.

(a) *Boyce v. Moore*, 2 Dall. 196.

(b) *Fleming v. Marine Ins. Co.*,
3 W. & S. 144; *American Ins.
Co. v. Francia*, 9 Penn. St.
390.

(c) *Brown v. Girard*, 4 Yeates,
115; *Miller v. South Caro-
lina Ins. Co.*, 2 McCord, 336.

62. Protests of Foreign Shipmasters.—"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."(*a*)

(*a* Rev. Stat. of United States, § 2391.

63. False Protests.—The making or procurement of false protests is punishable heavily. In Michigan, any vessel-master or other officer or mariner who makes, causes to be made, or swears to any false protest, and any owner or other person concerned in the vessel or cargo who procures it to be made, or exhibits it with the purpose of injuring, deceiving or defrauding any insurers of the vessel or cargo, is liable to imprisonment for ten years or less in the State prison, or a fine of not more than \$5,000, with not more than a year's imprisonment in the county jail. (*a*)

(*a*) 2 Comp. L. § 7595.

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LIABILITY FOR NEGLIGENCE.

64. Negligent Errors.—The notary, being a ministerial officer and not vested with discretionary powers, is bound to understand his duties sufficiently to use ordinary diligence in the execution, and is liable for the negligent performance of them. His liability for civil and criminal misconduct is often declared by statutes. The provision in Michigan is that any person aggrieved by any delinquency or misconduct of a notary may prosecute a suit on his official bond, and may obtain judgment in the manner prescribed in relation to suits on the official bonds of sheriffs. (a) Generally, the holder of a bill is authorized to give full credence to a notary's certificate of demand and notice, and may look to the notary to repair any injury resulting from their falsity. (b) In California, if he omits to insert the requisite facts in his certificate so as to make the record valid, he may be liable in damages. (c) And, of course, his wilful misdoings are punishable; for instance, by a Louisiana statute a notary officially certifying a falsehood as truth may be prosecuted as for a misdemeanor. (d)

(a) 2 Comp. L. § 6645.

(b) Bank of Mobile v. Marston, 7 Ala. 108; Bowling v. Arthur, 34 Miss. 41; Bellemire v. Bank of United States, 1 Miles (Pa.) 173.

(c) Fogarty v. Finlay, 10 Cal. 239.

(d) Succession of Tete, 7 La. Ann. 95.

65. Acts as Agent.—His action, however, is sometimes so strictly that of an agent that delicate questions arise as to his responsibility. If he acts under the explicit instructions of his employer, he is of course excused from liability; as where he was directed to protest a bill on the wrong day, the court held that he was not presumed to be a lawyer who was to revise or reverse his employer's decision as to the character of the bill. (a) But where a statute requires him in protesting a promissory note, to give notice of dishonor to antecedent parties, he is bound to notify them, and is liable to an action on the part of those injured by his neglect. (b)

(a) Com'l Bank of Kentucky v. Varnum, 49 N. Y. 269.

(b) Johnson's Cyc. tit. Notary Public, by T. W. Dwight.

66. Diligence.—The liability of the notary depends some upon the question whether the negligence of which he is guilty is committed in the performance of a strictly notarial act, or of some act which any other agent besides a notary might perform as well. If a collecting agent gives a bill to a notary to protest, and the notary's negligence discharges the drawer and indorsers, some courts hold that if his act was strictly notarial,—as in making the actual protest,—the notary is directly liable, but that if it was such a mere act of agency as giving notice of protest of an inland bill, the person for whose benefit the notice was given cannot sue him. Still, it is held in many States that the remedy is against the notary alone, whether the act is notarial or not. (a) As every professed notary must be supposed to be answerable for the competent discharge of the duties of his office, the only safe way for him is to perform them with diligence and care, and not to depend upon his ignorance to shield him from liability.

(a) Johnson's Cyc. tit. Notary Public, by T. W. Dwight.

PROOFS IN BANKRUPTCY.

The Notary's Power.—Whatever statutory powers are granted to the notary by different States, he is authorized throughout the Union, by the amendatory Bankrupt Act of 1874, to take proof of debts against the estates of bankrupts, under the regulations provided by law, certifying such proof and attesting it by his signature and official seal. (a)

(a) Rev. Stat. of U. S. § 5076 A.

