

Laws of Her Majesty's Province of Upper Canada, passed in the year 1849. Montreal: Stewart Derbishire & George Desbarats, 1849.

12 Victoria – Chapter 22

An Act to amend the law regulating Inland Bills of Exchange and Promissory Notes, and the protesting thereof, and Foreign Bills, in certain cases. 30th May, 1849.

Whereas it is expedient to revise the laws relating to Inland Bills of Exchange and Promissory Notes, and to render more uniform the protesting thereof, and the practice in that behalf: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That on and from the day when this Act shall come into force, an Act of the Parliament of Lower-Canada, passed in the thirty-fourth year of the Reign of King George the Third, intituled, *An Act to facilitate the negotiation of Promissory Notes*, shall be and is hereby repealed.

II. And be it enacted, That any Bill drawn or Note made payable to the order of any person, or to the order of the maker or drawer thereof, shall be deemed and taken to be negotiable, and shall be transferable by endorsement either in full or in blank or by delivery, and the holder under a blank endorsement shall have the same remedy by action as if the endorsement were in full.

III. And be it enacted, That when the words value received shall be expressed on the face of any Bill or Note, value shall be presumed to have been received on every such Bill or Note and endorsement thereon, for the amount thereof.

IV. And be it enacted, That no acceptance of any Bill shall be sufficient to bind or charge any person, unless such acceptance shall be in writing on some part of such Bill, or if there be more than one part of such Bill, on one of the said parts.

V. And be it enacted, That three days of grace, and no more, next after the day when such Bill or Note shall become due and payable or after the day when such Bill shall be presented to the drawer thereof if drawn at sight, shall be allowed for the payment thereof, and shall be reckoned to expire in the afternoon of the third of the said days of grace, unless the said third day shall fall on a Sunday or holy-day, when the next day preceding not being a Sunday, or holy-day shall be the last of the days of grace; any thing in any law or usage or custom to the contrary notwithstanding: Provided always, that nothing herein contained shall be construed to entitle the maker of any Note payable on *demand* to any days of grace, or to prevent the holder of any such note from demanding payment for the same at any time, and protesting for non-payment whenever the same shall be refused.

VI. And be it enacted, That the non-payment of any Bill or Note after the maturity thereof, and on or before the last day of grace, shall *ipso facto* entitle the holder to recover from the party liable on such Bill or Note, in addition to the principal sum thereof, legal interest thereon from the last day of grace, whether such Bill or Note be protested or not.

VII. And be it enacted, That every such Bill and Note shall be deemed and taken to be payable generally, unless it be expressed in the body thereof that the same is payable at a Bank or other place only, and not otherwise or elsewhere; and every acceptance of a Bill shall be deemed and taken to be a general acceptance, unless the same be expressed to be payable at a Bank or other place only, and not, otherwise or elsewhere; and the acceptance on such Bill and the promise on such Note so made payable at a Bank or other place only, and not otherwise and elsewhere as aforesaid, shall be and be taken to be a qualified acceptance of such Bill or promise of such Note: and the acceptor or maker shall not be liable to pay the said Bill or Note, except in default of payment when such payment shall have been first duly demanded at such Bank or other place.

VIII. And be it enacted, That whenever any Bill shall be refused acceptance by the drawee thereof, the same may be forthwith protested for non-acceptance; and after due notice of such protest shall have been given to the parties liable on such Bill, the holder thereof may insist on immediate payment from the said parties, and may sue for and recover the amount of such Bill with costs and interest as if the same had matured and been protested for non-payment; Provided always, that when due notice of non-acceptance shall have been given to the said parties, it shall not be necessary afterwards to present the said Bill for payment, or if such presentment be made to give notice of the dishonour.

