and therefore the holder cannot sue it should it refuse to pay. This rule, however, is rather losing ground and the other is coming into more general favour—that a cheque does operate to transfer the money of the maker to the holder and, consequently, that he has a right to sue the bank for the money.

Cheques are made payable either to bearer or order. If a cheque is made payable to bearer it can be transferred from one person to another simply by handing it to him—by delivery; but if a cheque is made payable to order, then the person who receives it, if wishing to transfer it to some one else, must write his name on the back. If he writes his name on the back it is called a blank indorsement, and this form is often used in transferring cheques. If, however, a person intends to send a cheque through the mail he should never write it payable to bearer, but always payable to the order of a particular person, so as to require his name to be written thereon in order to make a good transfer. This is a much safer way of sending cheques than simply by making them payable to bearer.

COMMERCIAL LAW

XV. THE LAW RELATING TO LEASES

A LEASE IS AN AGREEMENT, and, as every one knows, usually relates to the hiring of lands and houses. *If the agreement is to be for a longer period than one year it should be in writing*, for if it be not either party can avoid it, not morally but in law. The statute of frauds, which has been explained, would shield either party in not carrying out such an agreement if it were not in writing if by its terms it was to last for a longer period than one year.

There is another very important reason for putting such an agreement in writing. Much of the law relating to the two parties, landlord and tenant, is one-sided and in favour of the landlord. Our law on that subject is based on the English law. It was imported in the early colonial days, and, though it has been greatly changed by statute and by decisions of the courts, it is still very one-sided, as we shall see before finishing this paper. For this reason, especially, all leases relating to houses and stores or other buildings, even for a short period, should be in writing, with the rights and duties of both parties fully stated, so that both may clearly know what to do and to expect.

Unless something is said in the lease concerning repairs

the landlord is not obliged to make any. This statement shows at once the need of having a written lease. If the house is out of order—the locks, blinds, doors, and windows are not in good order—the tenant cannot claim anything of the landlord or require him to put them in good condition. Even if a house should become unfit for habitation in consequence of fire, or is blown down, or is flooded with water, the landlord is not bound to do anything unless he has stated that he will in his lease.

A fire broke out not long since in a large warehouse and burned it so completely as to render it wholly unfit for use; indeed, all the merchandise in it was wholly consumed. Nevertheless, when the lease expired and the tenants refused to pay as they had agreed to do, the landlord brought a legal proceeding against them to compel them to pay during the entire period, as though they had been staying there and selling goods and making money, and they were compelled to pay. *This is the common law on the subject*, and every tenant is bound to pay in such cases unless he has clearly stated in his lease that he is not to be holden in the event of the destruction of the building by fire, flood, lightning, or other cause.

Furthermore, it may be added that leases nowadays are often furnished with blank spaces to be filled up with names, the amounts to be paid, times of payment, etc., and persons often sign them without even reading them. They should not do this. They should be careful to read them over two or three times or more, until they fully understand them and are sure of their nature before signing or executing them. People are still more negligent in taking out insurance policies without reading them. They are very long and parts of them are printed in fine type and, perhaps, are quite difficult, especially for old eyes, to read. In truth some of the most important parts are put in the finest print—some of the exceptions against loss and other matters, which, we are quite sure, if a person when taking out a policy should read over and understand he would insist on having changed.

If a house becomes unfit for living therein by its own fault—for example, if it is overrun with rats, or becomes so decayed that the weather invades and is thereby rendered unfit—the tenant, so the law says, has indeed the privilege of quitting, if he did not know these things at the time of entering; but if he did, he would be required to live there, however much he might dislike the company of rats or the presence of the snow or rain, and also to pay his rent; or, if quitting for that reason, he would still be responsible for the rent as he would if living in the house. An eminent legal writer has stated the principle in this way: The tenant can leave if the defect was not known or anticipated by him, or known or anticipated if he had made a reasonable investigation or inquiry before he took the lease.

A tenant is not required to make general repairs without an agreement, but he must make those that are necessary to preserve the house from injury by rain and wind. If the shingles are blown off or panes of glass are broken others must be put in their places; and it is said that he would be bound even for ornamental repairs, like paper and painting, if he made an agreement to return the house in good order.

A tenant of a farm must manage and cultivate it by the same rules of husbandry as are practised in his vicinity, and if his lease ends by any event that is uncertain and could neither have been foreseen nor foretold, he is entitled to the annual crop sowed or planted by him while he was in possession.

As we have stated, if the house is wholly destroyed the

tenant must still pay the rent, for the reason, which to many may seem absurd, that the law regards the land as the principal thing and the house as secondary. It is true that a man, in the event of his house burning down, might pitch a tent on the ground and live there, but it would be a decidedly chilly way of living, especially in the winter-time, in the northern part of our country. If a tenant should agree to return and deliver the house at the end of the term in good order and condition, reasonable wear and tear only excepted, he would be obliged to rebuild the house if it burned down. Once more, we ask, in view of these things, ought he not to make a written lease and well understand its terms before signing it?

The times for paying rent are usually specified in the lease, if one is made. When they are not the tenant is governed by the usage of the country or place where he lives.

When nothing is said about underletting the whole or a part to some one else the tenant has a right to do this, but remains bound to the landlord for his rent. Generally when written leases are made there is a clause stating that the tenant cannot underlet any portion or all without the landlord's consent.

A tenant is not responsible for taxes unless it is expressly agreed that he shall pay them.

