TREATISE ON (T)HE LAW OF BILLS AND NOTES, CHECKS
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§ 15. Fictitious or non-existing parties. — It is not an uncommon practice, in order to ***give a bill or note a fictitious value***, for ***fictitious persons to be named as payees and endorsees***, and for the ***real payee to make indorsements for these fictitious parties***. The **English rule** was, that where the ***introduction of fictitious parties*** is ***done with the knowledge of the maker of the note*** or the **acceptor of a bill**, he can be **held liable on such an instrument in an action by a bona fide holder**, as **if it were payable to bearer**; but that **he is not liable**, ***if he was ignorant of the use of fictitious parties.***" And this distinction, **based upon the ignorance or knowledge of the primary obligor of the fictitious character of 'the payee or indorsee**, has been followed by many of the courts in this country, **particularly in the case of a bank, on which a check is drawn payable to a fictitious payee**.' In England, by the act of 1882, the acceptor of a bill or ***maker of a note, made payable, or indorsed to fictitious parties, is liable thereon as if it were originally made payable to bearer, whether he knew of the fictitious character of the parties or not.'*** —But the **right to treat the paper as payable to bearer is limited to bona fide holders**. One, who takes the paper with knowledge of the fictitious character of

some of the parties, cannot maintain an action against the maker or acceptor in any case."

§ 16. S a m e person as different parties.—- In order that ***commercial paper may be negotiated without indorsement and the consequent liability of indorsers***, and yet avoid the commercial discredit of an indorsement " without recourse;" it has become **quite common for bills and notes to be made payable to the order of the drawer or maker**, so that the ***named payee is the same person as the drawer or maker***. The **drawer or maker then indorses it in blank**, and ***it is then transferred***, **AS IF IT HAD BEEN MADE PAYABLE TO BEARER**. Of course, two parties, distinct and separate, are as necessary to the negotiation of a bill or note, as they are to the making of any other contract. For this reason, it was once held that a bill or note, in which the drawer or maker was the named payee, was invalid.' But the ***prevailing rule is, that while it is an impossibility for a valid bill or note to be created in that manner, as long as it is not transferred to some other person, because there has been no delivery, and consequently not a complete contract***; as ***soon as it has been indorsed and transferred to a purchaser***, there are ***two distinct separate parties in contractual relation to each other***, and the ***paper may be sued on, as if originally payable to bearer."***

The ***drawer may draw upon himself, and likewise make the bill payable to his own order***, so that, when indorsed by him in blank, and delivered to another person, a **good negotiable instrument will have been**

executed. Inasmuch, however, ***as the drawer and drawee are the same persons***, the ***holder may at his option treat the paper as a bill of exchange*** or promissory note, ***and in neither case is presentment for acceptance necessary.***"

§ 18. A ***distinct obligation to pay***. In order to ***MAKE A BILL*** or note ***NEGOTIABLE***, it **MUST CONTAIN A DISTINCT OBLIGATION TO PAY-(DISCHARGE a DUTY created by promise); the BILL MUST CONTAIN A CERTAIN ORDER** or command to the drawee to pay, while the **NOTE MUST CONTAIN CERTAIN PROMISE TO PAY.** If, however, the ***instrument shows the intention to pay a certain sum of money***, it ***will be a good promissory note***, ***although there may not be a distinct promise to pay***. And the ***omission of the personal pronoun***, " I " or " we " will not affect the negotiability of an otherwise properly executed note.' Where, in a bill, in accordance with the custom of commercial courtesy, the phrase used is " please pay," it is no less a command or order, and does not destroy the negotiability of the bill. But Where the entire phraseology indicates that the payment by the person, to whom the note is addressed, is requested as a favor and not a right, the courts have held that the paper is not a negotiable bill of exchange.' But ***where words of negotiability are inserted in the paper***, the ***paper is generally held to be a negotiable BILL***, not with standing the dubious phrases of request.' Although the word " pay " is customarily employed, it is not necessary. Any equivalent, such as "deliver" will be sufficient. Whether a mere due bill, which generally contains only an acknowledgment of a

debt, is to be treated as a negotiable note,is doubtful. Some of the American cases follow the English rule, that ***a mere naked due BILL, WITHOUT WORDS OF NEGOTIABILITY, IS NOT A PROMISSORY NOTE IN ANY SENSE***. And ***CERTAINLY, WITHOUT WORDS OF NEGOTIABILITY, (T)HE DUE BILL IS NO-WHERE CONSIDERED A NEGOTIABLE NOTE, (THEREFORE ALLONGE BILL WITH WORDS OF NEGOTIABILITY)***. But ***WHERE WORD OF NEGOTIABILITY ARE EMPLOYED, and (T)HE DUE BILL SATISFIES ALL (T)HE OTHER REQUIREMENTS OF NEGOTIABLE PAPER*** as to certainty of time of payment and ***amount of indebtedness***, it is ***commonly held to be a negotiable promissory note, notwithstanding the absence of a distinct promise to pay***.

NOTICE: ALL OBTAIN A BILL, IN THE FORM OF A COUPON, FROM A ACCOUNT AS A REPORT TO SECURITIES & EXCHANGE COMMISSIONER, WHICH HAS NOT WORDS OF NEGOTIABILITY UPON IT: THEREFORE ONE MUST ALLONGE COUPON WITH WORDS OF NEGOTIABILITY TO SECURE INTEREST OF BILL, WHICH ACTS AS A TRADE ACCEPTANCE TO BALANCE ACCOUNT