IX. And be it enacted, That the duty of noting and protesting Bills and protesting Notes shall be performed in Lower-Canada by the Public Notaries for Lower-Canada; and every protest shall be made in duplicate by one Notary underneath or on the back of a copy of the Bill or Note and its endorsements; and no second or countersigning Notary, and no witness, shall be deemed necessary for the perfecting of any act of noting, protesting, or notice made or given by such Notary; any law, usage or custom to the contrary notwithstanding.

X. And be it enacted, That every noting for non-acceptance of a Bill shall be made underneath, or be endorsed upon the back of a copy of the Bill and endorsements, and filed and kept upon record by the Notary noting the same; and upon every Bill noted or protested for non-acceptance, and every Bill or Note protested for non-payment, the protesting Notary shall write, print or stamp the words "noted for non-acceptance," or "protested for non-acceptance" or "protested for non-payment," (as the case may be), with the date of the noting or protest, and his fees and charges, and shall subscribe thereto his initials, and the usual initial letters designating his office: Provided always, that when a Bill noted for non-acceptance shall afterwards be protested for non-payment, it shall not be necessary to extend a protest for non-acceptance, but the noting and the date thereof, with the name of the Notary by whom the noting was effected, shall be stated in the body of the protest for non-payment.

XI. And be it enacted, That notice to any party entitled thereto, of the protest for non-acceptance or for non-payment, shall be deemed sufficient if such notice be given to such party personally or at his residence, office or usual place of business; and in case of death or absence at his last residence, office or place of business, or if the said notice directed to such party be deposited in the nearest Post Office communicating with the residence or office or place of business aforesaid of such party, and the postage thereon be pre-paid; and like notice given to the duly appointed and notified assignee of the bankrupt estate of any bankrupt party liable on any Bill or Note, shall be as valid and effectual as if such notice had been given to the bankrupt personally, or at his residence, office or usual place of business, or through the Post Office as aforesaid; Provided always, that in such cases, the Bill shall have been drawn or endorsed, and the Note shall have been endorsed by the bankrupt, before the issuing of the commission of bankruptcy against him.

XII. And be it enacted, That the duplicate protest and duplicate notice aforesaid, with the service of such notice duly attested under the signature of the protesting Notary, shall be deemed and taken by all Courts, and by all persons, and in all places within Lower-Canada, to be *primâ facie* evidence of the truth of the matters in such protest and notice and service thereof respectively set forth as matters of fact; and the same faith and credence shall likewise be given to all copies of the same, attested in like manner to be true copies of the originals thereof remaining of record in the protesting Notary's office.

XIII. And be it enacted, That every Bill and Note, payable at such Bank or other place only, and not otherwise or elsewhere, shall at maturity be presented for payment at such Bank or place only; and every Bill and Note payable generally, shall at maturity be presented to the acceptor or maker, either personally or at his then residence or office or usual place of business; or if presentment for payment of any such Bill or Note payable generally, cannot be made to the acceptor or maker as aforesaid, by reason of his absence, and not having any known residence or office or place of business, at or in the place where his Acceptance or Note bears date, by reason of his death, then such presentment for payment of any such Bill or Note shall, be deemed good and sufficient if made at the residence or office or usual place of business of such acceptor or maker, or at his last known residence or office or usual place of business, in the said place where the Acceptance or Note bears date.

XIV. And be it enacted, That if at the expiration of the forenoon of the last day of grace any Bill or Note shall be unpaid, the holder, thereof may cause the same to be duly presented for payment, and in default thereof to be protested for nonpayment; Provided always, that no presentment and protest for non-payment of any Bill or Note, shall be sufficient to charge the parties liable on such Bill or Note, unless such presentment and protest be made in the afternoon of the last day of grace, nor unless also due notice of the protest be given to the said parties as hereinafter provided: And further, provided always, that the liability of such acceptor or maker towards the holder, shall continue in full force and effect, although the liability of the other parties may be discharged from the want or illegality of protest or of notice of protest.