The Proof must be written out and sworn to, and must set forth the demand and the consideration; state whether any securities are held for it, and if so, what, and whether any payments have been made on it, and if so, what; allege that the sum claimed is justly due from the bankrupt to the claimant; that neither the claimant nor any other person for his use, has received any security or satisfaction other than that which he has set forth; that the claim was not procured for the purpose of influencing the decisions in bankruptcy, and that no bargain or agreement, express or implied, has been made or entered into, by or on behalf of such creditor, to sell, transfer or dispose of the claim, or any part thereof, against such bankrupt, or take or receive, directly or indirectly, any money, property or consideration whatever, whereby the vote of such creditor or any other person in the proceedings, is or shall be in any way affected, influenced or controlled. In cases of assigned claims the date and fact of the transfer must be shown and the original creditor's name. Where the claim is of a lien on property the proof should contain a description of the property and a statement of its estimated value; a description of the lien, and a statement of its character, of the manner in which it was acquired, and of all the circumstances necessary to make it a valid claim against the property. Data should be furnished for a computation by the register of the interest due. In case of debts in open account interest need not be computed unless it is shown when they became due, or the average date of maturity if there are different items. There must be an averment that no note has been received for the account

nor any judgment rendered on it. The name and residence of the affiant must be given, and the full name of the creditor, or, at least, one christian name in full, besides his surname. If it is a firm that is the creditor, the names of all the partners should be stated. The evidences of debt, such as the note, agreement, bond, or account, should be marked as Exhibits, identified by the notary's signature, and affixed to the deposition. Written evidences of liens, or duly certified copies of them, are generally attached as exhibits also. There ought to be an express reservation of all rights under the security in cases of lien, so forfeiture may not be risked. The proof should be entitled in the court and cause in which it is to be used, and show the district in which it is to be taken, and the name and official title of the officer taking it. It must be signed by the affiant, and by the officer who takes it, who must also, if he is only a notary public, add a certificate that the proof is satisfactory to him. It must be indorsed with a brief statement of its character and of the title of the case and of the court where it pends. When it has been taken in due form it should be sent to the register who has charge of the case, who can reject it if he finds it legally defective, and return it to the notary to be amended.

Letters of Attorney.—If a creditor who has proved his claim wishes to take part in the election of the bankrupt's assignee, and cannot be present himself, he usually executes a letter of attorney, which must be properly attested, and is usually acknowledged; the acknowledgment can be taken by a notary. It should be properly entitled in the cause, and addressed to the person whom the creditor selects as his agent. If it is addressed to more than one, it ought not to be made joint, because that would compel the agents to act jointly. Any power of substitution should be specially inserted, as one agent cannot authorize another to act for him without such power. The party executing it must sign it, but a partner or an agent may sign it for his co-partners or principal respectively, indicating however that the names were all signed by himself. The partner, too, must swear that he is a member of the firm, and the agent must show by legal evidence that he is authorized to sign. If executed for a corporation, the signer must take oath that he is a duly authorized officer

of the corporation. When the signer is not personally known to the officer taking the proof or acknowledgment, his identity must be satisfactorily proved to him. An agent making the acknowledgment should make it as the act of his principal, and a partner as that of his firm. The officer taking it should sign the certificate of acknowledgment.

The execution or assignment of a claim after proof of it, may be proved or acknowledged as is a letter of attorney. (a)

(a) Bump's Bankruptcy (9th Ed.) Chap. V., p. 81. Notes of Decisions, pp. 619-640. Also see Forms 21 to 26 inclusive, pp. 907-912.

SPECIAL DUTIES.

70. As Circuit Court Commissioners.—Upon an order from the circuit judge of the county, any notary who is an attorney of the Supreme Court may act in any particular suit as circuit court commissioner, where it is shown that there is no such officer in the county, or if there is, that he is disqualified from acting by being himself concerned in the case. (a) But, before acting, he must be satisfied by affidavit or other suitable proof that there is no regular commissioner who can perform the duty, and this proof must accompany his acts and form part of his proceedings. (b) He may exercise a commissioner's powers in issuing execution or process to enforce his determinations, and cases may be appealed or removed from before him to the circuit court. If his term of office as notary expires before the conclusion of the proceedings before him, they are not discontinued, but are transferred to some circuit court commissioner or some other notary appointed to take cognizance of the matter. (c) But these provisions cannot be construed to give the notary the right to exercise any judicial powers whatever. He cannot, for instance, dissolve an attachment. (d) Nor can he be authorized by the stipulation of parties to perform a commissioner's duties. (e) The law does not favor the enlargement of his powers beyond those of a ministerial character.

(a) 2 Comp. L. § 5585, 5596.

(b) § 5597.

(c) § 5598.

(d) Chandler v. Nash, 5 Mich. 418.

(e) Crone v. Angell, 14 Mich. 346.

71. Taking Testimony.—The notary may frequently have to perform the circuit court commissioner's duty of taking testimony on depositions. A suitable form of oath to be administered in such cases is given in the chapter on Affidavits. When he has taken the testimony he must make due return of it as a circuit court commissioner would, and may certify to his return in this form:

[Title of the Case and Court.]

"I (name) a notary public in and for the county of _____ do hereby certify that the foregoing deposition of _____ was taken before me at my office in (name of the

place) at (date, and time, and place, in full, as stated in the commission authorizing him to take the testimony) on the part and at the request of ———, the above named plaintiff; that the said deposition was taken pursuant to the notice, a copy of which, with an affidavit of the service thereof, is hereto annexed, and that the said deposition was taken for the reason that the said (deponent's name) resides more than thirty miles from the place of trial of said cause, as appears by the affidavit of the said plaintiff, also hereto annexed; that before making the said deposition, the said (deponent's name) was by me duly sworn to tell the truth, the whole truth and nothing but the truth relating to the cause aforesaid; that the said testimony was reduced to writing by me and subscribed by said witnesses in my presence; and that at the taking of the said deposition ———, Esq., the attorney of the above named defendant, appeared before me and put such interrogatories to the said witness as he thought fit. Dated (name of place, and date)."(a)

[Signature and Title.]

