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THE HAGUE CONVENTION OF 1912, RELATING TO BILLS OF EXCHANGE AND
PROMISSORY NOTES: A COMPARISON WITH ANGLO-AMERICAN LAW.

By Ernest G. Lorenzen

A. THE HAGUE CONVENTION

Notwithstanding its common origin, the law relating to bills of exchange has assumed a great variety of forms in the different countries. Three principal systems developed: the French, the German, and the Anglo-American. The greatest divergence existed in matters of detail. Even in the most recent times there were not less than forty different bills of exchange acts outside the Anglo-American group. With the rapid growth of international trade, during the last century, the advantages of a uniform commercial law among the civilized nations of the world became more and more apparent. In the matter of bills and notes, especially, it seemed that such unification was within the realm of actual realization. At the beginning of the twentieth century the time appeared

1. Professor of Law, University of Minnesota.

2. The following are the principal countries belonging to the French group: Argentine Republic, Bolivia, Brazil, Chile, Columbia, Ecuador, Egypt, France, Greece, Guatemala, Hayti, Luxemburg, Monaco, Mexico, Netherlands, Nicaragua, Panama, Paraguay, Polish Russia, Servia, Turkey, Uruguay.

The following are the principal countries belonging to the German group: Austria-Hungary, Bulgaria, Denmark, Germany, Italy, Japan, Norway, Peru, Portugal, Roumania, Russia (exclusive of Polish Russia), Salvador, Sweden, Switzerland, Venezuela.

Dr. Felix Meyer, in his "Weltwechselrecht," I, pp. 25-27, assigns Belgium, Cuba, Honduras, Malta, the Philippines, Porto Rico, and Spain to a fourth group which stands intermediate between the French and German groups.
ripe' at last for the consummation of this plan. At a conference, which met at The Hague in 1910, an advance draft of a uniform law relating to bills and notes was prepared. At a second conference, in 1912, a Uniform Law and Convention were actually adopted. The convention entered into as a result of these conferences, has been signed by practically all of the European countries, by a number of Central and South American states, and by China and Japan. The British and American delegates made it clear at both conferences, that Great Britain and the United States, though greatly interested in the international unification of the law, were not in a position to become parties to an international convention. The signatory powers to the convention have assumed the obligation to adopt the Uniform Law textually without any derogations, except in so far as they may be expressly authorized by the convention itself. As long as the convention is in force in a given country, its provisions wholly supplant the former national law. It deals with the entire subject of bills and notes, and does not apply solely to international operations. The contracting powers are not bound indefinitely, however, and may denounce the convention after three years from the date of the first deposit of ratifications. Defects in the present convention are to be corrected at a future conference which shall be called by the government of the Netherlands after a lapse of five years from the first deposit of ratifications or after the lapse of two years, upon the request of any five contracting states.

Notwithstanding the above provisions for the denunciation of the convention and its modification at a future conference, it was impossible to reach an agreement on all points. In regard to some matters, the national law seemed so important to certain countries that rather than to make concessions with respect to them, they pre-

3. The proceedings of these conferences were published officially under the title of "Conférence de la Haye pour l'Unification du Droit relatif à La Lettre de Change," 1910, "Actes," pp. 388; "Documents," pp. 429; 1912, "Actes," I, pp. 264; II, pp. 421; "Documents," I, pp. 247; II, pp. 147. They are contained also in translated form in two reports to the Secretary of State by Mr. Charles A. Conant, American delegate to the conferences, which are printed as Senate Document, No. 768, 61st Congress, 3d session, and as Senate Document, No. 162, 63d Congress, 1st session. The original proceedings will be cited in this article as "Actes, 1910, 1912," "Documents, 1910, 1912." The proceedings in their translated form will be referred to as "Proceedings, 1910, 1912."

At the second conference an advance draft of a uniform law was adopted also, which is to be the subject of further consideration at another conference.

ferred not to become parties to the proposed convention. Reservations had to be made in these instances in favor of the national law of the contracting states.

Though complete uniformity was unattainable, the adoption of the Uniform Law constitutes nevertheless a great advance over previously existing conditions. It has united the countries outside the Anglo-American group into one great system. The differences in the law of bills and notes will in the future be reduced, therefore, in the main to those existing between the Anglo-American system and that of the Hague convention. It is the object of the present article to point out the differences in the law of these two systems. Before doing so, a few general observations must be made concerning the Uniform Law, the Bills of Exchange Act, and the Negotiable Instruments Law.

The most striking contrast between the Uniform Law and the English and American acts, is due to the fact that the Uniform Law deals only with the so-called “formal” law of bills and notes. In this respect it follows the German Bills of Exchange Law of 1849. When a uniform bills of exchange act was drafted for the different states belonging to the Zollverein, the diversity of the systems of law existing in the states made it evident that unless all rules which had direct reference to the general law were eliminated, it would fail of adoption. So it came that the German Bills of Exchange Law embraced only the “formal” law relating to bills and notes, that is, the special rules resulting from the formal nature of the instrument. The same necessity of eliminating all rules directly connected with the general law presented itself at the Hague conferences. No agreement whatever could have been reached except as to the “formal” law relating to bills and notes. Many provisions found in the Bills of Exchange Act and the Negotiable Instruments Law are excluded from the Uniform Law for the simple reason that they were deemed to fall outside of the “formal” law of bills of exchange.