XV. And be it enacted, That if a Bill accepted payable generally, or a Note payable generally, shall become due after the appointment, and public notification of the appointment of an assignee to

the estate of the acceptor or maker as aforesaid, under a commission of bankruptcy issued against him, the presentment for payment of such Bill or Note may be made either to the bankrupt personally or at his residence or office or usual place of business, or to the assignee personally or at his residence or office or usual place of business; and such presentment shall be as valid and effectual as if the presentment had been made to the bankrupt personally or at his residence or office or usual place of business; Provided however, that the acceptance of the Bill or the making Of the Note, shall have been effected before the issuing of such commission against such acceptor or maker.

XVI. And be it enacted, That any service of notice of protest for non-acceptance or non-payment, if made within three days next after the day upon which such Bill or Note shall have been protested, shall have the same force and effect as if such service had been made upon the day of protesting the same; Provided always, that nothing herein shall be construed to extend the time for protesting any Bill or Note herein provided.

XVII. And be it enacted, That whenever any Bill shall be noted for non- acceptance, it shall not be necessary to cause service of notice of the same to be made upon any party liable thereon; Provided always, that whenever any Bill so noted shall afterwards be protested for non-payment, the notice of such protest shall also embody notice of the previous noting for non-acceptance, and shall give the holder of any such Bill the same right to recover from the parties liable thereon, as if they had been severally served with notice of the noting thereof.

XVIII. And be it enacted, That the several fees and charges mentioned in the schedule to this Act subjoined, relating to the protesting and noting of Bills and Notes, together with the postages pre-paid upon notices deposited at any Post Office as herein provided for, shall and may be claimed from the holder of the Bill or Note by the Notary or Justice performing such duties, and shall be recovered from such parties thereto as shall be liable for the payment of the same.

XIX. And be it enacted, That every person who shall represent himself to be a Notary for or Justice of the Peace in Lower-Canada, and who shall act as such in and about the protesting of a Bill or Note, or in and about the noting of a Bill, not being such Notary for or Justice in Lower-Canada, and being convicted thereof, shall be deemed and taken to be guilty of a misdemeanor, and shall be punished by imprisonment for the space of not more than six months.

XX. And be it enacted, That in places where the holder of a Bill or Note shall be prevented from employing a Notary, by reason of there being none resident practising therein, or by reason of the absence or disability from sickness or otherwise of such Notary, it shall be lawful for any Justice of the Peace duly commissioned and sworn in Lower-Canada, to make such noting and protest and to give notice of the same; and all such acts done by any such Justice shall have the same force and virtue as if the same had been done by a Notary; Provided that such Justice shall state and set forth in the body or preamble of such protest, the particulars and reasons wherefore the same could not be done and performed by a Notary; and a certificate and duplicate copy of such protest or noting, containing such reasons, under the hand and seal of such Justice, shall be deemed and taken to be sufficient proof many Court in Lower-Canada of the truth thereof.

XXI. And be it enacted, That in the discounting of any Bill or Note, it shall be lawful for any person to retain, receive or charge the amount of the discount or interest upon the principal sum therein specified at the time the same shall be discounted or received.

XXII. And be it enacted, That it shall be lawful for any person who shall discount or receive any Bill or Note payable in Lower-Canada, but at a distance from the place wherein the same shall be discounted or received, to charge, retain or receive over and above the legal interest upon any such Bill or Note, a commission sufficient to defray any agency, expense or exchange attending the collection thereof; and the holder shall, notwithstanding such commission, have the same right to recover the full amount of any such Bill or Note, with any interest thereon accrued after maturity and protest, as he would have had if no more than interest had been charged, retained or received thereupon: Provided always, that such commission shall in no wise exceed the rate of one per centum upon the amount of such Bill or Note.

