GENERAL INFORMATION ON BANKING AND BUSINESS METHODS.

Another common form of limiting the endorsement is to enable the payee (when it is made payable to his order) to transfer his title to the instrument without becoming responsible for its payment, and making the party to whom it is transferred assume all responsibility concerning payment. To do this the endorser writes the words "Without Recourse" over his signature, which has the effect of relinquishing his title without making him liable to the holder in case the payor fails to take it up.

Another method of limiting the endorsement is to make it conditional, a good illustration of which is the following: "Pay to John Sims or order upon his delivering to the First National Bank a warranty deed to lot 5, block 4, etc.," below which the endorser places his signature. He can also make it payable to "A. B. *only*," or in equivalent words, in which case "A. B." cannot endorse it over.

In fact, the endorser has the power to limit his endorsement as he sees fit, and either to lessen or increase his liability, such as either "waiving notice of demand;" making his endorsement a "general and special guaranty of payment" to all future holders, etc., but he cannot, by his endorsement, either increase or lessen the liability of any other endorser on the instrument.

An endorser, *as a rule*, is entitled to immediate notice in case the payor fails to pay it. This is the case in nearly all of the United States, as it has been a rule of the "law merchant" for many years. A few modifications, however, of the general "law merchant" have been made by statute in several of the States, relating to negotiable paper, in changing the endorser's liability by rendering his contract absolute instead of conditional, making notice unnecessary unless he suffers damage through want of it, or requiring a judgment to be first recovered before he can be held. In the absence, however, of statutory provisions of this kind, and they only exist in a few of the States, it may be said that to hold endorsers they must have prompt notice of non-payment, and it may be said to be a *general* rule of the "law merchant" that all parties to negotiable paper as endorsers who are entitled to notice are discharged by want of notice. The demand, notice and protest must be made according to the laws of the place where payable.

The term *Protest* is applied to the official act by an authorized person (usually a Notary Public), whereby he affirms in a formal or prescribed manner in writing that a certain bill, draft, check or other negotiable paper has been presented for acceptance or payment, as the case may be, and been refused. This, and the notice of the "Protest," which must be sent to all endorsers and parties to the paper is to notify them officially of its failure.

GUARANTY.

A "GUARANTOR" is one who is bound to another for the fulfillment of a promise, or of an engagement, made by a third party. This kind of contract is very common. According to the "statute of frauds" it must be in writing, and unless it is a sealed instrument there must be a consideration to support it. As a rule it is not negotiable, so as to be enforced by the transferee as if it had been given to him by the guarantor, but this depends upon the wording, as, if it contains all the characteristics of a note, payable to order or bearer, it will be held negotiable. A contract of guaranty is construed strictly, and, if the liability of the principal be materially varied by the act of the party guaranteed, without the consent of the guarantor, the guarantor is discharged. The guarantor is also discharged if the liability or obligation is renewed, or extended by law or otherwise, unless he in writing renews the contract. In the case of a bank incorporated for twenty years, which was renewed for ten years more without change of officers, the courts held that the original sureties could not be held after the first term.

The guaranty can be enforced even though the original debt cannot, as is the case in becoming surety for the debt of a minor. A guarantor who pays the debt of the principal is entitled to demand from the creditor all the securities he holds, or of the note or bond which declares the debt; and, in some States, the creditor cannot fall back upon the guarantor until he has collected as much as possible from these securities and exhausted legal remedies against the principal. If the debt or obligation be first incurred and completed before the guaranty is given, there must be a new consideration or the guaranty is void.

A guaranty is not binding unless the guarantor has notice of its acceptance, but the law presumes this acceptance when the offer of guaranty and acts of the party to whom it is given, such as delivery of goods or extending credit are simultaneous. But an offer to guarantee a future operation does not bind the offerer unless he has such notice of the acceptance as will afford him reasonable opportunity to make himself safe. A creditor may give his debtor some indulgence or accommodation without discharging the guarantor, unless it should have the effect of prejudicing the interests of the guarantor, in which case he would be released. Generally a guarantor may, at any time, pay a debt and so, at once, have the right to proceed against the debtor. Where there has been failure on the part of the principal and the guarantor is looked to, he must have reasonable notice—and notice is deemed reasonable if it prevents the guarantor from suffering from the delay.