Another difference, which is very prominent, consists in the fact that with regard to almost all of the topics treated, the Bills of Exchange Act, and the Negotiable Instruments Law go into greater detail than does the Uniform Law. This difference is due, not so much to the circumstance that the Uniform Law is an international code, which, for practical reasons, must be expressed in

5. These reservations are found in Arts. 2-22 of the Convention.
more general terms than a national law, as to a fundamental difference in the aims of the Anglo-American and the continental legislators in the matter of codification. The Bills of Exchange Act and the Negotiable Instruments Law are primarily re-enactments of the law laid down by the courts. So far as the courts have dealt with the matter, the English and American acts lay down specific rules. Continental codes, on the other hand, usually prescribe only general rules which the judges apply in a particular case as justice may demand.

B. THE UNIFORM LAW AND THE ANGLO-AMERICAN LAW CONTRASTED

I. FORM AND INTERPRETATION.

Unconditional Order or Promise to Pay. This requirement results from the very nature of the instruments, with respect to which there can be no disagreement. In Anglo-American law an unqualified order or promise to pay is unconditional, though coupled with: (1), an indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or (2), a statement of the transaction which gives rise to the instrument. Whether such additional provisions would be allowed in the continental countries is doubtful. There is no express provision with reference to this question in the Uniform Law.

A sum certain. The Uniform Law allows a stipulation for interest only in bills and notes payable at sight, or a certain time after sight. In any other case, the stipulation is void. If the rate of interest is not fixed in the bill, it is to be five per cent. Interest is to run from the date of the instrument, if no other date is specified.

These provisions adopt a middle ground between the Anglo-American view and the rule formerly prevailing in many of the continental countries. In Austria, for example, a stipulation for

6. The Uniform Law goes actually into greater details than many of the national laws.
7. The Convention and Uniform Law are printed in the original French and in an English translation in Mr. Conant's report of 1912, pp. 37-66 (Senate Document, No. 162, 63d Congress, 1st session). For convenience of reference this translation has been adopted for the purposes of this article, except with respect to Art. 20 of Convention, and Arts. 20, 33, 39, 45, 47 and 78 of the Uniform Law, the translation of which is faulty.
8. N. I. L. s. 3; B. E. A. s. 3 (3).
10. Arts. 5, 79.
interest made the bill of exchange void.\textsuperscript{11} In Germany,\textsuperscript{12} and in most of the other countries belonging to the German group,\textsuperscript{13} such a stipulation was deemed not written. The Hague convention does not authorize a stipulation for interest with respect to bills and notes having a fixed day of maturity, because the amount of interest can be ascertained accurately in these cases when the instrument is drawn and can be added, therefore, to the principal sum.\textsuperscript{14}

\textit{Installments, etc.} Bills and notes payable in installments are void under the Uniform Law\textsuperscript{15} which follows the view adopted by a number of continental countries.\textsuperscript{16} Nothing is said about bills payable with exchange, or with costs of collection, or an attorney's fee. In some countries, such a provision may render the instrument void; in others it will probably be deemed unwritten, and will, therefore, not affect its validity.\textsuperscript{17}

\textit{Money.} According to the Uniform Law, the parties may expressly stipulate that the holder may demand payment in a specified foreign currency.\textsuperscript{18} In England and in the United States, such instruments would not constitute bills and notes.\textsuperscript{19}

\textit{To Order.} The Uniform Law agrees with the Anglo-American and German\textsuperscript{20} law in allowing non-negotiable bills and notes. Although non-negotiable instruments have little importance in dealings among merchants, and, especially, in international transactions, it was deemed unnecessary to adopt the principle of the French group, which requires negotiability as one of the essential elements of bills and notes.\textsuperscript{21} According to the Uniform Law, a non-

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\textsuperscript{11} Ibid., p. 106.
\textsuperscript{12} Art. 7, German Bills of Exchange Law; \textit{Meyer}, I, p. 100.
\textsuperscript{13} \textit{Meyer}, I, p. 106.
\textsuperscript{15} Art. 32, par. 2.
\textsuperscript{16} \textit{Meyer}, I, p. 127.
\textsuperscript{17} See \textit{Meyer}, I, p. 98.
\textsuperscript{18} Art. 40. See also Art. 79. A request of the Mexican delegation that the contracting states be permitted to provide that notwithstanding a stipulation requiring actual payment in foreign money, payment might always be made in the national currency, was denied because such a stipulation was deemed to afford "the only means of doing business with some security in countries where the national currency, under the empire of unforeseen circumstances, may be subjected to sharp fluctuations in value." "Proceedings," 1912, p. 313; "Actes," 1912, I, p. 174.
\textsuperscript{20} See Art. 9, German Bills of Exchange Law.
negotiable bill is transferable only in the form and with the effect of an ordinary assignment.22

In England and in the United States, also, the indorsement of a non-negotiable bill or note, operates merely as a transfer of the rights of the indorser. With respect to the nature of the liability of such indorser there is no uniformity of view. In the United States the indorser of a non-negotiable note is sometimes regarded, as under the Uniform Law, as a mere assignor.23 In other jurisdictions, his liability appears to be that of a maker or a guarantor.24 In still others, he is regarded as an indorser.25 In England the indorser of a non-negotiable bill is in the nature of a new drawer.26

Negotiability not being deemed an essential requisite, the question arose at the first Hague conference whether the intent to execute a negotiable instrument should be expressed or presumed. Inasmuch as in modern times negotiability is the rule and non-negotiability the great exception, most legislators dealing with the subject since the German Bills of Exchange Law have deemed negotiability a natural quality which should impose upon the person executing the instrument the duty of indicating the contrary intent by appropriate words.27 The Bills of Exchange Act accepted this point of view as a concession to Scotland where the principle had been established as early as the year 1726.28 A like change was not made in the Negotiable Instruments Law, which re-enacts the old rule that words of order are necessary to give negotiability to the instrument.29 The Uniform Law adopts the modern view that negotiability should be presumed in the absence of words indicating a contrary intent.30

