CHAPTER XI - OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED

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108. Acceptance for honour

Any person not already liable on a bill that has been noted or protested for non-acceptance or for better security may, with the holder's consent, accept it for the honour of any party by writing on the bill.

> When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Section 108 of the Negotiable Instruments Act, 1881 lets a stranger to the bill step in when the drawee has refused to accept it, or when the acceptor's credit has failed before maturity and the holder has protested for better security under s. 100. This person is called the acceptor for honour, or acceptor *supra protest*. He accepts to protect the credit of a party who would otherwise be pursued at once by the holder, usually the drawer or an endorser. The bill must first have been noted or protested for non-acceptance or for better security. The acceptor for honour must not already be liable on the bill, so a drawer or endorser cannot accept for honour. The holder must consent, because he is otherwise entitled to proceed immediately against the earlier parties. The acceptance must be written on the bill itself, and it must be for the honour of a party to the bill. That party should be named, and if no party is named, the acceptance is deemed to be for the drawer (ss. 109 and 110). The acceptor for honour becomes liable to all parties who came after the party for whose honour he accepted (s. 111).

His liability is conditional: at maturity the bill must first be presented to the drawee for payment, be dishonoured and noted or protested for non-payment, and notice must be given to the acceptor for honour before he is bound to pay (s. 112). For example, A draws a bill for ₹1 lakh on B in favour of C. B refuses to accept, and C has the bill noted and protested for non-acceptance. D is a friend of A and not a party to the bill. To save A's credit, D obtains C's consent, writes "Accepted for the honour of A" on the bill and signs it. At maturity, C must first present the bill to B. If B does not pay, and the bill is protested for non-payment with notice to D, D must pay C, and he can then recover the amount from A. E, an endorser of the same bill, could not have accepted for honour, because he is already liable on it.

109. How acceptance for honour must be made

A person accepting a bill for honour shall do so in writing on the bill, signed by him, declaring that he accepts the protested bill under protest for the honour of the drawer, of a named indorser, or generally for honour.

> A person desiring to accept for honour must, by writing on the bill under his hand, declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour.

Section 109 of the Negotiable Instruments Act, 1881 sets out the formalities for an acceptance for honour. Under s. 108, when a bill has been noted or protested for non-acceptance or for better security, any person who is not already liable on it may, with the holder's consent, accept it for the honour of a party to the bill. This is done to protect that party's credit and prevent immediate recourse against him. Section 109 requires three things for that acceptance to be valid. First, it must be in writing on the bill itself; an oral promise or a separate letter is not enough. Second, it must be under the acceptor's hand, meaning it is signed by him. Third, it must declare that he accepts the protested bill under protest, and state for whose honour he accepts: the drawer, a particular indorser whom he names, or generally for honour. Naming the party matters because the acceptor for honour, after paying, steps into the rights of the party for whose honour he paid and can recover from that party and from all parties liable to him (s. 114). If the acceptance does not say for whose honour it is made, it is deemed to be for

the honour of the drawer (s. 110). The acceptor for honour is liable only if the drawee fails to pay the bill at maturity, and only after the bill has been presented to the drawee for payment, protested for non-payment, and the acceptor for honour notified (ss. 111 and 112). For example, A draws a bill on B in favour of C, and C indorses it to D. B refuses to accept it, and D has it noted and protested for non-acceptance. E, a friend of C who is not a party to the bill, wishes to protect C's credit. With D's consent, E writes on the bill: "Accepted under protest for the honour of C, the indorser — (signed) E." This is a valid acceptance for honour. If B still does not pay at maturity, D, after presentment, protest for non-payment and notice to E, can recover from E. Having paid, E can then recover from C and from A, who is liable to C, but not from D, who is a later party. If E had simply written "Accepted — E" without naming anyone, the acceptance would be treated as made for the honour of A, the drawer.