It is, in many cases, difficult to say—and upon it rests the question of legal liability—whether the promise of one to pay for goods delivered to another is an original promise, as to pay for one's own goods, in which case it need not be in writing; or a promise to pay the debt or guaranty the promise of him to whom the goods are delivered, in which case it must be in writing. The question generally resolves itself into this: To whom did the seller give and was authorized to give credit? This is a question of fact and not of law. If the books of seller show that he charged them to the party to whom he delivered them, it is almost impossible for him to hold the other party for it, but if on the other hand it is shown that he regarded the goods as being sold to the party whom it is desired to hold, but delivered them to another party and it is so shown on his books, it is not regarded as a guaranty, but an original or collateral promise, and would make the party liable. In general, a guarantor of a bill or note is not entitled to such strict and exact notice as an endorser is entitled to, but only such notice as shall save him from actual loss, as he can not make the want of notice his defense unless he can show that it was unreasonably withheld and that he suffered thereby. There is a marked difference in the effect of a guaranty of the "payment," or of the "collection" of a debt. In the first case, the creditor can look to the guarantor at any time; in the latter, the creditor must exhaust his legal remedies for collecting it.

ACCOMMODATION PAPER.

AN accommodation bill or note is one for which the acceptor or maker has received no consideration, but has lent his name and credit to accommodate the drawer, payee or holder. He is bound to all other parties just as completely as if there were a good consideration, for, if this was not the case, it would be of no value to the party accommodated. He is not allowed to set up want of consideration as a defense as against any holder for value. But he is not bound to the party whom he thus accommodates, no matter how the instrument may be drawn.

IDENTIFICATION.

THE mere act of identifying a party or making him known to a banker carries with it no liability on the part of the party who thus preforms it, unless it can be shown there was fraud or collusion. Customers of banks are frequently asked to identify and make known to their own bankers, strangers who desire checks or drafts cashed or other accommodations. In some cases a mere introduction is all that is necessary, but only because the banker relies upon the honor and integrity of his customer, knowing that an improper person would not be introduced, for in a case of this kind the bank assumes all the risk. Generally speaking, however, it is an almost invariable rule with bankers, as it should be, to require their customer to endorse all drafts or checks which are honored for the stranger. In this case the endorser becomes personally liable to the bank if any or all of the drafts or checks prove worthless.

An endorsement which is frequently made by parties who are asked to identify others is to merely indicate that they know the party to be the payee named in the check or that the signature of the payee or party is correct. This is done by writing the words "Signature O. K." under the party's name and signing it. This has the effect of guaranteeing that the party's name is as written and that it is his proper signature. It does not guarantee that the check or draft is good or will be paid, but merely as expressed, that the signature is correct, and the only liability assumed is that he will pay the amount in case the signature proves a forgery. Many banks, however, will not accept paper endorsed this way and justly so, for it throws upon them the burden of the risk.

RECEIPTS AND RELEASES.

ANY acknowledgement that a sum of money has been paid is a receipt. A receipt which reads "in full" though admitted to be strong evidence is by no means legally conclusive. If the party signing it can show an error or mistake, it will be admitted in his favor. Receipts for money will be held open to examination, and the party holding it must abide the results of such examination—the great aim of the law being to administer strict justice. A receipt may be of different degrees of explicitness, as the word "Paid" or "Received Payment" written on a bill. A "release" is simply a form of receipt, but is more binding upon the parties, inasmuch as, if properly drawn, under seal, for a consideration, it is a complete defense to any action based on the debts or claims so released. Herein, releases differ from receipts. A release is in the nature of a written contract and therefore cannot be controlled or contradicted by evidence, unless on the ground of fraud. But if its words are ambiguous, or may have either of two or more meanings, evidence is receivable to determine the meaning.