(a) 2 Com. L. §§ 7434, 7446.

f

FEES.

72. Overcharging fees is a misdemeanor. The fees allowed to Michigan notaries by statutes (2 Comp. L., §§ 7434, 7446) are—

For drawing affidavit, per folio..... 20 Cents

For copying it, per folio..... 6 "

For taking depositions, as circuit court commissioner, per folio..... 20 "

For every day's attendance in taking testimony..... \$3 00

For every folio of testimony taken... 10 "

For administering an oath generally..... 25 "

For administering an oath or giving an official certificate to a discharged soldier or seaman or, if dead, his legal representatives, for the purpose of procuring the payment of pension, bounty or back-pay (Comp. L. § 7474.)..... 15 "

But it appears that for administering an oath to the widow of a deceased soldier, or the guardian of his minor children, "or other legal representative of such deceased soldier or sailor" (Comp. L. § 7475), he may charge..... 25 "

For taking proof of debt in bankruptcy, per folio..... 20 "

For certifying such proof to be satisfactory 25 "

For taking every acknowledgment to a deed, unless there is more than one to be taken, 25 "

For every additional acknowledgment.... 10 "

For drawing and copy of protest for non-payment or non-acceptance where necessary by law..... 50 "

For drawing and copy of every other protest..... 25 "

For drawing copy and service of every notice of non-payment or non-acceptance. 25 "

FORMS.

The following forms will be found useful by notaries. They are published by Messrs. Richmond, Backus & Co., of Detroit, the publishers of the Notary's Manual, and each form is designated by its number according to their sale-list.

The blank spaces simply indicate that the names, dates and facts wanting are to be there inserted, whether expressed by single words or by whole clauses.

No. 1.—[R. B. & Co. No. 203.]

OATH AND BOND AS NOTARY PUBLIC.

KNOW ALL MEN BY THESE PRESENTS, That as principal, and as surety held and firmly bound unto the People of the State of Michigan, in the penal sum of one thousand dollars, lawful money of the United States of America, to be paid to the said People, or to their certain attorney, heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each and every one of them, firmly by these presents.

Sealed with our seals, dated the day of one thousand eight hundred and seventy

WHEREAS, said was on the day of A. D. 187 , duly commissioned Notary Public for the County of for the period of four years.

NOW THEREFORE, The condition of this obligation is such, that if the said shall duly and faithfully discharge the duties of his said office, without fraud, then this obligation to be void, otherwise to be and remain in full force and virtue.

Signed and Sealed in Presence of }

[L. S.]
[L. S.]

I do hereby approve the within Bond and the sureties thereon.

Dated at this day of A. D. 187 .
County Clerk.

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STATE OF MICHIGAN, }
County of } ss.

I do solemnly swear that I will support the Constitution of the United States, and the Constitution of this State, and that I will discharge the duties of the office of Notary Public in and for said County to the best of my ability.

Subscribed and sworn to before me, this day of
A. D. 187 .

No. 2—[R. B. & Co. No. 269.]

MARINE PROTEST.

UNITED STATES OF AMERICA

STATE OF MICHIGAN. }
County, } ss.

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME OR
MAY CONCERN :

I, a Public Notary in and for the State of Michigan, by letters patent under the Great Seal of the said State, duly commissioned and sworn, dwelling in the , send GREETING : KNOW YE, That on the day of in the year of our Lord one thousand eight hundred and before me, the said Notary, appeared of the 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 the aforesaid, again comes the said and requires me to extend his Protest, and together with the said also come belonging to the aforesaid all of whom, being by me duly sworn, voluntarily, freely, and solemnly do declare and depose as follows, that is to say: That he the said set sail and departed in and with the said as thereof, from having on board the said a cargo of and bound for the Port of that the said was then stout, staunch and strong; had her cargo well and sufficiently stowed and secured; was well masted, manned, tackled, victualled, appareled and appointed; and was in every respect fit for sea, and the voyage she was about to undertake: [Insert the special facts

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upon which the protest is based, with all circumstances bearing on them,] and the said further says, that as all the damage and injury which already has or may hereafter appear to have happened or occurred to the said or her said cargo, has been occasioned solely by the circumstances herein before stated, and cannot, nor ought to be attributed to any insufficiency of the said 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 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 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 or the owner or owners of the said 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 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, to fall on him, the said his officers or crew.

THUS DONE AND PROTESTED, in the this day of in the year of our Lord one thousand eight hundred and

IN TESTIMONY WHEREOF, I, the said Notary, have subscribed these presents, and have also caused my Seal of Office to be hereunto affixed, the day and year last above written.

