

TITLE XXIX.

NOTES, OBLIGATIONS, AND SET-OFFS.

Chap. 1....OF NOTES AND BILLS OF EXCHANGE.

" 2....OF OBLIGATIONS AND DISCOUNTS.

CHAPTER 1.

OF NOTES AND BILLS OF EXCHANGE.

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| 1. Of inland bills of exchange. | 6. Their fees. |
| 2. Of bills lost. | 7. To keep record of what. |
| 3. Effect of acceptance. | 8. How record used, etc. |
| 4. Action on endorsed note. | 9. Original or copy evidence. |
| 5. Notaries appointed. | 10. Notary's oath, etc. |

REV. 395. An Act concerning promissory notes, inland bills of exchange, and nota-
 HAR. 248. ries public.

Revision....Approved April 16, 1846.

What inland bills, put on same footing as foreign bills of exchange.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That every bill of exchange, of the sum of eight dollars or upwards, drawn or to be drawn in, or dated or to be dated at and from any city, town, or other place in the state of New Jersey, upon any person or persons of or in any city, town, or other place in the said state, and payable at a certain number of days, weeks, or months after date or sight thereof, shall, in case of nonacceptance by the drawee, when presented for acceptance, or, if accepted, in case of nonpayment by the drawee, when due and presented for payment, be protested by a notary public in like manner as foreign bills of exchange, and shall in every respect, except where this act otherwise directs, be regulated and governed by the same law, custom and usage as regulate and govern foreign bills of exchange; *provided*, that such protest shall, for want or in default of a notary public, be made by any justice of the peace, whose act, in such case, shall be of equal efficacy and virtue with that of a notary public.

Bill lost, drawer to give another, on security.

2. *And be it enacted*, That in case any such inland bill of exchange shall happen to be lost or miscarried, within the time before limited for payment of the same, then the drawer of the said bill is and shall be obliged to give another bill of the same tenor with that first given, the person or persons to whom the same is and shall be so delivered giving sufficient security, if demanded, to the

said drawer, to indemnify him against all persons whatsoever, in case the said bill of exchange, so alleged to be lost or miscarried, shall be found again.

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3. *And be it enacted*, That if any person accept any such inland bill of exchange, for and in satisfaction of any former debt or sum of money formerly due to him or her, the same shall be accounted and esteemed a full and complete payment of such debt, if such person accepting of any such bill for his or her debt, doth not take his or her due course to obtain payment thereof, by endeavouring to get the same accepted and paid, and make his protest as aforesaid, in case of nonacceptance and nonpayment thereof.

Effect of acceptance.

4. *And be it enacted*, That all notes in writing, already made or hereafter to be made, and signed by any person or persons, body politic or corporate, or by the servant, factor, or agent of any corporation, banker, merchant, or trader, who is usually intrusted by him, her, or them to sign such promissory notes for him, her, or them, whereby such person or persons, body politic or corporate, his, her, or their servant, factor, or agent, as aforesaid, doth or shall promise to pay to any other person or persons, body politic or corporate, his, her, or their order, or unto bearer, any sum of money mentioned in such note, shall, by virtue thereof, be taken and construed to be due and payable to any such person or persons, body politic or corporate, to whom the same is or shall be made payable; and also every such note, payable to any person or persons, body politic or corporate; his, her, or their order, shall be assignable or endorsable over to any other person or persons, body politic or corporate, in the same manner as inland bills of exchange are or may be; and that the person or persons, body politic or corporate, to whom such sum of money is or shall be, by such note, made payable, shall and may maintain an action for the same, in such manner as he, she, or they might do upon any inland bill of exchange against the person or persons, body politic or corporate, who, or whose servant, factor, or agent as aforesaid, signed the same; and that any person or persons, body politic or corporate, to whom such note, that is payable to any person or persons, body politic or corporate, his, her, or their order, is or shall be endorsed or assigned, or the money therein mentioned ordered to be paid by endorsement thereon, shall and may maintain his, her, or their action for such sum of money, either against the person or persons, body politic or corporate, who, or whose servant, factor, or agent as aforesaid, signed such note; or against any of the persons who endorse the same; and in every such action, the plaintiff or plaintiffs shall recover his, her, or their damages and costs of suit; and if such plaintiff or plaintiffs shall be nonsuited, or a verdict be given

Action maintained on endorsed note, as on inland bill of exchange.