INFANTS AND MINORS.

THE incapacity of a person to make a valid contract may arise from several causes, and the fact of being an infant, or minor, is one of them. The general rule of law may be stated as being that the contract of an infant or minor is not always void, but is voidable, and in many cases special exception is made, giving validity to their contracts for necessaries. By being voidable, but not void in themselves, means that the infant has the right to disavow and annul the contract, either before or within a reasonable time after he reaches his majority. He may do this by word only, but a mere acknowledgment that the debt exists is not enough, and it must be substantially a new promise.

AGENCY.

THERE are a few well-settled and important rules of law governing the matter of agents and agency, which every business man should understand thoroughly. The relation of principal and agent implies that the principal acts by and through the agent. A principal is responsible for the acts of the agent *only* when he has actually given full authority to the agent, or when he has by his words, or his acts, or both, caused or permitted the person with whom the agent deals to believe him clothed with this authority. This is a point which is not always thoroughly understood, but it is a well-settled principle of law. There are two kinds of agents—general and special. A general agent is one authorized to represent his principal in all his business, or in all his business of a particular kind, and his power is limited by the *usual* scope and character of the business he is empowered to transact. If he is given out as the general agent, the principal is bound, even if the agent transcends his actual authority, but does not go beyond the natural and usual scope of the business.

On the other hand, a special agent is one authorized to do only a specific thing, or a few specified things, or a specified line of work. If this special agent exceeds his authority, it may be stated as an almost invariable rule that the principal is not bound, because the party dealing with the agent must inquire for himself and at his own peril, into the extent and limits of the authority given to the agent. Especially is this the case where the party knew that the agent had been or was engaged in attending to a particular and specified line of work connected with the business of the principal. The party, however, is not bound by any special reservations or limitations made secretly by the principal of which he had no reasonable or easy means of having notice. The authority of an agent may be given by the principal, by writing or orally, or may be implied from certain acts. Thus if a person puts his goods into the custody of another whose business it is to sell such goods, he authorizes the whole world to believe that this person has them for sale; and any person buying them honestly, in this belief, would hold them. If one, knowing that another had acted as his agent, does not disavow the authority as soon as he conveniently can, but lies by and permits a person to go on and deal with the supposed agent, or lose an opportunity of indemnifying himself, this is an adoption and confirmation of the acts of the agent.

A principal is bound by the acts of an agent even after the revocation of his agency, if such revocation has not been made public or is unknown to the party dealing with the agent. An agent can generally be held personally liable if he transcends his authority; but this is not the case if the party with whom he dealt knew that the authority was transcended.

ORIGIN AND HISTORY OF BANKING.

IN general, banks may be said to be credit institutions or dealers in credit. John Jay Knox once said that "the exchanges of the modern world are barter, effected by the indirect agency of the credit system, and banks and bankers are the machinery by which this is done." Metallic money and its representative, the circulating note, are only the small change of "Trade" employed in the settlement of balances and small purchases and payments. This fact is illustrated by the operations of the New York clearing house. The exchanges have been about 800,000 millions of dollars during the past thirty years while the balances paid in money have only been about 36,000 millions, or about four per cent. of the amount of the settlements.

It has always been claimed that the business of banking originated with the Venetian money changers who displayed their wares and moneys on the streets and thus supplied those in need of change. According to the most eminent authorities the earliest banking institution in Europe was the Bank of Venice, which was founded in 1172, and was based upon a forced loan of the government. Funds deposited in it could be transferred to others on the books of the bank at the pleasure of the owner, but they *could not be withdrawn*. The perpetual annuities of the British debt are handled in a very similar manner at the present day. The Bank of Venice was continued until 1797. In 1401, the Bank of Barcelona was formed. At a period much earlier than this, the Jewish money-dealers had invented what are known as "foreign bills of exchange," but it is said that this bank was the first institution that made a business of negotiating and handling them. The Bank of Genoa commenced operation in 1407 and for centuries was one of the principal banks of Europe. It was the first to issue circulating notes—which were passed only by endorsement, not being payable to bearer.