Notary Public.

FORMS.

STATE OF MICHIGAN, }
County, } ss.

seamen of and belonging to the called the
being severally duly sworn, do severally make oath and say
that the foregoing instrument of Protest hath been clearly
read over to them, these deponents, and that the several
matters and things therein contained, are right and true
in all respects, as the same are therein particularly alleged,
declared and set forth.

Subscribed and Sworn to before me this day of
18

No. 3—[R. B. & Co. No. 356.]

PROOF OF DEBT.

STATE OF }
County of } ss.

being duly sworn, deposes and says that the
foregoing and annexed account is correctly made out from
the books of original entry of the said that the said
charges were made in said books at or about the time of
their respective dates; that the goods for which said charges
were made, were sold and delivered by said to that
the charges are correct, and the account just and true as
stated, to the best of deponent's knowledge and belief;
that the demand of said against said as shown
by the annexed account, is just, due and unpaid; that there
is no just off-set known to deponent, either in law or equity,
against said demand; that all just and legal set-offs, pay-
ments and credits, have been given to said account; that
there is now due to the said from said upon
said open account the sum of Dollars, as near as this
deponent can estimate the same, over and above all legal
set-offs, and that interest is due thereon from the day
of A. D. 18 at the rate of per cent. per annum.

Taken, subscribed and sworn to before me at in
the County of and State of the day of
A. D. 18

WHEN this Affidavit is sworn to outside of the State of Michigan,
the following instructions MUST BE STRICTLY OBSERVED :

FIRST—It must be certified by some Judge of a Court having a seal,
to have been taken and subscribed before him, specifying the time and
place where taken.

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SECOND—The genuineness of the signature of such 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 the seal thereof; or,

THIRD—If such Affidavit be taken in any other of the United States, or any Territory thereof, it may be taken before a Commissioner duly appointed and commissioned by the Governor of this State to take affidavits to be used therein.

No. 4.—[R. B. & Co. No. 332½.]

AFFIDAVIT—PROOF OF ACCOUNT.

County of
STATE of MICHIGAN. } ss.

On this 187 , personally appeared and made
oath, the within is correct and has not been paid.
Sworn and subscribed before me this 187
Notary Public, County, Michigan.

No. 5.—[R. B. & Co. No. 332.]

PROOF OF DEMAND.

STATE OF
County of } ss.

being duly sworn, says that he makes this affidavit
in behalf of That the amount of as near as he
can estimate the same, over and above all legal set-off, is
due to the said from upon an account
of which a copy is hereto annexed,

Sworn to and subscribed before me, this day
of A. D. 187

No. 6.—[R. B. & Co. No. 288.]

AFFIDAVIT OF DEBT.

STATE OF MICHIGAN, } ss.
County of

being duly sworn, deposes and says that the
foregoing and annexed account is correctly made out from
the books of original entry of the said that the said
charges were made in said books at or about the time of

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their respective dates; that the goods for which said charges were made, were sold and delivered by said to that the charges are correct, and the account just and true as stated, to the best of deponent's knowledge and belief; that the demand of said against said as shown by the annexed account, is just, due and unpaid; that there is no just off-set known to deponent, either in law or equity, against said demand; that all just and legal set-offs, payments and credits have been given to said account; that there is now due to the said from said upon said open account, the sum of Dollars, as near as this deponent can estimate the same, over and above all legal set-offs, and that interest is due thereon from the day of , A. D. 187 , at the rate of per cent. per annum.

Subscribed and sworn to before me, this day of , A. D. 187

No. 7—[R. B. & Co. No. 22.]

PROTEST NOTICE.

187 .

Mr

TAKE NOTICE, That the for \$ made by dated payable after date at and endorsed by you, has this day been presented and demand made for thereof, which has been refused; said has been duly PROTESTED for non- and the holders now look to you for payment of the same.

Yours, &c.,

Notary Public.

No. 8.—[R. B. & Co. No. 23.]

CERTIFICATE OF PROTEST.

STATE OF MICHIGAN, }
County of } ss.

BE IT KNOWN, That on the day of in the year of our Lord one thousand eight hundred and seventy- at the request of I a Notary Public, duly

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admitted and sworn, dwelling in _____ County and State
aforesaid, did present the original _____ which is attached,
at the _____ and demanded _____ thereof, which was re-
fused.

WHEREUPON, I, the said Notary, at the request afore-
said, did PROTEST, and by these presents do solemnly pro-
test, as well against the Drawers, Makers and Endorsers
of the said _____ as against all others whom it doth or
may concern, for exchange, re-exchange, and all costs,
charges, damages and interest already incurred and to be
incurred by reason of the non- _____ of the said _____

And I, the said Notary, do hereby certify, that on the
same day and year aforesaid, due notices that said _____
had thus been presented for _____ and that _____ thereof
had been thus demanded and refused, and that the holders
of the said _____ did and would look to the Drawers,
Makers and Endorsers thereof for payment of the same,
were put into the Post-office at _____ with the full legal
postage paid thereon, and directed as follows, after dili-
gent inquiry being made for the residence and place of
business of the Drawers and Endorsers :

Notices for _____ directed

“ “

And I further certify, that notices were left as follows:

Notice left for _____ at

“ “

Each of the above named places being the reputed place
of residence or business of the person to whom the notice
was directed, or to whom it was left aforesaid.