Damages and costs recovered.

When defendant to recover costs.

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Execution.

Set-off allowed, in what cases.

Notaries public appointed.

Fees to notaries.

Notaries to keep record, of what.

How used, and where deposited.

5. *And be it enacted*, That the governor of this state for the time being may appoint and commission such and so many notaries public as to him shall seem necessary, who shall hold their respective offices during good behaviour.

6. *And be it enacted*, That it shall and may be lawful for every notary public and justice of the peace to demand and take the following fees, to wit: for every attestation, protestation, and other instrument of publication, under his seal of office, relative to a foreign bill of exchange, one dollar, and for recording the same in a book kept for that purpose, seventy-five cents; for every attestation, protestation, and other instrument of publication, under his seal of office, relative to inland bills of exchange or promissory notes, if said notes or bills exceed one hundred dollars, the sum of fifty cents, and if one hundred dollars or less than one hundred dollars, the sum of thirty cents, and for recording the same in a book kept for that purpose, the sum of twenty-five cents.

7. *And be it enacted*, That it shall be the duty of every notary public or justice of the peace in this state, upon protesting any foreign or inland bill of exchange or promissory note, in addition to the duties already prescribed by law, and without further compensation, to record, in a book to be kept for that purpose, the time when, place where, and upon whom, demand of payment was made, with a copy of the notice of nonpayment, how served, and the time when; or if sent, in what manner, and the time when; and if sent by post, to whom the same was directed, at what place, and when the same was put into such post office, to which record they shall sign their names.

8. *And be it enacted*, That it shall always be lawful for such notary public or justice of the peace, when called upon to give evidence in any court of this state, upon the subject of such protest, to recur to such record for his own satisfaction; and, upon the death or removal out of the state, of such notary or justice, such

record shall be deposited in the office of the clerk of the county in which he last resided. TIT. XXIX. CHAP. 2.

9. *And be it enacted*, That whenever any question shall arise in any court of this state touching the protest of any such promissory note or inland bill of exchange, and it shall be made to appear that the notary or justice by whom the same was made, is dead, or has removed out of this state, and, after diligent inquiry, his place of residence cannot be discovered, then the said record so deposited in the office of the clerk of the county, or a certified copy thereof, by the said clerk, under his seal of office, shall be received as competent evidence of the matters contained in said record. Record or certified copy evidence.

10. *And be it enacted*, That every notary public in this state, now commissioned, or who may be hereafter commissioned, shall take and subscribe an oath or affirmation before the clerk of the county in which he resides, faithfully and honestly to discharge all the duties appertaining to his said office, and that he will make and keep a true record of all such matters as are required by law; which oath or affirmation shall be filed with the said clerk; and that the said clerk, for drawing, taking, and filing such oath or affirmation, shall be entitled to the sum of fifty cents. Oath of notary filed. Clerk's fee.

CHAPTER 2.

OF OBLIGATIONS AND DISCOUNTS.

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| 1. Scroll good seal for certain purposes. | 8. Payment may be pleaded in bar. |
| 2. What assignments good. | 9. So of payment before suit brought. |
| 3. Joint debtors liable separately. | 10. Of bringing money into court. |
| 4. So of representative of. | 11. Plea of payment with notice, etc. |
| 5. Assignment of breaches. | 12. If debt paid, verdict for defendant. |
| 6. Same, after judgment on demurrer, etc. | 13. Jury to allow discount proved. |
| 7. Judgment to remain as security. | 14. If plaintiff overpaid, what verdict. |

An Act concerning obligations, and to enable mutual dealers to discount. REV. 305.

Passed November 1, 1797.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That any instrument for the payment of money, to which the person making the same shall affix a scroll, or ink, or other device, by way of seal, shall be taken and adjudged to be of the same force and obligation as if it were actually sealed with wax. A scroll, or ink, or other device, by way of seal, shall be valid. Assignment of bonds good, and assignee may sue in his own name.

2. *And be it enacted*, That assignments of bills, bonds and other writings obligatory, for the payment of money, shall be good and

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effectual in law; and an assignee of any such may thereupon maintain an action of debt in his own name, but shall allow all just set-offs or discounts, not only against himself, but against the assignor, before notice of such assignment shall have been given to the defendant.