22. Art 10. The same is true of non-negotiable notes. See Art. 79.
29. Sec. 1, par. 4. In jurisdictions in which bills and notes need not be designated as such, see infra, words of negotiability may serve to distinguish them from other similar instruments. That the words "or order" might serve this purpose was admitted at the conference of Leipzig, which drafted the German Bills of Exchange Law. Thoel, "Protokolle," p. 14.
30. Art. 10 par. 1. It is interesting to note the development of the law concerning the negotiability of bills of exchange. Until the end of the sixteenth century, it seems, bills of exchange were exclusively non-negotiable. Negotiability was recognized only after a considerable struggle, and was not fully established until the middle of the seventeenth century. See Biener, "Wechselrechtliche Abhandlungen," p. 121; Goldschmidt, "Handbuch des
Or Bearer. Bills of Exchange payable to bearer are almost of equal age with bills payable to order.\textsuperscript{31} They were prohibited, however, in France, in 1716,\textsuperscript{32} and are allowed today in none of the continental countries.\textsuperscript{33} Promissory notes payable to bearer are authorized in the countries belonging to the French group.\textsuperscript{34} Anglo-American countries and Japan are practically the only ones recognizing bills of exchange payable to bearer. The advance draft prepared at the Hague conference accepted the Anglo-American view, but allowed each contracting state to prohibit this form of bill for those which might be drawn payable, accepted, or guaranteed within its limits.\textsuperscript{35} At the conference of 1912, it was decided to omit all direct reference to the subject, which remits the matter to the national legislation of the countries concerned.\textsuperscript{36}

The arguments advanced against the recognition of such instruments were the following: (1) there is no demand for them; (2) they are less easy to discount than bills to order; (3) the creation of such bills of exchange might impair the privileges of the establishments which issue bank notes.\textsuperscript{37} For those familiar with Anglo-American law, it is difficult to appreciate the force of the last argument. Certainly no such results have happened in England or in the United States. The other arguments reveal the typical attitude of continental legislation with regard to bills and notes. It manifests a tendency to tell bankers and business men what they can do instead of merely fixing limits beyond which, on grounds of policy, they are not allowed to go. The recognition of blank indorsements was not deemed a sufficient reason for allowing bills and notes to be made originally payable to bearer. The person executing the instrument having created order paper, it seemed inadmissible to permit its character to be changed by a subsequent holder. While an indorsement in blank may enable the bill or note payable to order to circulate as if payable to bearer, such an instrument differs, nevertheless, from one originally payable to

\textsuperscript{31} Goldschmidt, "Handbuch des Handelsrechts," I, p. 449; Gruenhut, "Wechselrecht," I, pp. 90-95. Words of negotiability ("or order") were required in all countries, excepting Scotland, until 1849, when the German Bills of Exchange Law recognized negotiability as a natural but non-essential quality of all bills and notes.

\textsuperscript{32} Savary, "Le Parfait Négociant," I, pp. 214-216.

\textsuperscript{33} Meyer, I, pp. 116-117.

\textsuperscript{34} Meyer, I, p. 117; Lyon-Caen & Renault, "Traité de Droit Commercial," 4th ed., IV, p. 413.

\textsuperscript{35} See Art. 3, par. 4, of the Proposed Uniform Law and Art. 3 of the Convention, "Proceedings," 1910, pp. 34, 40.


bearer in that each holder has it within his power to prevent its further negotiation by mere delivery by filling out the blank indorsement, or by indorsing the bill or note specially.\textsuperscript{38} In Anglo-American law the blank indorsement of an instrument payable to order converts it into one payable to bearer, where it is the only or last indorsement.\textsuperscript{39} Where a blank indorsement is followed by a special indorsement, the instrument is payable to order, so that the indorsement of the special indorsee is required for its further negotiation.\textsuperscript{40}

**Designation as Bill or Note.** The Uniform Law requires for the validity of a bill its designation as a bill of exchange in the body of the instrument.\textsuperscript{41} According to Article 2 of the convention, however, any contracting state may prescribe that bills of exchange issued within its own territory, which do not bear the designation “bill of exchange,” shall be valid, provided they contain the express indication that they are payable to order.

The requirement of the designation as a bill of exchange is of German origin and is of comparatively recent date.\textsuperscript{42} It was introduced into German law at the end of the eighteenth century through the decisions of the courts which followed the views of text writers, and became finally established through the German Bills of Exchange Law of 1849. Since that time it has become a legal requisite for the validity of bills and notes in nearly all of the countries belonging to the German group.\textsuperscript{43} Such a requirement furnishes, of course, a ready means to distinguish bills and notes from other similar instruments. The necessity of doing so was especially strong at the time of the origin of this requirement, when the remedy of imprisonment for debt was open to the holder of bills and notes in case of non-payment. Although im-


\textsuperscript{39} N. I. L. s. 9 (5); B. E. A. s. 8 (3).

\textsuperscript{40} Before the B. E. A., where a blank indorsement was followed by a special indorsement, the instrument remained payable to bearer:—Smith v. Clarke, 1794, Peake, 225. Prior to the N. I. L., the doctrine of Smith v. Clarke was followed in the United States. See Curtis v. Sprague, 51 Calif. 239; Daniel, “Negotiable Instruments Law,” 5th ed., s. 695. According to Art. 40 of the N. I. L. “where an instrument, (originally?) payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery, but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.” Sect. 4 of the proposed amendments to the N. I. L. would repeal sect. 40, because of its apparent inconsistency with sect. 9, par. 5, N. I. L.