IN WITNESS WHEREOF, I have hereunto subscribed my
name and affixed my seal of office.

Notary Public.

No. 9.

AFFIDAVIT OF SERVICE OF SUMMONS OR NOTICE.

[Title of the Court and Case.]

STATE OF _____ }
County of _____ } ss.

being duly sworn says that he is (a clerk in the of-
fice of the attorney for the plaintiff in the above entitled
cause—or whatever his occupation may be) and that on

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the day of 18 , he served on [name of defendant] at [his place of business or residence] in the city of the within summons [or notice], by delivering a copy thereof to him personally, and leaving the same with him [or, by tendering a copy thereof to him personally, and on his refusal to receive the same, deponent laid it down upon the desk of the said and said to him, "I hereby deliver this to you." Deponent further says that he knows the person so served to be the person mentioned and described in the summons as defendant therein [or the person to whom said notice is addressed.]

[Jurat.]

[Signature.]

No. 10.

AFFIDAVIT OF SERVICE OF SUBPŒNA.

STATE OF }
County of } ss.

being duly sworn says that on the day of
18 , at in said County, he served the annexed subpœna personally on therein named, by then and there showing to him the said original subpœna, and at the same time giving to and leaving with him a copy of the same, and at the same time and place paying [or, tendering] him cents, his fees.

[Jurat.]

[Signature.]

No. 11.—[R. B. & Co. No. 17.]

ASSIGNMENT OF MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS, That of the first part, for and in consideration of the sum of lawful money of the United States of America, in hand paid by of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and BY THESE PRESENTS do grant, bargain, sell, assign, transfer and set over unto the said part of the second part, a certain Indenture of Mortgage, bearing date the day of one thousand

eight hundred and seventy- made and recorded
in the Register's Office of the County of in Liber
of Mortgages, at page with all and singular the
premises therein mentioned and described together with
the or obligation therein also mentioned, and the
moneys now due, and the interest that may hereafter grow
due thereon; To HAVE AND TO HOLD the same unto the
said part of the second part, heirs, and assigns,
FOREVER, subject only to the proviso in the said Indenture
of Mortgage mentioned. And do hereby authorize
and appoint the said part of the second part, true
and lawful attorney, irrevocable in name, or other-
wise, but at proper costs and charges, to have, use
and take all lawful ways and means for the recovery of
the sum or sums of money now due and owing, or here-
after to become due and owing, upon the said and
mortgage; and in case of payment to give acquittance or
other sufficient discharge, as fully as might or could
do if these presents were not made; and do hereby
for heirs, executors and administrators, covenant,
promise and agree to and with the said part of the second
part, that there is due upon the said and Mort-
gage the sum of and that ha good, right, and
lawful authority to grant, bargain and sell the same in
manner aforesaid.

Sealed and delivered the day of 187
In presence of }
[Two witnesses.] } [L. S.]
[Add acknowledgment.]

No. 12.—[R. B. & Co. No. 18.]

DISCHARGE OF MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS, That of the
of and State of Do HEREBY CERTIFY, That
a certain Indenture of Mortgage bearing date the day
of one thousand eight hundred and seventy- made
and executed by of the first part, to of the
second part, and recorded in the Register's Office for the
County of in Liber of Mortgages, on Page
on the day of one thousand eight hundred and

seventy- is fully paid, satisfied and discharged.
 IN WITNESS WHEREOF, hereunto set hand and
 seal the day of one thousand eight hundred
 and seventy-

Signed, Sealed and Deliv- }
 ered in Presence of
 [Two witnesses.] }

[L. S.]

[Add acknowledgment.]

No. 13—[R. B. & Co. No. 18 A.]

RELEASE—PART OF MORTGAGED PREMISES.

THIS INDENTURE, Made this day of in the year one
 thousand eight hundred and BETWEEN part
 of the first part, and part of the second part:
 WHEREAS, by Indenture of Mortgage, bearing date the
 day of one thousand eight hundred and
 for the consideration therein mentioned, and to secure the
 payment of the money therein specified, did convey certain
 lands and tenements, of which the lands hereinafter des-
 cribed are part, unto AND WHEREAS, The said part
 of the first part, at the request of the said part of the
 second part, ha agreed to give up and surrender the lands
 hereinafter described unto the said part of the second
 part, and to hold and retain the residue of the mortgaged
 lands as security for the money remaining due on the said
 mortgage:

Now, THIS INDENTURE WITNESSETH, That the said
 part of the first part, in pursuance of the said agree-
 ment, and in consideration of Dollars, to duly
 paid at the time of the ensealing and delivery of these
 presents, the receipt whereof is hereby acknowledged,
 ha granted, released, quit-claimed, and set over, and by
 these presents do grant, release, quit-claim, and set over,
 unto the said part of the second part, all that part of
 the said mortgaged lands situated and being in the
 of County of and State Michigan, known and
 described as follows:

TOGETHER with the hereditaments and appurtenances
 thereunto belonging, and all the right, title and interest of
 the said part of the first part, of, in and to the same, to

FORMS.

the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified may remain to the said part of the first part.