110. Acceptance not specifying for whose honour it is made

An acceptance for honour that does not state for whose honour it is made shall be deemed to be made for the honour of the drawer.

> Where the acceptance does not express for whose honour it is made it shall be deemed to be made for the honour of the drawer.

Section 110 of the Negotiable Instruments Act, 1881 applies to acceptance for honour, also called acceptance supra protest. It arises when the drawee refuses to accept a bill of exchange, or to give better security, and the bill is noted or protested. A third person who is not already liable on the bill may then accept it, with the holder's consent, to save the credit of a party liable on it (s. 108). The acceptor for honour must declare in writing on the bill that he accepts under protest, either for the honour of the drawer, of a named indorser, or generally (s. 109). Where he does not name anyone, s. 110 presumes that he accepted for the honour of the drawer, since the drawer is the party primarily answerable for the bill being honoured. This matters because the party for whose honour the bill is accepted decides whom the acceptor protects and whom he can recover from if he pays. A person who pays for honour gets the holder's rights against that party and all parties liable to that party (s. 114). An acceptor deemed to act for the drawer can therefore look only to the drawer, and not to the indorsers who come after him. The acceptor for honour is liable only if the bill is first presented to the

drawee for payment, protested for non-payment, and he is given notice of this (s. 112). For example, A draws a bill on B, payable to C, and C indorses it to D. B refuses to accept it, and D has it noted and protested. With D's consent, E writes "Accepted for honour" on the bill and signs it, without naming any party. Under s. 110, E's acceptance is deemed to be for A's honour. If B also fails to pay at maturity and E pays after due protest and notice, E can recover the amount from A, the drawer, but not from C. Had E written "Accepted for the honour of C", he could have recovered from both C and A, since A, as drawer, is liable to C.

111. Liability of acceptor for honour

An acceptor for honour shall pay the bill to every party after the party for whose honour he accepted if the drawee fails to pay, and shall be compensated by that party and all earlier parties.

> An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.
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> But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

Section 111 of the Negotiable Instruments Act, 1881 sets out the liabilities of an acceptor for honour. This is a person who, after a bill has been noted or protested for non-acceptance or for better security, accepts it to save the credit of a particular party to the bill (ss. 108–110). His liability is secondary: he promises to pay only if the drawee does not pay at maturity. The section also limits who can enforce that promise. He is bound to the parties who come after the party he accepted for, because those are the parties his acceptance protects. He is not bound to the party he accepted for, or to anyone before that party. In return, the party he accepted for and all prior parties must compensate him, each in their own capacity as drawer, indorser and so on, for any loss or damage his acceptance causes him. The proviso adds a procedural condition. He is not liable to the holder unless the bill is presented to him for payment no later than the day after its maturity.

If the address he gave on the bill is somewhere other than where the bill is payable, it is enough that the bill is forwarded for presentment within that time. Separately, under s. 112, the bill must first be presented to the drawee for payment at maturity and, if unpaid, be noted or protested. For example, A draws a bill on B payable to C. C indorses it to D, and D indorses it to E. B refuses to accept the bill, and it is protested for non-acceptance. F, a friend of C, then accepts it for C's honour. At maturity, E presents the bill to B, who does not pay, and it is protested. E then presents it to F the next day. F must pay E, and if D had to pay instead, F would be liable to D, because both are subsequent to C. F is not liable to C or to A. Once F has paid, he can recover the amount and his costs from C, whose honour he saved, or from A as drawer. If E had not presented the bill to F until three days after maturity, F would not be liable to E.

112. When acceptor for honour may be charged

An acceptor for honour shall not be liable unless, at maturity, the bill has been presented to the drawee for payment, dishonoured by him, and noted or protested for that dishonour.