\textsuperscript{41} Art. 1. The same is true of promissory notes. See art. 79.

\textsuperscript{42} Weiske’s “Rechtslexikon,” XIV, p. 215, note 39.

\textsuperscript{43} Meyer, I, p. 157; Art. 4 (1) German Bills of Exchange Law.
prisonment for debt has been generally abolished, bills and notes are still subject in many countries to special and rigorous rules. The procedure is often summary, and in some countries a bill or note is subject to execution as such. Moreover, in certain countries, Germany for example, the designation of a bill of exchange as such in the instrument, appears to be the only means by which it can be distinguished from a "commercial order." It was natural, therefore, that the German delegates at the Hague conferences should advocate the above requirement for the Uniform Law. They were opposed in this regard by the French delegates, who, if a change was to be made in their law, preferred the English system. The English delegates also argued against the advisability of extending the formalism in bills and notes by the addition of another requirement. To the English bankers it appeared to be both "needless and vexatious." The uncompromising attitude of the delegates made an agreement upon this subject impossible and led to the compromise contained in Article 2 of the convention, mentioned above.

Other Formal Requisites. The other formal requisites of a bill of exchange under the Uniform Law are the following:

1. The name of the drawee.
2. An indication of the date of maturity. If the time for payment is not indicated, it is deemed payable at sight.
3. Indication of place of payment. If none is indicated, the place specified beside the name of the drawee is deemed the place of payment.
4. The name of the payee.
5. An indication of the date of the place where the bill is issued. Where a bill of exchange does not bear the name of the

46. The requirements for a note are similar. Art. 77.
47. Each contracting state has the power, so far as regards obligations assumed with reference to bills or notes within its own territory, to determine the manner of providing a substitute for signature, provided that a formal declaration inscribed on the bill or note verifies the intent of the person who should have signed. Art. 3, Convention.
49. Arts. 1, 2.
50. Arts. 1, 2.
51. Art. 1.
52. The date appeared necessary: (1), to ascertain whether the stamp laws have been complied with; (2), to determine whether the drawer or maker had capacity to bind himself by a bill or note; (3), to ascertain the date of presentment in case of bills payable at sight or at a certain
place at which it was issued, it is deemed drawn at the place designated beside the place of the drawer. 53

6. Signature of the drawer. 54

An instrument wanting in any of the formal aspects, as qualified above, is not a valid bill or note. 55

It is obvious from the above provisions that the Uniform Law contains stricter formal requirements than does the Anglo-American Law. In England and the United States the validity of a bill or note is not affected by the fact that it is not dated, 56 or does not specify the place where it is drawn, 57 or does not specify the place where it is payable. 68 The name of the drawee and payee need not be given, it being sufficient that these parties are indicated in the instrument with reasonable certainty. 58 Again, a bill or note may be payable at a determinable future time. 59 Such an instrument is void under the Uniform Law, except in the case of bills payable at sight or a certain time after sight. 60

Additional Provisions or Clauses. There are no provisions in the Uniform Law corresponding to Section 5 of the Negotiable Instruments Law, nor is there any general rule from which the effect of such stipulations upon the validity of the instrument can be ascertained. In view of the fact that the different continental countries have taken various attitudes with reference to such clauses, 62 different results will, no doubt, be reached under the Uniform Law if the question should arise.


53. Arts. 1, 2.
54. Art. 1.
55. Art. 2, par. 1. Does this hold true also in the case where the name of the payee is omitted? There is no express provision on the point in the Uniform Act. The Central Committee at the conference of 1910 decided that they should be considered as bills of exchange in blank. "Proceedings," 1910, p. 203; "Actes," 1910, pp. 329-330.

56. N. I. L. s. 6 (1); B. E. A. s. 3 (4).
57. N. I. L. s. 6 (3); B. E. A. s. 3 (4) (c).
58. N. I. L. s. 6 (3); B. E. A. s. 3 (4) (c).
59. N. I. L. ss. 1 (5), 8; B. E. A. ss. 6 (1), 7 (1).
60. N. I. L. ss. 1, 4; B. E. A. ss. 3 (1), 11.
61. Arts. 1, 32. Another qualification is found in Art. 6 of the Convention, which reserves to the contracting states the right, within their own territory, to allow bills payable at a fair and to fix the date of their maturity.

Delivery. According to the Negotiable Instruments Law, 63 "every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him, so as to make them liable to him is conclusively presumed."

The only express provision on the subject in the Uniform Law is found in Article 28, according to which an acceptor may cancel his acceptance before delivery of the bill, except where he cancelled the same after having informed the holder or any other signer in writing that he has accepted. 64 All other contracts on the instrument will probably be deemed likewise revocable until delivery. 65 From Article 15 of the Uniform Law it is clear that the want of delivery cannot be set up against the person who acquired title to the instrument in good faith and in the exercise of due care by an uninterrupted series of indorsements.

Interpretation. There is an express provision in the Uniform Law 66 that where the amount is written several times, either in words or in figures, in case of discrepancy the sum payable shall be the smaller sum. The Bills of Exchange Act and the Negotiable Instruments Law are silent on the subject. 67

Article 8 of the Uniform Law makes a person, who adds to his signature on a bill of exchange words indicating that he signs in a representative capacity, personally liable on the bill if he was not duly authorized. This agrees with the law as laid down in the Negotiable Instruments Law, 68 which followed the German law in this regard. 69 Article 95 of the German Bills of Exchange Law imposes upon the agent the same liability as would have

63. Sec. 16.
64. The B. E. A. provides likewise that an acceptance written on the bill is irrevocable after the drawee has given notice to or according to the directions of the person entitled to the bill that he has accepted. B. E. A. s. 21 (1).
65. For the antecedent law see Meyer, I, pp. 41-44; Thaller, pp. 637 et seq.; Staub, Art. 45, ss. 2 et seq.
66. Art. 6.
68. Sec. 20.
69. Sect. 20 reads: "Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized."