Joint debtors
separately
answerable.

3. *And be it enacted*, That all persons who now are, or hereafter shall be jointly indebted to any other person or persons, for or upon any joint contract, obligation, matter, or thing, for which a remedy could or might be had at law against such debtors, in case all were or could be taken by process issued out of any court of this state, shall be answerable to their creditors separately for such debts; that is to say, such creditor or creditors may issue process against such joint debtors; and in case any of such joint debtors shall be taken and brought into court, by virtue of such process, such of them so taken and brought into court shall answer to the plaintiff or plaintiffs, and if judgment shall pass for the plaintiff or plaintiffs, he, she or they shall have his, her, or their judgment and execution against such of them so brought into court, and against the other joint debtor or debtors named in the process, in the same manner as if they had been all taken and brought into court by virtue of the said process.

Representatives of one jointly bound chargeable as in joint and several obligations.

4. *And be it enacted*, That the representatives of one jointly bound with another for the payment of a debt, or for performance or forbearance of any act, or for any other thing, and dying in the lifetime of the latter, may be charged, by virtue of such obligation, in the same manner as such representatives might have been charged, if the obligators had been bound severally as well as jointly.

In an action on bond for nonperformance of covenants, etc., plaintiff may assign as many breaches as he pleases.

5. *And be it enacted*, That in every action upon any bond, or for any penal sum for nonperformance of covenants or agreements contained in any indenture, deed, or writing, or upon any bond, with condition other than for the payment of money, the plaintiff may assign as many breaches as he shall think fit; and the jury, upon trial of such action, shall assess damages for such of the said breaches as the plaintiff shall prove to have been broken; and on verdict therefor, the like judgment shall be entered as heretofore hath been usually entered, in such action.

If judgment given on demurrer, etc., plaintiff may assign breaches.

6. *And be it enacted*, That where judgment on demurrer, or by confession, or default, shall be given for the plaintiff in such action, he may assign as many breaches of the covenants, agreements, or conditions aforesaid, as he shall think fit; upon which a jury shall be summoned to inquire of the truth of such breaches, and to assess the damages that the plaintiff shall have sustained thereby.

On payment of damages assessed

7. *And be it enacted*, That if the defendant, after such judgment entered, and before execution executed, shall pay into the court

where the action is or shall be brought, to the use of the plaintiff, or his executors or administrators, such damages, so assessed by reason of all or any of the breaches of such covenants, agreements, or conditions, together with costs of suit, a stay of execution of the judgment shall be entered on record; and if by reason of any execution executed, the plaintiff, or his executors or administrators, shall be fully paid or satisfied all such damages so assessed, with costs of suit and the legal charges for executing the said execution, the body, lands, and goods and chattels of the said defendant shall be thereupon forthwith discharged from the said execution, which shall likewise be entered on record; but in every such case the said judgment shall, notwithstanding, remain as a security to the plaintiff, his executors and administrators, for any other breaches which may afterwards happen of such covenants, agreements, or conditions; upon which the plaintiff, or his executors, or administrators, may have a scire facias against the defendant, his heirs, devisees, terretenants, executors or administrators, assigning other breaches, to summon him or them, respectively, to show cause why execution should not be had or awarded on the said judgment; and thereupon damages shall be assessed as aforesaid, and execution issued accordingly; and that upon payment or satisfaction, in manner aforesaid, of such future damages, costs and charges as aforesaid, all further proceedings on the said judgment shall be stayed, and so on as often as the same shall happen; and the defendant, his body, lands, goods and chattels, shall be discharged from the said execution.

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stay of execution entered.

When discharge entered.

But plaintiff to have sc. fa. for other breaches.

8. *And be it enacted*, That in any action of debt on single bill, or action of debt or scire facias on a judgment, if the defendant hath paid the money due on such bill or judgment, such payment may be pleaded in bar.

In action on single bill, etc., if the money be paid, defendant may plead the same in bar.

9. *And be it enacted*, That in any action of debt on a bond, which hath a condition or defeasance to make void the same on payment of a less sum, at a day or place certain, if the obligor, his heirs, executors, or administrators have, before the action brought, paid to the obligee, his executors, or administrators, the principal and interest due by the condition or defeasance of such bond, though such payment was not made strictly according to the condition or defeasance, yet it may be pleaded in bar, and shall be as effectual a bar of such action as if the money had been paid at the day and place, according to the condition or defeasance, and had been so pleaded.

