

THE PARLIAMENT OF THE COMMONWEALTH

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HOUSE OF REPRESENTATIVES.

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BILLS OF EXCHANGE BILL.

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MEMORANDUM ON THE BILL.

(*Circulated by the Hon. P. M. Glynn, Attorney-General.*)

The Bill is founded on the *Bills of Exchange Act* 1882 of the United Kingdom, and the Bills of Exchange Acts of the several States.

All the State Acts in substance follow the Act of the United Kingdom; in fact they are practically adaptations of the latter Act with certain modifications, to which reference is made later on.

The draft of the Act of the United Kingdom was prepared by Sir M. D. Chalmers, K.C.B., C.S.I., who is an eminent authority on the law relating to Bills of Exchange and also on the subject of codification. The Act was intended to codify the law on the subject of Bills of Exchange, Promissory Notes, and Cheques, as existing at the time.

The Act of the United Kingdom may be considered as an example of successful codification. A slight amendment was recently made by Act 6 Edw. 7, c. 17. This amendment is the only amendment which was made in the United Kingdom.

The State Acts are as follow :—

New South Wales :

The *Bills of Exchange Act* 1887, No. 2.

Victoria :

The *Instruments Act* 1890, No. 1103, Part I.

The *Instruments Act* 1904, No. 1925.

Queensland :

The *Bills of Exchange Act* of 1884, No. 10.

The *Bills of Exchange Act Amendment Act* of 1905, No. 7.

South Australia :

The *Bills of Exchange Act* 1884, No. 312.

The *Bills of Exchange Amendment Act* 1904, No. 867.

Western Australia :

The *Bills of Exchange Act* 1884, No. 10.

The *Bills of Exchange Act* 1904, No. 54.

## Tasmania :

The *Bills of Exchange Act* 1884, No. 14.

The *Bills of Exchange Act* 1905, No. 7.

The *Bills of Exchange Amendment Act* 1906, No. 29.

The Bill if passed into law will take the place of all these Acts, and there will then be in Australia one uniform law in place of twelve distinct laws.

The State Acts relating to bank holidays contain certain provisions as to the effect of bank holidays and bank half-holidays in relation to bills, &c. Provisions to effect the same object have been included in the Bill—(see clause 98, sub-clauses (2), (4), and (5)).

The extent to which the clauses in the Bill differ from the English Act and the State Acts is shown in the following notes on the various clauses :—

Clauses 1-3. Formal.

Clause 4. The definitions are in substance the same as under the State Acts except that Australasia is made to include “any Territory under the control of the Commonwealth.”

Clause 5. In accord with English and State Acts.

Clauses 6-7. Preliminary clauses.

Clause 8. In accord with English and State Acts.

Clause 9. In accord with majority of State Acts, but the clause is extended, by virtue of the definition of “Australasia,” so as to make bills drawn in any territory under the control of the Commonwealth “Inland Bills.” In Tasmania only bills drawn and payable in Tasmania are regarded as Inland Bills. In all the other States bills drawn and payable in Australia, Tasmania, New Zealand, or Fiji, are regarded as Inland Bills.

Clauses 10-24. In accord with English and State Acts.

Clause 25. In accord with English Act, s. 20. There are various differences in the State Acts:—

See N.S.W. s. 20.

Vic. s. 21.

Qd. s. 21.

S.A. s. 20.

W.A. s. 21.

Tas. s. 20.

The material differences are as follow:—The N.S.W. section contains a provision that “when the drawer of a bill signs it and dies before it has been accepted the drawee may still accept it; and when the acceptor of a bill dies before the drawer has signed it the drawer may still complete it.” The Qd. section contains a provision that “when a simple signature, on unstamped paper or paper stamped with an adhesive stamp only, is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount not exceeding the amount (if any) written thereon as the maximum, using the signature for that of the drawer, or the acceptor, or an indorser.”

Clauses 26-45. In accord with English and State Acts.

Clause 46. In accord with English and State Acts, except that of Tasmania. The Tasmanian Act, section 41 sub-section (1), contains a proviso to para. (1.) as follows:—"Provided that if the drawee has an office, presentment may be made by leaving the bill at such office for acceptance."

Clauses 47-59. In accord with English and State Acts.

Clause 60. In accord with English and State Acts, except that of New South Wales. The New South Wales Act, section 55, contains a proviso to sub-section (2) para. (a) as follows:—"Provided that where two or more persons indorse as co-sureties, nothing in this sub-section shall disentitle any one or more of them to contribution from the other or others, but the rights and liabilities *inter se* of such indorsers shall be subject to the contract in pursuance of which they became indorsers."

Clause 61. In accord with English and State Acts.

Clause 62. In accord with English and State Acts, except those of New South Wales and South Australia. The New South Wales Act has, at the end of section 57, a paragraph as follows:—"Nothing in this section shall deprive any person of the right to recover any unliquidated damages to which he may be by law entitled." The South Australian Act, section 57, sub-section (1), paragraph (b), contains the words, "at the rate of ten pounds per centum per annum."