By necessary implication, the agent is liable on the instrument, if he was not duly authorized. In most jurisdictions in this country before the Negotiable Instruments Law such agent was not liable on the instrument, but only for breach of warranty of authority, See
rested upon the principal had the agent been authorized to bind him. He is under no liability, therefore, if the alleged principal would have had no capacity to bind himself, or if the statute of limitations would have barred an action against him. The Bills of Exchange Act re-enacts the common law. The agent signing in a representative capacity without authority is not liable on the bill or note, but only in an action for breach of warranty of authority or for deceit. Most of the continental countries, likewise, limit the holders rights under these circumstances to an action for damages.

II. Consideration.

There are no rules relating to the subject of consideration in the Uniform Law. The notions of "holder for value" or "holder in due course" are equally unknown to the Uniform Law. The explanation is to be found in the fact that the law of bills of exchange, which had a continental origin, and was developed there upon the basis of the Roman law, was incorporated in England into the common law, and was thus compelled to adjust itself to the common law doctrine of consideration. An application of all rules governing the question of consideration in the law of contracts would have defeated the very purposes for which negotiable bills and notes had been created. It became necessary, therefore, to indulge in presumptions and fictions and to make exceptions to the ordinary rules and with respect to the burden of proof.


70. Sec. 26, par. 7.
71. Meyer, I, p. 68.
72. Huffman, "The Law of Negotiable Instruments: Statutes, Cases and Authorities," p. 327, note, says: "The doctrine that a bill or note requires any consideration is of comparatively recent origin. It was unknown in the time of Blackstone (2 "Comm." 445), and early American cases are to be found in which it appears to be denied or doubted (Bowers v. Hurd, 10 Mass. 427; Livingston v. Hastie, 2 Cai. (N. Y.) 246). But the modern cases now uniformly hold that a bill or note executed and delivered as a gift is unenforceable for want of consideration."
73. Attention may be called to the following: An antecedent debt constitutes value. N. I. L. s. 25; B. E. A. s. 27 (1) (b). An accommodation party is liable to a holder for value. N. I. L. s. 29; B. E. A. s. 28. Every negotiable instrument is deemed primâ facie to have been issued for valuable consideration (N. I. L. s. 24); and every person whose signature appears thereon to have become a party thereto for value. N. I. L. s. 24; B. E. A. s. 30 (1). Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who become such prior to that time. N. I. L. s. 26; B. E. A. s. 27 (2).
On the continent, where the law of bills and notes continued to develop as a separate legal institution upon its original basis, it became a circulating medium free from the personal relationship existing between the parties, without having to encounter such difficulties as were created in England by its doctrine of consideration. While liability upon a bill or note in Anglo-American law rests today fundamentally upon the same footing as ordinary contracts, there is often a basic distinction between the two classes in continental countries. The theory has become prevalent in Germany that a unilateral promise to pay a certain sum may constitute in itself a contract, deriving its validity not from the transaction giving rise thereto, but exclusively from its form. The rights of the holder, whether he be an immediate or a remote party, result in a clear and logical manner from this conception. It would seem that this viewpoint underlies also in general the Uniform Law. It should be observed, however, that whatever the divergencies in the fundamental notions underlying the continental and Anglo-American systems of bills and notes may be regarding the matter under discussion, they attain substantially the same result in the end. The main difference lies in the method by which this result is reached. Under the continental system it is done in a direct and simple manner; under the Anglo-American, in a roundabout way by means of fictions and exceptions to the ordinary rules governing the subject of consideration.

III. COVER. (Provision.)

In certain continental countries belonging to the French group the connection of a bill of exchange with the underlying business transaction is seen in the rules relating to cover. According to the law of these countries, the drawer or his agent must provide cover, which exists when at the time of maturity the drawee owes to the drawer or to the party for whose account the bill of exchange is drawn an amount equal to the sum stipulated in the instrument. In case the drawer has not complied with his obligation, he will be liable even though the instrument was not duly presented and

Absence or failure of consideration is not a defence against any person who is a holder in due course. (N. I. L. s. 28); who may not have given any consideration himself (N. I. L. s. 58; B. E. A. s. 29 (3)).

74. The theory was first propounded with great force by Otto Baehr, "Die Anerkennung als Verpflichtungsgrund," Cassel, 1855.

75. This is not true, of course, in all cases. A note, executed by A and delivered by him to C as a gift would probably be enforceable under the Uniform Law, but would not be, for want of consideration, according to English and American law.

76. Meyer, I, pp. 149-161.
protested. If he has furnished cover, he is not liable upon the dishonor of the bill. The acceptance of a bill of exchange raises the presumption that the drawee has received cover. Where a bill is drawn for accommodation, the want of cover has no effect upon the legal existence of the instrument. A holder in bad faith, however, can not recover in such a case.