XXIII. And whereas by law all contracts and assurances whatsoever for payment of money made for an usurious consideration are utterly void; and whereas in the course of mercantile transactions, negotiable securities often pass into the hands of persons who have discounted the same without any knowledge of the original conditions for which the same were given; and the avoidance of such securities in the hands of such *bonâ fide* indorsees without notice, is attended with great hardships and injustice: For remedy thereof—Be it therefore enacted, That no Bill or Note that shall be drawn or made after the passing of this Act shall, though it may have been given for an usurious consideration, or upon an usurious contract, be void in the hands of an endorsee, or in the case of a Note transferable by delivery, in the hands of a person who shall have acquired the same as bearer for valuable consideration, unless such endorsee or bearer had, at the time of discounting or paying such consideration for the same, actual knowledge that such Bill or Note had been originally given for an usurious consideration or upon an usurious contract.

XXIV. And be it enacted, That in every action and claim founded upon a Bill or Note, any party to which is designated on such Bill or Note by the initial letters or some contraction of his Christian or first name or names, it shall be sufficient in every affidavit to hold to bail, and in the Writ or Process and declaration or claim, to designate such person by the same initial letter or letters or contraction of his Christian name or first name or names, instead of stating the same in full.

XXV. And be it enacted, That in all matters relating to Bills and Notes not herein specially provided for, recourse shall be had in all Courts in Lower-Canada, to the laws now in force there, and in the absence of such laws, to the laws of England in force at the time of the passing of this Act, and in the investigation of all facts in actions and suits founded upon Bills and Notes, recourse shall be had in all such Courts to the laws of England in force at the time of the passing of this Act; Provided always, that Bills or Notes made or endorsed by persons not traders shall be subjected, in matters of proof thereon, to the said laws of England; and provided always, that nothing herein contained shall be construed to debar the parties to such actions and claims, from examining each other upon of interrogatories *sur faits et articles*, or upon the *serment décisoire* or to debar the Judges of

the Courts from deferring to any of the parties to such actions and claims, the oaths known as the *juramentum judiciale*, or *juramentum suppletorium*, and the *juramentum in litem*.

XXVI. And be it enacted, That none other than the New Year's or Circumcision day, the Epiphany or Twelfth day, Annunciation day, Good-Friday, Ascension day, Corpus Christi day, St. Peter and St. Paul's day, All Saints day, Conception day, and Christmas day, the anniversary of and day fixed to celebrate the birth-day of our Sovereign, and any day appointed by Royal Proclamation or by Proclamation of the Governor-General or Person administering the Government of this Province, for a Solemn Fast or as a day of Thanksgiving, shall be deemed and taken to be a holy-day within the meaning of this Act.

XXVII. And be it enacted, That wherever in this Act, with reference to any person, matter or thing, any word or words is or are used, importing the singular number or the masculine gender only, such word or words shall be understood and construed to include several persons as well as one person, females as well as males, bodies politic or corporate as well as individuals, and several matters or things, as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

XXVIII. And be it enacted, That nothing in this Act contained shall be construed to be a repeal or alteration of any of the provisions contained in an Ordinance of the Province of Lower-Canada, passed in the second year of Her Majesty's Reign, intituled, *An Ordinance to regulate Private Banking, and the circulation of the Notes of Private Bankers*, as amended and made permanent by the seventeenth section of a certain other Ordinance of the Province of Lower-Canada, passed in the Session held in the third and fourth years of Her Majesty's Reign, intituled, *An Ordinance to render permanent certain Ordinances therein mentioned, and to amend one of the said Ordinances*.

XXIX. And be it enacted, That the several notings, protests, notices thereof, and services of notice hereinbefore mentioned, shall be in the forms of the several Schedules of forms to this Act subjoined.

XXX. And whereas it is expedient to make provision for certain particulars in Foreign Bills of Exchange; Be it therefore enacted, That all Bills drawn abroad upon any person in Lower-Canada, or payable or accepted at any place within Lower-Canada, shall as to all parties resident therein and liable on such Bills, be subjected to the provisions of this Act with respect to the days of grace for payment of the same, and commission and interest thereon and both noting and protesting of such Bills for non-acceptance, and non-payment, and the notification and service of such protest.