> An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Section 112 of the Negotiable Instruments Act, 1881 makes the liability of an acceptor for honour secondary and conditional. An acceptor for honour is a third person who accepts a bill after it has been noted or protested for non-acceptance, in order to save the credit of a party liable on it, such as the drawer or an endorser (s. 108). By doing so he binds himself to pay the holder if the drawee does not pay (s. 111). Because his promise only backs up the drawee's, the holder must still go to the drawee first, even though the drawee has already refused to accept, since the drawee may have received funds or changed his mind by the due date. The acceptor for honour can be held liable only after three things have happened: the bill has been presented to the drawee for payment at maturity, the drawee has dishonoured it by non-payment, and that dishonour has been formally recorded by noting or protest before a notary public (ss. 99 and 100). If the holder skips any of these steps, for example by going straight to the acceptor for honour on the due date, the acceptor for honour is discharged. For example, A draws a bill

for ₹1 lakh on B, payable to C three months after date. B refuses to accept it, the bill is protested for non-acceptance, and D accepts it "for the honour of A". On the due date, C must first present the bill to B for payment. If B refuses and C has the dishonour noted or protested, C can recover the ₹1 lakh from D, who can in turn recover it from A, for whose honour he accepted (s. 111). If C fails to present the bill to B at maturity, or does not have B's refusal noted or protested, D is not liable to C at all.

113. Payment for honour

A bill of exchange that has been noted or protested for non-payment may be paid by any person for the honour of any party liable on it, provided the payer first declares before a notary public the party for whose honour he pays and the notary records that declaration.

> When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same: provided that the person so paying or his agent in that behalf has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Section 113 of the Negotiable Instruments Act, 1881 deals with "payment for honour", also called payment *supra protest*. It lets a stranger to the bill step in and pay it to protect a particular party liable on it, such as the drawer or an endorser, from the consequences of dishonour and from immediate action by the holder. Three conditions must be met. First, the bill must already have been dishonoured by non-payment and formally noted (s. 99) or protested (s. 100) by a notary public, so payment for honour can only follow a recorded dishonour. Second, the payer or his agent must declare before a notary public the party for whose honour he is paying, which fixes on whose behalf the payment is made. Third, the notary must record that declaration; without it, the payment is an ordinary payment and not a payment for honour. These formalities matter because of s. 114. A person who properly pays for honour gets all the rights of the holder at the time of payment, and can recover from the party for whose honour he paid the amount paid, with interest and expenses properly incurred. Since that party is treated as relieved by the payment, the parties who come after him on the bill are discharged, while he and the parties before him remain liable to the payer. For example, A draws a bill on B, payable to C. C endorses it to D,

and D endorses it to E. On the due date B refuses to pay, and E has the bill protested for non-payment. F, a business associate of C, wishes to protect C's credit, so he appears before a notary public, declares that he is paying for the honour of C, and has the declaration recorded, after which he pays E the amount of the bill. D and E, who come after C on the bill, are discharged. F steps into E's shoes as holder and can recover from C the amount paid with interest and expenses, and can also proceed against the parties before C, namely the drawer A and B if B had accepted the bill. If F had paid E without making and recording the declaration, the payment would not qualify under s. 113, and F could not claim the rights given by s. 114.

114. Right of payer for honour

A person who pays a bill for honour shall have all the holder's rights on the bill, and shall be entitled to recover from the party for whose honour he paid the amount paid, with interest and proper expenses.

> Any person so paying is entitled to all the rights in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Section 114 of the Negotiable Instruments Act, 1881 sets out what a person gets for paying a bill for honour. Under s. 113, when a bill has been noted or protested for non-payment, any person may pay it for the honour of any party liable on it. Before paying, that person or their agent must declare before a notary public whose honour the payment is for, and the notary must record that declaration. Such a payment is made to protect the credit of a party who would otherwise be exposed to proceedings for dishonour. Section 114 gives the payer two benefits. First, the payer steps into the shoes of the holder: they take over every right the holder had on the bill at the time of payment. This lets them enforce the bill against the party for whose honour they paid and against any party who is liable to that party, such as the drawer or prior endorsers. Second, the payer has a direct right to be reimbursed by the party for whose honour they paid. The reimbursement covers the full amount paid, interest on it, and all expenses properly incurred in making the payment, such as noting, protest and notary charges. The payer is therefore not a mere volunteer who loses the money. The law