TO HAVE AND TO HOLD the lands and premises hereby released and conveyed, to the said part of the second part, heirs and assigns, to their only proper use, benefit and behoof, forever, free, clear, and discharged of and from all lien and claim, under and by virtue of the Indenture of Mortgage aforesaid.

IN WITNESS WHEREOF, The said part of the first part ha hereunto set hand and seal the day of in the year one thousand eight hundred and seventy-

Signed, Sealed and Deliv- }
ered in presence of
[Two witnesses.] }

[L. S.]

[Add acknowledgment.]

No. 14—[R. B. & Co. No. A.]

CHATTEL MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS, That of the first part, being justly indebted unto of the second part the sum of ha for the purpose of securing payment of said debt, and the interest thereof, granted, bargained, sold and mortgaged, and by these presents do grant, bargain, sell and mortgage unto the said the following goods, chattels and personal property, to-wit:

which said above described goods, chattels and property, at the date hereof, are situate at in the of County, Michigan, and are free and clear from all liens, conveyances, incumbrances and levies and for a valuable consideration hereby warrant the above representations to be true TO HAVE AND TO HOLD THE SAME FOREVER. Provided always, and the condition of these presents is such, that if the said shall pay or cause to be paid the said the debt aforesaid, with the interest, on or before the day of A. D. 187 , then this instrument shall be void and of no effect. And the said agree to pay the same accord-

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ingly. But if default be made in such payment, the said
 hereby authorized to and shall sell at public auction,
 after the like notice as is required by law for constables'
 sales, the goods, chattels, and personal property hereinbe-
 fore mentioned, or so much thereof as may be necessary to
 satisfy the said debt, interest and reasonable expenses, and
 to retain the same out of the proceeds of such sale, the
 overplus or residue, if any, to belong, and to be returned
 to . And the said hereby authorized at any
 time when shall deem insecure, or if the said
 part of the first part shall sell, assign or dispose of, or
 attempt to sell, assign or dispose of the whole or any part
 of the said goods and chattels, or remove or attempt to
 remove the whole or any part thereof, from the said
 without the written assent of the part of the second
 part, then and from thenceforth it shall and may be lawful
 for the said part of the second part, executors, ad-
 ministrators or assigns, or his, her or their authorized
 agent, to enter upon the premises of the said part of the
 first part, or any place or places where the said goods and
 chattels, or any part thereof, may be, and take possession
 thereof, and the same retain in some convenient place, at
 the risk and expense of , and the said sum of money
 shall become due, as aforesaid, and then to dispose of the
 same in the manner above specified.

IN WITNESS WHEREOF, The said part of the first part,
 ha hereunto set hand and seal the day
 of in the year of our Lord one thousand eight hun-
 dred and seventy-

Signed, Sealed and Deliv-
 ered in Presence of }

[L. s.]

[L. s.]

No. 15—[R. B. & Co. No. 1.]

WARRANTY DEED—SHORT FORM.

THIS INDENTURE, Made this day of in the
 year of our Lord one thousand eight hundred and seventy
 BETWEEN of the first part, and of the
 second part, WITNESSETH, That the said part of the
 first part, for and in consideration of the sum of to

FORMS.

in hand paid by the said part of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents, grant, bargain, sell, remise, release, alien and confirm unto the said part of the second part, and heirs and assigns, FOREVER, All certain piece or parcel of Land, situate and being in the of County of and State of Michigan, and described as follows, to wit: [Insert description.] TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining: To HAVE AND TO HOLD the said premises, as described, with the appurtenances, unto the said part of the second part, and to heirs and assigns, FOREVER. And the said part of the first part, heirs, executors and administrators, do covenant, grant, bargain and agree, to and with the said part of the second part heirs and assigns, that at the time of the ensembling and delivery of these presents well seized of the above-granted premises in Fee Simple; that they are free from all incumbrances whatever, and that will, and heirs, executors, administrators shall WARRANT AND DEFEND the same against all lawful claims whatsoever,

IN WITNESS WHEREOF, the said part of the first part ha hereunto set hand and seal the day and year first above written.

Sealed and Delivered in }
Presence of }

[L. S.]
[L. S.]

STATE OF MICHIGAN, } ss.
County of }

On this day of in the year one thousand eight hundred and seventy- before me, a in and for said County, personally appeared to me known to be the same person described in and who executed the within instrument, who acknowledged the same to be free act and deed.