XXXI. And be it enacted, That all Bills whether Foreign or Inland and all Notes, due and payable in Lower-Canada at the time when this Act shall come into force, shall be held and taken to be absolutely paid and discharged if no suit or action is brought thereon, within five years next after the day on which such Bills or Notes shall become due and payable, and all such Bills and Notes made and not due when, or to be made after this Act shall come into force, shall be held and

taken to be absolutely paid and discharged if no such suit or action is brought thereon, within five years next after the day on which such Bills or Notes shall become due and payable.

XXXII. And be it enacted, That this Act shall commence and take effect on and from the first day of August next after the passing thereof.

Schedule

Of Fees and Charges.

	£	S.	D.
For presenting and noting for non-acceptance, any Inland Bill of Exchange, and keeping the same on record	0	5	0
Copy of the same when required by the holder	0	2	6
For protesting for non-payment, any Inland Bill of Exchange or Promissory Note, and putting the same on record	0	7	6
For making and furnishing the holder of any Bill or Note, with duplicate Copy of any protest for non-acceptance or non-payment, with certificate of service and copy of notice served upon the drawer and endorsers	0	2	0
For every Notice, including the service and recording copy of the same, to an endorser or drawer	0	2	6
Exclusive of actual travelling expense incurred by the Notary for travelling one mile from his residence, and two shillings and six pence for his professional services, if within one league, five shillings, if within two leagues, and seven shillings and six pence, if within any further distance.			

Schedule No. 1.

Nothing for Non-Acceptance.

(Copy of Bill and Endorsements.)

On the _____ 18____, the above Bill was by me, at the request of _____, presented for acceptance to E. F., the drawee, personally (*or*, at his residence, office or usual place of business in the city, town or village of _____,) and I received for answer, " _____ "; The said Bill is therefore noted for non-acceptance.

A. B,

Not Pub.

_____, _____ 18____.

Due notice of the above was by me served upon { A. B., } the { drawer, }
C. D., } endorser, }
personally, on the _____ day of _____, (*or*, at his residence, office or usual place of business in _____,) on the _____ day of _____, (*or*, by depositing such notice, directed to him at _____, in Her Majesty's Post Office in this city, town or village, on the _____ day of _____, and pre-paying the postage thereon.)

A. B,

Not Pub.

_____, _____ 18____.

Schedule No. 2.

Protest for non-acceptance or for non-payment of a **Bill** payable generally.

Copy of Bill and Endorsements.

On this _____ day of _____ in the year 18___, I, A. B., Notary Public, for Lower-Canada, dwelling at _____ in Lower-Canada, at the request of _____ did exhibit the original Bill of Exchange, whereof a true copy is above written, unto E. F., the { drawee } thereof, personally, (or, at his residence, office or usual place of business in _____,) and, speaking himself (or his wife, his clerk, or his servant, &c.,) did dem^{acceptance} _{payment} thereof; unto which demand { he } answered, " _____." _{she }}

Wherefore I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the acceptorm drawer and endorsers (or, drawer and endorsers) of the said Bill, and other parties thereto, or therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of { acceptance } of the said Bill. _{payment }}

All which I attest under my signature.

(Protested in duplicate.)

A. B.,
Not Pub.

Schedule No. 3.

Protest for non-acceptance or for non-payment of a **Bill** payable at a specified place.

(Copy of Bill and Endorsements.)

On this _____ day of _____ in the year 18___, I, A. B., Notary Public, for Lower-Canada, dwelling at _____ in Lower-Canada, at the request of _____, did exhibit the original Bill of Exchange, whereof a true copy is above written, unto E. F., the { drawee } thereof, at _____, being the specified place where the said Bill is payable, and there, speaking to _____, did demand { acceptance } of the said bill; unto which demand he answered, " _____."