rewards their intervention by securing full indemnity, provided the formalities of s. 113 are complied with. For example, A draws a bill for ₹1,00,000 on B, payable to C, and C endorses it to D. On maturity B refuses to pay, and D has the bill protested for non-payment. E, a business associate of C, wishes to save C's credit. E declares before a notary that the payment is for the honour of C, the declaration is recorded, and E pays D ₹1,00,000 and spends ₹2,000 on notarial charges. Under s. 114, E acquires D's rights on the bill. E may recover from C the ₹1,00,000, interest on it, and the ₹2,000 expenses. As holder, E may also proceed against A, the drawer, who is liable to C. If E had paid without first making and recording the declaration before a notary, the payment would not be a valid payment for honour under s. 113, and E could not claim these rights under s. 114.

115. Drawee in case of need

A bill naming a drawee in case of need shall not be treated as dishonoured until that drawee has also dishonoured it.

> Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Under Section 7 of the Negotiable Instruments Act, 1881, a "drawee in case of need" is a person named in a bill of exchange, or in an indorsement on it, in addition to the main drawee, to be turned to if the main drawee fails to accept or pay. The drawer or an indorser names such a person to protect their own credit, so the bill can still be honoured without being returned to them. Section 115 makes that alternative binding on the holder. If the main drawee refuses to accept or pay, the bill is not yet dishonoured. The holder must present it to the drawee in case of need, and the bill counts as dishonoured only if that person also refuses. This matters because the liability of the drawer and indorsers depends on dishonour. A holder who skips the drawee in case of need cannot treat the bill as dishonoured, and so cannot give a valid notice of dishonour (s. 93) or sue the drawer and indorsers on that ground. The drawee in case of need may also pay or accept the bill for the honour of the party who named him (ss. 108 and 116). For example, A of Patna draws a bill for ₹1,00,000 on B of Kolkata, payable to C, and names D of Kolkata as drawee in case of need. On maturity, C presents the bill to B, who refuses to pay. C cannot sue A straight away. He

must first present the bill to D. If D pays, the bill is discharged and C has no claim. Only if D also refuses is the bill dishonoured, and C may then give notice of dishonour to A and recover the amount from him. If C sues A without presenting the bill to D, A can defend on the ground that the bill was never dishonoured.

116. Acceptance and payment without protest

A drawee in case of need may accept and pay the bill without first having it protested.

> A drawee in case of need may accept and pay the bill of exchange without previous protest.

Section 116 of the Negotiable Instruments Act, 1881 deals with the "drawee in case of need": a person whose name the drawer or an endorser writes on the bill as someone to turn to if the original drawee refuses to accept or pay (s. 7). Under s. 115, when such a person is named, the bill is not treated as dishonoured until that person has also refused. Section 116 removes a procedural step in this situation. A stranger who wants to accept or pay a bill for someone's honour can normally do so only after the bill has been noted or protested for dishonour, under ss. 108 and 113. A protest is a formal certificate by a notary public recording the dishonour (s. 100). The drawee in case of need does not have to wait for any of this. He is not a stranger to the bill, because he was named in it to act if the original drawee defaulted, so he may accept or pay as soon as the drawee fails to. This saves the time and cost of protest and helps the bill get honoured quickly. For example, A draws a bill on B for ₹1,00,000 payable to C, and writes on it "in case of need, apply to D". C presents the bill to B, who refuses to accept it. C may then go straight to D, and D may accept the bill, and later pay it, without C first getting the dishonour by B noted or protested by a notary. If instead E, a person not named in the bill, wanted to accept it for A's honour, the bill would first have to be noted or protested for non-acceptance before E could do so.