No. 16—[R. B. & Co. No. 6.]

MORTGAGE—SHORT FORM.

THIS INDENTURE, Made this day of in the year of our Lord one thousand eight hundred and sev-

FORMS.

enty BETWEEN of the first part, and of
 the second part, WITNESSETH, that the said part of the
 first part, for and in consideration of the sum of to
 in hand paid by the said part of the second part,
 the receipt whereof is hereby confessed and acknowledged,
 has granted, bargained, sold, remised, released, enfeoffed
 and confirmed, and by these presents do grant, bargain,
 sell, remise, release, enfeoff and confirm unto the said
 part of the second part, and to heirs and assigns,
 FOREVER, ALL certain piece or parcel of Land
 situate in the of , in the County of and
 State of Michigan, and described as follows, to-wit: [In-
 sert description.] TOGETHER with the hereditaments and
 appurtenances thereunto belonging or in anywise apper-
 taining; TO HAVE AND TO HOLD the above bargained prem-
 ises, unto the said part of the second part, and to
 heirs and assigns, to the sole and only proper use, benefit
 and behoof of the said part of the second part
 heirs and assigns FOREVER:

PROVIDED ALWAYS, and these presents are upon this
 express condition, that if the said part of the first part
 shall and do well and truly pay, or cause to be paid, to the
 said part of the second part, the sum of according
 to bearing even date herewith, executed by to
 the said part of the second part, as collateral security,
 then these presents, and shall cease, and be null and
 void. But in case of non-payment of the said sum of or
 of the interest thereof, or any part of said prin-
 cipal or interest, at the time, in the manner and at the
 place above limited and specified for the payment thereof,
 then and in such case it shall and may be lawful for the
 said part of the second part, heirs, executors, ad-
 ministrators or assigns, and the said part of the first
 part do hereby empower and authorize the said part
 of the second part, heirs, executors, administrators
 or assigns, to grant, bargain, sell, release and convey the
 said premises, with the appurtenances, at Public Auction
 or Vendue, and on such sale to make and execute to the
 purchaser or purchasers, heirs and assigns, FOREVER,
 good, ample and sufficient deed or deeds of conveyance in
 law, pursuant to the Statute in such case made and pro-
 vided, rendering the surplus moneys (if any there should
 be), to the said part of the first part, heirs, execu-

FORMS.

tors or administrators, after deducting the costs and charges of such vendue and sale aforesaid.

AND IT IS FURTHER EXPRESSLY AGREED, That as often as any proceeding is taken to foreclose this mortgage, either by virtue of the power of sale herein contained, or in Chancery, or in any other manner provided by law, said first part shall pay said second part Dollars, as a reasonable Solicitor or Attorney fee therefor, in addition to all other legal costs.

IN WITNESS WHEREOF, The part of the first part has hereunto set hand and seal the day and year first above written.

Signed, Sealed and Delivered in Presence of } [L. S.]
[L. S.]

STATE OF MICHIGAN, } ss.
County of

On this day of in the year one thousand eight hundred and seventy- before me, the subscriber, a in and for said County, personally appeared to me known to be the same person described in and who executed the within instrument, who acknowledged the same to be free act and deed.

No. 17—[R. B. & Co. No. 294.]

U. S. BANKRUPTCY ACT, March 2, 1867, Sec. 22.

[Deposition for Proof of Debt Without Security.]

IN THE DISTRICT COURT }
OF THE UNITED STATES } In Bankruptcy.
for the
District of

IN THE MATTER OF BANKRUPT .
District of , ss.

At in the County of and State of , in said District, on the day of A. D. 187 , before me, , came , of in the County of and State of , and made oath, and says that the said , the person by or against whom a Petition for Adjudication in Bankruptcy has been filed, at and before the

FORMS.

filing of the said Petition and still justly and truly indebted to this Deponent* in the sum of† for or on account of which said sum of Dollars and Cents and interest, as above stated, or any part thereof, no payment has been made to this Deponent, nor to any person by his order for his use, nor has any judgment been rendered thereon, nor has any person by order, or to this deponent's knowledge and belief, for use had or received any manner of satisfaction or security whatsoever.

And this Deponent further says that the said claim was not procured for the purpose of influencing the proceedings under the Act of Congress, Title LXI., entitled "BANKRUPTCY," of the Revised Statutes of the United States; that no bargain or agreement, express or implied, has been made or entered into by or on behalf of this Deponent to sell, transfer, or dispose of said claim or any part thereof, against said Bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this Deponent for Assignee, or any action on the part of this Deponent or any other person in the proceedings under said Title LXI., has been, is, or shall be in any way affected, influenced or controlled.

Deposing Creditor.

Subscribed and sworn to before me, and the Exhibit hereto annexed, marked , certified by me ; and I certify that all the statements in the foregoing deposition appear to be true, and that the proof is satisfactory to me; and, further, that the fees paid to me for establishing the debt set forth in this deposition amount to the sum of \$, which is entitled to priority of payment under § 5101 Revised Statutes, pursuant to General Order XXX. in Bankruptcy.