Under French law the drawing and indorsement of a bill operates as an assignment of the funds in the hands of the drawee. Every holder has an action against a drawee who has received cover, and, in the event of the bankruptcy of the drawer, will be entitled to such funds.77

The above rules are plainly opposed to the German system where the bill of exchange stands on its own merits, independent of the relations that may exist between the drawer and drawee. They are also contrary to the law of England and to that of the United States.78 At the Hague conference the French delegates insisted that the interested parties in France were satisfied with the French system and asked that it be not sacrificed in the interest of the unification of the law.79 No agreement could be reached with regard to this matter. The convention expressly provides that all questions relating to cover shall be outside the scope of the Uniform Law and Convention.80

IV. NEGOTIATION.

Before the Uniform Law, the laws of the continental countries differed widely from each other and from Anglo-American law, on the subject of indorsements. In some, a very formal system prevailed. France, for example, allowed only special indorsements and required that they be made to order, that they be dated, and recite the value received.81 An indorsement in blank would not pass title to the instrument, but would operate only as a power of attorney to collect the amount of the bill.82 The Uniform Law, on

77. Articles 115-117, Code de Commerce; Williamson, pp. 26-48; Lyon-Caen & Renault, IV, pp. 159-175; Thaller, pp. 681-696.

78. N. I. L. s. 127; B. E. A. s. 53 (1). The Bills of Exchange Act makes an exception in favor of Scotland. It provides: "In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favor of the holder, from the time the bill is presented to the drawee." B. E. A. s. 53 (2).


80. Art. 14. The same impossibility of reaching an agreement upon this point had been disclosed at the Congresses of Antwerp and Brussels in 1885 and 1888.


82. Art. 138, Code de Commerce. Since the law of June 14, 1865, an indorsement in blank has been recognized in France as regards checks. Lyon-Caen & Renault, IV, p. 142.
the other hand, agrees in most respects with the provisions of the Anglo-American law. A conditional indorsement, however, is not allowed, the condition being regarded as void. Nor is an indorsement to bearer permitted. As has been seen, an indorsement in blank does not convert an order instrument into one payable to bearer. When the blank indorsement is not filled out and is followed by a special indorsement, the last indorsee is presumed to have acquired the bill under an indorsement in blank.

**Indorsement by way of Pledge.** The Uniform Law contains a form of indorsement which is permitted in France and some other countries, but is unknown to German and to Anglo-American law—an indorsement by way of pledge. Such an indorsement protects the indorser against a dishonest indorsee to whom he has pledged the instrument. If he indorsed the bill or note specially to such pledgee, or in blank, as he would otherwise be required to do, he might be unable to prove that the indorsement had been really by way of pledge. At the conference there was disagreement at first as to whether this form of indorsement should be dealt with by the Uniform Law, but it was decided in the end that it was preferable to admit it, and to determine its form and effect while reserving to the national laws the privilege not to recognize it. According to the Uniform Law, an indorsement by way of pledge confers upon its holder all the rights arising from the bill of exchange; but an indorsement by him shall be valid only as an indorsement in the capacity of an agent. The parties liable cannot set up against the holder defenses based on their personal relations with the in-

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83. See Articles 10-12.

84. Art. 11. According to Sect. 39 of N. I. L.: "Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally." See also B. E. A. s. 33.

85. Art. 11.

86. Art. 15, par. 1.

87. An intention to indorse by way of pledge may be indicated by the stipulation, "value as security," "value as pledge," or any other words implying a pledge. Art. 18, par. 1.


89. This point is reserved by Art. 4 of the Convention, according to which each contracting state may prescribe that, in an indorsement made within its own territory, any statement implying a pledge shall be deemed void. The indorsement, therefore, is to be regarded as an unconditional one.

90. Art. 18, par. 1.
dorser, unless the indorsement has been given in pursuance of a fraudulent understanding.91

Indorsement after Maturity. An indorsement after maturity had a most diversified effect before the Uniform Law in the different countries. In some (e. g. in Holland)92 such an indorsement was forbidden, so that a bill or note could only be assigned after maturity. In others, France, for example, the indorsee after maturity, obtained the same rights as an indorsee before maturity, an indorser after maturity being regarded as the drawer of a bill of exchange payable at sight.93 In England and in the United States, likewise, an indorsement after maturity is equivalent to the drawing of a sight draft.94 Under such an indorsement, no greater rights can be acquired than those possessed by the holder at the time of maturity.95 Still other countries apply one rule to indorsements before and another rule to indorsements after the expiration of the time for protesting.96 The Uniform Law97 agrees with Anglo-American law, except that it applies these rules only to indorsements made after protest for non-payment, or after the expiration of the time fixed for drawing it. As the last holder may receive the instrument only in the afternoon before or even on the day of maturity, it seemed proper to allow him to negotiate the bill of exchange with all the effects attached to an indorsement prior to maturity, so long as the protest had not been drawn and the time for protest had not expired.98

V. GUARANTY OF BILLS AND NOTES. (Aval).

A guaranty of bills and notes by an aval form of guaranty is not uncommon in foreign countries, but is unknown to Anglo-American law. The nearest equivalent thereto is found in the section of the Bills of Exchange Act, which reads:

"Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course." 99

Before the Uniform Law, the laws recognizing avals differed a great deal both as to the form in which an aval must be given,
and as to the relation existing between the principal debtor and the
d party giving the guaranty.100 The Uniform Law provides101 that
it may be given by a third party or even by a signer of the bill.
and that it may be given upon the bill of exchange or upon an
allonge.102 It shall be expressed by the words, "good for guaranty"
(bon pour aval), or by equivalent words, signed by the giver of
the guaranty. Except in the case of the signature of the drawee
or of the drawer, it is deemed to be created by the mere signature
of the giver of the guaranty, on the face of the bill of exchange.103
The guaranty must indicate on whose behalf it is given. In default
of such indication, it is deemed to be given for the drawer.104
The giver of a guaranty is liable in the same manner as the party for
whom the guaranty is given.105 His engagement is valid even when
the liability for which he has given a guaranty was invalid for any
other cause than a defect of form.106 Upon payment of bill of
exchange, he has a right or recourse against the party whose sig-
nature he has guaranteed, and against the parties liable to the
latter.107