In an action on bond, if the money due be paid after day stipulated, but before action bro't, it may be pleaded in bar.

10. *And be it enacted*, That if at any time pending an action on any such bond, with a penalty, the defendant shall bring into the court, where the action shall be depending, all the principal

Defendant may, pending action on bond, bring the money due, with costs, into court.

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money and interest due on such bond, and all such costs as have been expended in any suit or suits in law or equity upon the said bond, the said money, so brought in, shall be deemed and taken to be in full payment and satisfaction of such bond; and the court shall give judgment to discharge the defendant from the same accordingly.

Mutual deal-
ers may
plead pay-
ment, and
discount.

11. *And be it enacted*, That if any two, or more, dealing together, or having dealt together, be indebted to each other, upon bonds, bills, bargains, contracts, promises, accounts, or the like, and one of them, or his or her executors or administrators, commence an action against the other or others, his, her, or their executors or administrators, in any court of this state, if the defendant or defendants cannot gainsay the deed, bargain, contract, or assumption, upon which he, she, or they is or are sued, it shall be lawful for such defendant or defendants to plead payment of all or any part of the debt or sum demanded, giving notice, in writing, with the said plea, of what he, she, or they will insist upon, at the trial, for his, her, or their discharge, and to give any bond, bill, receipt, account, bargain, or contract, so given notice of, in evidence, or else be precluded from bringing any action for that which he, she, or they might or ought to have pleaded and given in evidence by virtue of this act: *and further*, where such suit shall be brought on a bond, bill, or other contract for the recovery of a penalty on the nonpayment of money only, or for a penalty to secure or enforce the payment of money only, and if any bond, bill, or contract, with such penalty as aforesaid, shall be given in evidence for the plaintiff or defendant upon such trial, under the plea of payment, then the sum bona fide and in equity due, and not the penalty, shall be deemed and taken to be the debt due.

Real sum
due, and not
penalty, con-
sidered as
the debt.

If debt be
paid, jury
shall find for
defendant.

12. *And be it enacted*, That if, on such trial, it shall appear that the debt or sum so demanded is paid or satisfied, the jury shall find for the defendant or defendants, and judgment shall be entered, that the plaintiff or plaintiffs take nothing by his, her, or their writ, bill, or plaint; and unless the plaintiff or plaintiffs prosecute as executors or administrators, the defendant or defendants shall also recover his, her, or their costs of suit against such plaintiff or plaintiffs.

Jury to dis-
count money
paid, and find
verdict for
balance due.

13. *And be it enacted*, That if, on such trial, it shall appear that any part of the debt or sum demanded has been paid or satisfied, then such part shall operate as payment, and so far extinguish the said debt or sum, and in such case it shall be the duty of the jury to set-off or discount so much as has been paid or satisfied and to find a verdict for the amount of the residue or balance, upon which the plaintiff shall have judgment, with costs of suit, if costs

ought to be awarded; *provided*, that in all actions which shall be brought on any bond or obligation for the payment of money, wherein the plaintiff shall recover, judgment shall be entered for the penalty of such bond or obligation, to be discharged by the payment of the principal, or sum found by the verdict, as the case may require, with interest till paid, and costs, where costs ought to be awarded; unless it be proper that such judgment shall stand as a further security to the plaintiff, his executors and administrators.

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Judgment entered for penalty, discharged by payment of principal, etc.

14. *And be it enacted*, That if, on such trial, it shall appear that the plaintiff or plaintiffs is or are overpaid, then it shall be the duty of the jury to find a verdict for the defendant or defendants for the sum so overpaid, for which he, she, or they shall have judgment and execution, with costs, unless the plaintiff or plaintiffs prosecute as executors or administrators; in which case the sum so found by the jury shall be deemed a debt of record, to be paid in the course of administration, and the defendant or defendants, for recovery thereof, shall have an action of debt or a scire facias against the plaintiff or plaintiffs in the said action.

If plaintiff be overpaid, jury shall find for defendant to amount of such surplus.

15. Repealer.