The Bank of Hamburg, established in 1619, was a bank of both deposit and circulation based on fine silver bars. This bank, like nearly all of that early time, had, as a principal object, the protection of the people from worn, sweated, clipped and plugged coins, or coins of certain empires that were reduced in standard value. The remedy generally adopted was to lock up the debased and depreciated coins and circulate the credit granted for them. Various other banks sprang into existence throughout Europe, many of them being powerful government agencies, and in many cases exerted a wide influence in shaping the destinies of empires.

In 1694 the Bank of England was established, and there is no banking institution in the world equal to it in the management of national finances. The Bank of France was authorized in 1800. It is not a fiscal agent of the government as is that of England. It does not collect or disburse the revenues of the exchequer but it lends to it largely, while its credits, in the form of circulating notes and other acceptances, have borne the government safely through extraordinary needs.

It is claimed that the first organized bank in the United States had its origin in the formation of a banking company without charter June 18th, 1780, by the citizens of Philadelphia, and first action by Congress was taken June 22, of the same year in reference to this proposed association. Two years afterward, a "perpetual charter" was granted to the Bank of North America at Philadelphia. In 1784 the State of Massachusetts incorporated the Massachusetts Bank. The Bank of New York was chartered in March, 1791, although it had been doing business since 1784, under articles of association drawn by Alexander Hamilton. Most of these institutions are still running and have been converted into national banks. The Bank of the United States was organized in 1791. The most of the stock was owned by the United States Government, but later the Government interest was disposed of, and in 1843 the bank failed.

State banks were organized rapidly, and private banking firms sprang into existence and the business of banking assumed immense proportions.

In 1863, the NATIONAL BANK SYSTEM was adopted and in 1864 the National Bank Bureau of the Treasury Department was organized, the chief officer of which is the comptroller of the currency. In March, 1865, an act was passed providing for a ten per cent. tax on notes of any person or State bank issued for circulation, and making an exception of National banks. This had the effect of taxing the State bank circulation out of existence. As the National banking system has proven one of the most efficient and satisfactory methods the world has ever known, it will be of interest to review here some of its principal features. Under this act National banks may be organized by any number of persons not less than five. Not less than one-third of the capital must be invested in United States bonds, upon which, circulating notes may be issued equal to 90 per cent of the par value of the bonds. These circulating notes are receivable at par in the United States in all payments except for duties on imports, interest on the public debt and in redemption of the national currency. The National banks are required to keep a certain reserve; they are authorized to loan money at the rate of interest allowed by the various States—when no rate is fixed by the laws of the State, the banks may charge 7 per cent. Shareholders are held individually liable, equably and ratably, for all debts of the association to the extent of the amount of their stock, in addition to the amount invested therein. The banks are required, before the declaration of a dividend, to carry one-tenth part of their net profits of the preceding half year to a surplus fund until the same shall amount to 20 per cent. of the capital; and losses and bad debts must be deducted from net profits before any dividend is declared. A receiver may be appointed by the comptroller to close up under his supervision the affairs of any national bank which shall fail to keep good its lawful money reserve or which may become insolvent. While there have been national bank failures, there has never been any loss to the people whatever on the circulation. A suit may be brought for forfeiture of the charter of a bank if the directors shall knowingly violate the law; and in such cases they may be held liable in their individual capacity. There are other restrictions in the law—such as for instance, the prohibition against loaning to any one borrower of more than ten per cent. of the capital; or the holding of any real estate except such as is required for banking purposes, or the granting of loans upon the security of the bank stock.