VI. PRESENTMENT FOR ACCEPTANCE. ACCEPTANCE.

According to the Uniform Law, a bill may be presented for
acceptance before the day of maturity, but not on the day of ma-
turity or later.108 Presentment must be made at the residence of
the drawee even in the case of a bill of exchange payable in another
place (domiciled bill).109 The drawer and indorser may stipulate
that a bill must be presented for acceptance with or without fixing
a time limit. The indorser cannot do so, however, when the drawer
has forbidden presentment for acceptance.110 The drawer may for-

100. Meyer, I, pp. 446-460.
101. Art. 29.
102. Art. 30, par. 7. According to Art. 5 of the Convention each con-
tracting state has the power to prescribe that a guaranty may be given with-
in its own territory by a separate document indicating the place where it
was executed. This mode of giving an aval, which is sanctioned by Art.
142 of the French Code de Commerce, is used to avoid injury to the credit
of the party in whose behalf the guaranty is given.
103. Art. 30, par. 3.
104. Art. 30, par. 4.
105. Art. 31, par. 1.
106. Art. 31, par. 2.
107. Art. 31, par. 3.
108. Art. 20. In N. I. L. s. 138 and B. E. A. s. 18 (2) it is expressly
provided that a bill may be accepted when overdue.
110. Art. 21, par. 4. This is based upon the consideration that inas-
much as the prohibition by the drawer is operative with respect to all hold-
ers of the instrument, an indorser should not be allowed to change the
character of the instrument.
bid such presentment except in the case of a domiciled bill, or a bill payable at sight, or a certain time after sight. He may also stipulate that presentment for acceptance shall not take place before a certain date. In the absence of an express stipulation, presentment for acceptance is required only in the case of bills of exchange payable after sight.

Greatly varying rules existed in regard to the time within which instruments payable after sight must be presented for acceptance. The Anglo-American group of countries prescribed a reasonable time; the other countries had definite periods which differed greatly among themselves. France, for example, required presentment within a period of three, four, six, or twelve months, according to certain geographical zones fixed by law. Germany, on the other hand, prescribed the uniform time of two years. The delegates at the Hague conference did not approve the Anglo-American rule because of its too great indefiniteness, and at the first conference fixed it at six months, with the privilege of the drawer to extend the time another six months. Upon the representation of the English delegates, who informed the members of the conference that bills drawn upon England circulated not infrequently longer than twelve months before being presented for acceptance, the limitation was dropped. The Uniform Law provides that bills of exchange payable after sight must be presented for acceptance within six months after the date of issue, but that the drawer may extend such period or shorten it. The indorser may shorten the period, but not extend it.

111. Art. 21, par. 2. France and Austria favored this provision because, in their opinion, it is an excellent means for the discounting of outstanding debts. It seems that in France debtors are willing to have creditors draw upon them a bill payable on the day when the debt is due, but are opposed to bind themselves by an acceptance. In these cases it is customary to draw a bill prohibiting presentment for acceptance and to have the same discounted. “Proceedings,” 1910, p. 245; “Actes,” 1910, pp. 83-84.
112. Art. 21, par. 3.
113. Art. 22. According to N. I. L. s. 143 (3) and B. E. A. 39 (2), a bill must be presented also for acceptance when it is drawn payable elsewhere than at the residence or place of business of the drawee.
114. Sec. 144 of N. I. L. provides that bills required to be presented for acceptance must be presented for acceptance or be negotiated within a reasonable time. The B. E. A. s. 40 (1) has the same provision, but limits its application to bills payable after sight.
117. Art. 19, German Bills of Exchange Law.
119. Art. 22.
Anglo-American law gives to the drawee twenty-four hours in which to decide whether or not he will accept the bill.\textsuperscript{120} In other countries, Germany,\textsuperscript{121} for example, the drawee is allowed no time for deliberation. In still others he must decide the question upon the same day upon which presentment is made.\textsuperscript{122} The Uniform Law provides that the drawee may ask that a second presentment be made to him on the day following the first;\textsuperscript{123} but the holder is not bound to leave the bill with the drawee.\textsuperscript{124} The question as to the consequences of a failure or a refusal on the part of the drawee to return the bill within the time allowed for deliberation cannot, therefore, ordinarily arise. Formerly the effect of a failure to return the bill within the time specified by law varied in the different countries. In some, such failure made the drawee liable for the damage caused to the holder (France).\textsuperscript{125} In others, he was held liable as an acceptor.\textsuperscript{126} In England the acceptance is deemed refused.\textsuperscript{127} Under the Negotiable Instruments Law,\textsuperscript{128} where the drawee refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.\textsuperscript{129}

The only form of acceptance recognized by the Uniform Law is an acceptance upon the face of the bill itself.\textsuperscript{130} The mere signa-
ture of the drawee will suffice.\textsuperscript{131} When the bill is payable at a certain time after sight, or when it must be presented for acceptance within a time fixed by virtue of a special stipulation, the acceptance must be dated as of the time when it was actually given, unless the holder requires that it be dated as of the day of the first presentation.\textsuperscript{132} In default of the date, the holder, in order to preserve his right of recourse against the indorsers and against the drawer, must set forth this omission by a protest drawn within the legal time.\textsuperscript{133} According to the American law\textsuperscript{134} and English practice, a bill is accepted as of the day when it is presented for acceptance. When the acceptance is not dated, and the acceptor is not within reach, the holder may fill in the date. At the Hague conference the giving of such a right to the holder was deemed too dangerous.\textsuperscript{135}