*If claim due a partnership, state individual names and partnership name.

†After the † insert the amount and consideration of the debt, and whether any and what payments have been made thereon; and if on open account, state that "no Note has been received therefor nor any judgment rendered thereon."

No. 18—[R. B. & Co. No. 10.]

LEASE—SHORT FORM.

IT IS HEREBY AGREED, BETWEEN part of the first part, and part of the second part, as follows :

The said part of the first part, in consideration of the rents and covenants herein specified, do hereby LET OR LEASE to the said part of the second part for the term of from and after the day of 18 , on the terms and conditions hereinafter mentioned, to be occupied for , and in no case to be used for any business deemed extra hazardous on account of fire.

PROVIDED, That in case any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said part of the first , certain attorney, heirs, representatives and assigns, to re-enter into and re-possess the said premises, and the said part of the second part, and each and every other occupant to remove and put out.

And the said part of the second part do hereby hire the said premises for the term of as above mentioned, and do covenant and promise to pay to the said part of the first part, representatives and assigns.

And that will not assign nor transfer this lease, or sub-let said premises, or any part thereof, without the written assent of said part of the first part.

AND ALSO, that will at own expense, during the continuance of this lease, keep the said premises and every part thereof in as good repair, and at the expiration of the term, yield and deliver up the same in like condition as when taken, reasonable use and wear thereof and damage by the elements excepted.

And the said of the first part do covenant that the said part of the second part, on paying the aforesaid installments and performing all the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

The covenants, conditions and agreements, made and entered into by the several parties hereto, are declared binding on their respective heirs, representatives and assigns.

WITNESS our hands and seals this day of 187

[L. s.]

[L. s.]

FORMS.

IN CONSIDERATION of the letting of the premises in the foregoing instrument described, and for the sum of one dollar, to paid, do hereby become surety for the punctual payment of the rent and performance of the covenants in said instrument mentioned, to be paid and performed by the second parties therein named; and if any default shall at any time be made therein do hereby promise and agree to pay unto the part of the first part named in said instrument the said rent and arrears thereof that may be due, and fully satisfy the condition of said instrument, and all dangers that may occur by reason of the non-fulfillment thereof, without requiring notice or proof of the demand being made.

WITNESS hand and seal this day of 187
[L. S.]

No. 19—[R. B. & Co. No. 16 A.]

LAND CONTRACT—SHORT FORM.

ARTICLES OF AGREEMENT, Made and entered into this
day of in the year eighteen hundred and sev-
enty- BETWEEN of the first part, and
WITNESSETH, That the said party of the first part doth
hereby covenant and agree to and with the said party of
the second part, that will sell and convey, as here-
inafter mentioned, to the said party of the second part,
all that certain piece or parcel of land, situate and being
in the of in the County of and State of
 , and described as . The said part of the
second part, for heirs, executors and administrators
do hereby covenant and agree, that he will well and
truly pay, or cause to be paid, to the said part of the first
part, heirs, executors, administrators and assigns,
without fraud or delay, the just and full sum of with
interest payable annually on all sums unpaid .

And it is further covenanted by and between the parties
aforesaid, that on the performance of all the conditions to
be done and performed at the time and manner above men-
tioned and specified, on the part and behalf of the said
part of the second part, that the said part of the first
part, shall execute a DEED to the said part of the
second part, heirs, executors and administrators, sub-

ject to all taxes assessed for and after this year, and on the failure and neglect of the said part of the second part, to do or perform anything herein specified to be done and performed on part, the said part of the first part may elect to consider ^{of} released and discharged of and from and all liability in any of the covenants specified to be done and performed on part, and all payments and improvements made by the said part of the second part shall be deemed forfeited without further notice, as stipulated damages for non-performance of contract.

IN WITNESS WHEREOF, The said parties hereunto have set their hands the day and year first above written.

Signed, Sealed and Delivered in Presence of

No. 20—[R. B. & Co. No. 27.]

BILL OF SALE.

KNOW ALL MEN BY THESE PRESENTS, That of the of in the County of and State of Michigan, of the first part, for and in consideration of the sum of Dollars, lawful money of the United States, to paid by of of the second part, the receipt whereof is hereby acknowledged, ha bargained and sold, and by these presents do grant and convey, unto the said part of the second part executors, administrators or assigns, all the belonging to and now in possession at To HAVE AND TO HOLD the same unto the said part of the second part, executors, administrators and assigns, FOREVER. And the said part of the first part, for heirs, executors and administrators, do covenant and agree to and with the said part of the second part, executors, administrators and assigns, to Warrant and Defend the sale of said property, goods and chattels hereby made, unto the said part of the second part, executors, administrators and assigns against all and every person or persons whatsoever.

IN WITNESS WHEREOF, have hereunto set hand and seal this day of one thousand eight hundred and seventy-

Signed, sealed and Delivered in Presence of

[L. S.]

[L. S.]

[L. S.]

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