The national bank circulation has been gradually growing less during the past ten years, as the United States bonds available are quoted so high above par and the rate of interest so low that there is but little profit to the banks in it. All of the States have laws regulating State Banks and providing certain restrictions, but as the laws of the various States are not alike it is impossible to give a general description of the matter that would apply to all the States. The laws, however, provide for and require State banks to hold a certain reserve, and at regular intervals they make full statements as to their condition and their affairs are examined into by certain State officials at frequent intervals. The laws of all the States have reached a high degree of perfection in the method of regulating and overseeing State banks, and the almost universal soundness and reliability of these institutions reflect credit upon the laws under which they exist.

CLEARING HOUSE.

THE Clearing-House is the place where the exchanges of the banks are made in all the principal cities of the world. The clearing-house system was first established in London about the beginning of the present century. It was first introduced into this country by the banks of the city of New York organizing an association, under the name of the New York Clearing House, which commenced operations Oct. 11, 1853. At that time it consisted of fifty-two banks, but five of them were soon closed because of their inability to meet its requirements. Clearing Houses have since been established in nearly all of the principal cities of the continent.

In all cities a bank receives large amounts of bills of and checks on other banks, so that at the close of each day's business every bank has, in its drawers, various sums thus due it by other banks. It is, in like manner, itself the debtor of other banks, which have during the day received its bills and checks drawn upon it. Prior to the establishment of the clearing-house it was necessary for each bank, every morning, to make up its account with every other bank, and to send its porter or agent to present the bills and checks so received to the debtor banks for payment. The balances were adjusted by payments in gold, which became so laborious, dangerous, and complicated, that the balances were settled only weekly instead of daily—a plan that resulted in great risk and evil. This was obviated by the clearing-house system, through which the settlements are so simultaneously and quickly effected that in New York the transactions in one single day have amounted to over $300,000,000, in adjusting which the exchanges were settled in the space of an hour. Besides saving a vast amount of work, book-keeping and expense, it enabled the banks by united aid to strengthen each other in times of excitement and financial panic.

The following is the manner in which the settlements are made in about all the clearing-houses of this country: The clearing-room is provided with a continuous line of desks, one for each bank that is a member of the association, each desk bearing the name and number of the bank. Each bank is represented every morning, at the hour fixed for settlement, by two clerks, one a messenger who brings with him the checks, drafts, etc., that his bank has received during the day previous upon the other banks—called the "exchanges," and these are assorted for each bank and placed in envelopes. On the outside of each envelope is a slip on which are listed the amounts of the various items which it contains. The messengers take their places in a line outside the row of desks, each opposite the desk assigned to his bank, while at each desk is a clerk with a sheet containing the names of all the banks in the same order as the desks, with the aggregate amounts which his bank's messenger has against each bank. Just previous to the hour fixed for making the exchanges the manager takes his position and calls the house to order. At a signal the bell rings and each messenger moves forward to the desk next his own and delivers the envelope containing the checks, etc., for the bank represented at that desk to the clerk at that desk, together with a printed list of the banks in the same order, with the amount opposite each bank. The clerk receiving it, signs and returns it to the messenger, who immediately passes on to the next desk; then to the next, and so on until he has made a complete circuit and has again reached the desk of his own bank—the starting point. All the other messengers moving in the same manner; each messenger has, by this means, visited every bank and delivered to each everything his bank held for it, taking a receipt for the same; and at the same time each bank has received all the exchanges that every other bank had against it. This operation even in the greatest clearing houses only consumes from ten to fifteen minutes.

This enables the banks to know at once the exact balance for or against it, as the clerks immediately enter from the slips on their own sheets the aggregate amount from each bank, and the difference between the total amount brought by them, which at once shows the balance due to or from the clearing house to each bank.

This is reported to their banks, and the balance is paid to or drawn from the clearing house, thus at once settling the accounts between all the banks. The lists are "proved" carefully, and certain fines are laid for all errors, tardiness, etc.

Entered according to Act of Congress, in the year 1894, by GEO. A. OGLE & Co., in the office of the Librarian of Congress, at Washington, D. C.