As in Anglo-American law, the acceptance must be absolute and unqualified. Partial acceptance is admitted, however, in derogation from this rule, and contrary to the law of England and of the United States\textsuperscript{136} for the benefit of the drawer and of the indorser.\textsuperscript{137} Any other modification of the terms of the bill is equivalent to a refusal to accept. The acceptor is bound, however, according to the tenor of the acceptance.\textsuperscript{138} The Uniform Law does not contain an express regulation as to the effect of taking a qualified acceptance with respect to the drawer and indorsers. Under the Negotiable Instruments Law\textsuperscript{139} and the Bills of Exchange Act\textsuperscript{140}.

\textsuperscript{131} Art. 24, par. 1.

\textsuperscript{132} Otherwise the convenience of the drawee would cause the holder to lose one day's interest.

\textsuperscript{133} Art. 24, par. 2.

\textsuperscript{134} "Memorandum on Uniform Law on Bills of Exchange" by Sir M. D. Chalmers and Mr. F. H. Jackson, "Proceedings," 1912, p. 401.

\textsuperscript{135} N. I. L. s. 136 (2); B. E. A. s. 19 (2) (b).

\textsuperscript{136} Art. 25, par. 1. The holder can protest only for the balance and in case of failure on the part of the drawee to pay at the time of maturity, the holder will be put to the trouble and expense of instituting two separate proceedings against the drawer and indorsers. In order to enable the holder to bring these suits, Art. 50 provides that in case of recourse in consequence of a partial acceptance, the party who pays the sum for which the bill has not been accepted may require that this payment shall be set forth on the bill and that he shall be given a receipt therefor. The holder shall also furnish to him a certified copy of the bill and the protest.

\textsuperscript{137} Art. 25, par. 2. Whether an acceptor who has modified his acceptance shall be held according to the law of exchange or according to the civil law, is left to the courts. "Proceedings," 1910, pp. 224-225; "Actes," 1910, p. 350.

\textsuperscript{138} Sec. 142.

\textsuperscript{139} Sec. 44.
the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assented thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto. Under the Uniform Law, if a bill is payable at the residence of the drawee, he may indicate in the acceptance a different address in the same place where payment is to be made. According to Anglo-American law, an acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere. An acceptance to pay in a different city constitutes a qualified acceptance.

Under the Uniform Law the drawer may sue the acceptor upon the bill and recover from him the amount to which any other party exercising recourse for non-payment is entitled. This will give him, contrary to Anglo-American law, a right to a commission, which, in the absence of agreement, is one-sixth of one percent of the principal sum.

VII. MATURITY.

The rules laid down in the Uniform Law regarding the calculation of maturity, days of grace, and the effect of holidays are in substantial accord with those of the Negotiable Instruments Law. Article 17 of the Convention leaves the contracting states free to provide that certain business days shall be assimilated to legal holidays. Specific rules are laid down for the calculation of the maturity of bills of exchange, drawn from one country upon another, when the calendars differ. Bills of exchange payable at sight must be presented for payment within the time fixed by law or

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141. Art. 26, par. 2.
142. N. I. L. ss. 140, 141 (3); B. E. A. s. 19 (2) (c).
144. Art. 27.
145. See, infra, "Amount of Recovery."
146. The B. E. A. s. 14 (1) still allows days of grace. As regards holidays, the English law distinguishes between common law and bank holidays. When the last day of grace falls on a common law holiday, the maturity is the next preceding business day. If it falls on a bank holiday, it is due and payable on the succeeding business day.
147. Art. 36. The provisions of the Uniform Law are as follows: "When a bill of exchange is payable at a fixed date in a place whose calendar is different from that of the place of issue, the date of maturity shall be deemed to be fixed according to the calendar of the place of payment."
contract for the presentment for acceptance of bills payable at a
certain time after sight. The maturity of a bill of exchange
payable at a certain time after sight shall be determined either by
the date of the acceptance or by that of the protest. In the absence
of protest, an acceptance which is not dated shall be deemed with
regard to the acceptor to have been given on the last day allowed
for presentment by law or contract.

[To be continued.]

"When a bill of exchange drawn between two places having different
calendars shall be payable at a certain time after date, the date of issue shall
be referred to the corresponding day of the calendar of the place of pay­
ment, and the maturity shall be fixed accordingly.

"The time for presentment of bills of exchange shall be calculated in ac­
cordance with the rules of the preceding paragraph.

"These rules shall not be applicable if a stipulation in the bill of ex­
change, or even the language of the document itself, indicates an intention
to adopt different rules."

Mr. Chalmers states that these rules are in accord with English Mer­

provides: "Where the bill is payable on demand, then, subject to the pro­
visions of this Act, presentment must be made within a reasonable time
after its issue in order to render the drawer liable, and within a reasonable
time after its indorsement, in order to render the indorser liable." Sec. 45
(2). "Where a note payable on demand has been indorsed, it must be
presented for payment within a reasonable time of the indorsement. If it
be not so presented the indorser is discharged." Sec. 86 (1).

According to N. I. L. s. 71 presentment for payment will be sufficient,
in the case of a bill of exchange, if it is made within a reasonable time
after the last negotiation thereof. Sec. 7 of the Proposed Amendments to
the Negotiable Instruments Law is drawn so as to bring the Negotiable In­
struments Law on this point into harmony with the English rule.

149. Art. 34.