Clauses 63-64. In accord with English and State Acts.

Clause 65. Sub-clause (1) is in accord with English and State Acts, except that of New South Wales; section 60, which adds, "and such indorsement shall be deemed to give as valid an authority to the banker to pay the bill as though it were genuine and made with due authority."

Sub-clause (2) is intended to protect a banker paying a bank draft having a forged indorsement. Several State Acts have provisions intended to have the same effect. They are as follow:—

Victoria—1904, No. 1925, s. 2.

"For the purposes of section sixty-one of the Principal Act a banker who carries on the business of banking at more than one place shall be deemed to be a separate and independent banker at each of such places."

Queensland—1905, No. 7, s. 2.

(Second paragraph).

"Where a bank carries on the business of banking at more places than one within Australasia, any order payable on demand signed by or under the authority of the bank at one of such places within Australasia, and addressed to itself at another of such places within Australasia, shall, for the purposes of this section be deemed to be a Bill payable to order on demand signed by one person and addressed by him to another person."

South Australia—1904, No. 867, s. 2.

This section is the same as s. 2 of the Victorian Act 1904, No. 1925.

Tasmania—1905, No. 7, s. 2.

This section is the same as s. 2 of the Victorian Act 1904, No. 1925.

Clauses 66–68. In accord with English and State Acts.

Clause 69. The Queensland and Western Australian Acts provide that the section shall not affect Stamp Duties Acts. Otherwise the clause is in accord with English and State Acts.

Clauses 70–73. In accord with English and State Acts.

Clause 74. In accord with English and State Acts except the New South Wales Act, section 69, which provides in addition for summary applications to the Supreme Court, and in certain cases to a District Court, to compel the giving of a duplicate.

Clauses 75–77. In accord with English and State Acts.

Clause 78. In accord with English and State Acts except the New South Wales Act, section 73, which defines a cheque as “A cheque is a bill of exchange drawn on a banker payable on demand to or to the order of a specified person or to bearer.”

Clause 79. Sub-clause (1) is in accord with English and State Acts.

Sub-clause (2) is new. It was inserted by the Senate to provide for the case of “State cheques.” See *Hansard*, 1907, pp. 2055–2060.

Clause 80. In accord with English and State Acts.

Clause 81. There is no clause in the English Act corresponding to this clause.

Queensland and Tasmania have both passed somewhat similar clauses.

Queensland—1905, No. 7, s. 2.—“Where a bank in good faith and without negligence pays a bill or note drawn on or made payable at the bank, and the bill or note has been so drawn, accepted, or made by a customer as to afford facility for any fraudulent alteration in the amount thereof, and the bill or note has been so fraudulently altered, the bank shall not be responsible or incur any liability by reason of having paid the bill or note.”

Tasmania—1906, No. 29, s. 2.—“Where a bank in good faith, and without negligence, pays a cheque drawn on the bank by a customer of the bank, and the cheque has been drawn by the customer with gross negligence, and such gross negligence has afforded facility for any fraudulent alteration in the amount thereof, and the cheque has been so fraudulently altered, the bank shall not be responsible or incur any liability by reason of having paid the cheque.

The foregoing portion of this section shall be printed on or attached to the cover of every cheque book issued by a bank after the passing of this Act.”

[NOTE.—By section 3 of the Tasmanian Act (1906, No. 29) the above section was declared to continue in force until the 31st December, 1907, only.]

In connexion with this clause see the case of *Marshall v. The Colonial Bank of Australasia*, 1 C.L.R., 632, and on appeal to the Privy Council sub-nom. *Colonial Bank of Australasia v. Marshall* [1906] A.C. 559.

Clauses 82–88. These clauses relate to crossed cheques, and are substantially in accord with the English and State Acts, except that the Queensland Act in dealing with crossed cheques differs to the extent that it provides for the crossing of cheques to individuals or firms, and contains incidental provisions to give effect to that crossing. See Queensland, 1884, No. 10, s.s. 77–82.

Clause 89. In accord with English and State Acts. As regards inland and foreign notes compare sub-clause (4) with clause 9.

Clauses 90–97. In accord with English and State Acts.

Clause 98. In the English Act, and some of the State Acts, a day appointed as a public fast or thanksgiving day is made a non-business day. This provision is omitted from the Bill.

The clause contains two sub-clauses (2) and (5) which are not in the English or State Acts relating to Bills of Exchange, but provisions having a similar effect are contained in the Bank Holidays Acts of the States.

Clause 99. In accord with English and State Acts.

Clause 100. The words “and the services of a notary cannot be obtained at the place where the bill is dishonored,” which are to be found in the corresponding clauses of the English Act and the State Acts, have been omitted. The words omitted were in the Bill as introduced in the Senate, but were omitted. See *Hansard*, 1907, pp. 759–763, 2415–2418.

Clause 101. In accord with English and State Acts.