Wherefore I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the acceptorm drawer and endorsers (*or*, drawer and endorsers) of the said Bill, and other parties thereto, or therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of { acceptance } of the said Bill.

All which I attest under my signature
(Protested in duplicate.)

A. B.,
Not Pub.

Schedule No. 4.

Protest for non-payment of a **Bill Noted**, but not protested, for non-acceptance.

If the Protest be made by the same Notary who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, beginning with the words "And afterwards, on, &c.," continuing as in the last preceding form, but introducing between the words "did exhibit," the word "again"; and, in a parenthesis, between the words "written, unto," the words (" and which Bill was by me duly noted for non-acceptance on the _____ day of _____ last.")

But if the Protest be not made by the same Notary, then it should follow a copy of the original Bill and endorsements and noting marked on the Bill,—and then in the Protest introduce in a parenthesis, between the words "written, unto," the words (" and which Bill was on the _____ day of _____ last, by _____, Public Notary for Lower-Canada, noted for non-acceptance, as appears by his note thereof marked on the said Bill.)

Schedule No. 5.

Protest for non-payment of a Note Payable Generally.

(Copy of Note and Endorsements.)

On this _____ day of _____ in the year 18____, I, A. B., Notary Public for Lower-Canada, dwelling at _____, in Lower-Canada, at the request of _____ did exhibit the original Promissory Note, whereof a true copy is above written, unto _____ the promissor, personally, (*or*, at his residence, office or usual place of business in _____,) and speaking to himself (*or* his wife, his clerk, *or* his servant, &c.,) did demand payment thereof; unto which demand { ^{he} } answered, "_____."

Wherefore I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the promissor and endorsers of the said Note, and all other parties thereto or therein concerned, and for all costs, damages and interest present and to come, for want of payment of the said Note.

All which I attest under my signature.
(Protested in duplicate.)

A. B.,
Not. Pub.

Schedule No. 6.

Protest for non-payment of a **Note** payable at a particular place.

(Copy of Note and Endorsements.)

On this _____ day of _____ in the year 18____, I, A. B., Notary Public for Lower-Canada, dwelling at _____, in Lower-Canada, at the request of _____ did exhibit the original Promissory Note, whereof a true copy is above written, unto _____ the promissor, at _____, being the particular place where the said Note is payable, and there, speaking to _____, did demand payment of the said Note; unto which demand, he answered, " _____."

Wherefore I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the promissor and endorsers of the said note, and all other parties thereto, or therein concerned, for all costs, damages and interests, present and to come, for want of payment of the said Note.

All which I attest under my signature.

(Protested in duplicate.)

A. B.,
Not. Pub.

Schedule No. 8.

Notarial Notice of Protest for non-payment of a Note.

(Place and date of Protest.)

To _____,
at

Sir,

Mr. P. Q.'s Promissory Note for £ _____ dated at _____, the _____
days
payable _____ months after date to you, or order, and endorse by you, was this
on _____ E. F.
day, at the request of _____, duly protested by me for non-payment.

A. B.
Not. Pub.

Schedule. No. 9

Act of a Notarial Service of Notice of a Protest for non-acceptance or non-payment of a Bill, or of non-payment of a Note *(to be subjoined to the Protest.)*

And afterwards, I, the aforesaid protesting Notary Public, did serve due notice
in the form prescribed by law, of the foregoing Protest, for { non-acceptance }
{ non-payment }
of the { bill } thereby protested upon { P. Q., } the { drawer } personally, on
{ note } { C. D., } { indorser }
the _____ day of _____ (or, at his residence, office, or usual place of business in
_____, on the _____ day of _____; or by depositing such notice, directed to the
said { P. Q., } at _____, in Her Majesty's Post-Office in this city, (town, or village,) on
{ C. D., }
the _____ day of _____ and prepaying the postage thereon.)

In testimony whereof, I have, on the last mentioned day and year, at _____ aforesaid,
signed these presents.

A. B.,
Not Pub.