If a lease be for a fixed time the tenant loses all right or interest in the land as soon as the lease comes to an end, and he must leave then or the landlord may turn him out at once, or, in other language, eject him. If, however, he stays there longer with the consent of the landlord he is then called a tenant at will and cannot be turned out by the landlord without giving a notice to him to quit. The statutes of the several States have fixed the

length of time that a notice must be given by the landlord to his tenant before he can turn him out. In many States a notice of thirty days must be given; sometimes sixty days' notice is required, or even longer.

It is an important question *what things a tenant may take away with him at the expiration of his lease.* Of course, there is no question whatever with respect to many things. Besides his wife and children he may take all his furniture and other movable property. But there are many things fixed to the house by the tenant that he desires to remove if he has the right to do so, and many questions have been asked and decided by the courts relating to this subject. The method of fastening them to the house is the test usually applied to determine whether they can be taken away or not. If they are fastened by screws in such a way as to show that the tenant intended to take them away, he can do so, otherwise he cannot.

In modern times the rule has been changed in favour of the tenant, and whatever he can remove without injuring the house, leaving it in as good condition as it would otherwise be, he can take away; for example, ornamental chimney-pieces, coffee-mills, cornices that are furnished with screws, furnaces, stoves, looking-glasses, pumps, gates, fence rails, barns or stables on blocks, etc. On the other hand, a barn placed on the ground cannot be removed, nor benches fastened to the house, nor trees, plants, and hedges not belonging to a gardener by trade, nor locks and keys. Of course, all these things may be changed by the written lease, and it should be clearly stated what things may be removed concerning which any doubt may arise. We have heard of a case in which a tenant put a pier-glass into a house, fastening it by means of cement. He asked and was given the landlord's

permission to do this at the time of putting it in, but when the lease ended the landlord would not allow him to take it out, and an appeal was made to a court, which decided in favour of the landlord. Doubtless this decision is correct. If the glass could have been taken away without injuring the wall then it belonged to the tenant. This shows the need of putting such matters in writing; otherwise the tenant will suffer unless the landlord be a man of the highest integrity.

COMMERCIAL LAW

XIII. CONCERNING AGENTS

VERY many persons act as agents for others. Much of the business of modern times is carried on by persons of this class. All the managers of corporations are agents of the railways, banks, manufacturing companies, and the like. They are to be seen everywhere. Every salesman is an agent. In short, *the larger part of the modern commerce of the world is done by agents.*

AGENTS ARE OF TWO KINDS, SPECIAL AND GENERAL; and there are important differences between the two. A GENERAL AGENT is a person who transacts all the business of the person hiring or appointing him, called a principal, or all his business of a particular kind. A principal might have several general agents for the different kinds of business in which he was engaged. Suppose he has a cotton-factory and a store and a farm; he might have three general agents, each managing one of these enterprises.

A general agent may be appointed in different ways. This may be done by a written contract. Very often, however, no such contract is made, and the person comes to act in a different way. A cashier of a bank, for example, is a general agent to transact its business, but the mode of appointing him rarely consists of anything more than a resolution of the board of directors. More

often than otherwise his appointment is purely verbal, by word of mouth. And, again, the authority of an agent thus to act is often found out by his acts, known and approved by his principal, or in other ways. Suppose that A should manage B's store for him, buying and selling merchandise with A's knowledge; by thus putting him before the world as B's agent the law would say that he really was so, and B would be bound by his acts within a limit soon to be explained. This, perhaps, is the more common way in which the world learns of the authority of an agent's act. He does a great variety of things which it is well known must be within the knowledge of his principal or employer and, as they are known by the employer and the employer says nothing in the way of disowning or repudiating these acts, he is bound by them.

Sometimes, indeed, persons pretend to be agents for others when really they have no authority to act. When this is done, and the person for whom they are pretending to act finds out what they are doing, then it is his immediate duty to take such action as the circumstances require to disown the acts of such pretenders. If this is not done he may be bound by them. His action in adopting or approving is called the RATIFYING of an agent's act; and when this is done the agent's action is just as valid as though authority had been given to him to act in the beginning. The principal's conduct in thus ratifying an agent's acts relates back to the time when the agent first began to act.

A SPECIAL AGENT is appointed to do a particular thing and this is more often done in writing. Perhaps the most common illustration is the appointment of some one to act for another at the annual meeting of a corporation to vote on stock. Such a person is called a PROXY, and persons often act as through another in this manner.

Sometimes one person serves as a proxy or agent for a very large number of shareholders.

The liability of a principal for the acts of a general agent are very different from his liability for the acts of a special agent. In the former case the principal is said to be responsible for all the acts of his agent that are within the general scope of his business. In other words, if it is generally known that A is acting as the general agent of B in conducting his business,— we will say managing his cotton-factory,— A will bind his principal B for everything done by him as general agent in conducting that business.

Suppose A was acting as a general agent of an insurance company and, among other things, was told by the president or board of directors of the company not to insure property in a given place below a stated rate. Suppose a person should go to this agent, desiring to have his property insured, but at a lower rate, and suppose that the agent should finally yield and make a lower rate as requested. Could his company repudiate the contract? Clearly not, for it was A's duty to make contracts for insuring properties. If the insured knew that the agent had been expressly limited in the rates for insuring and that he was going contrary to his instructions in making the lower rate, then, indeed, the company would not be bound by the contract. Otherwise it could not repudiate the act, for it would fall within the general principle that a principal is bound by the acts of his agent done within the general scope of his business or employment; and such a contract clearly would be within the limit. For, indeed, this is the very business of the agent — to effect insurance.

The only thing necessary, therefore, for a person doing business with a general agent is to find out whether he is such an agent; and when this is learned then a person can safely transact business with him, doing anything

within the general scope of his powers, unless the person actually knows that some limit or restriction has been put upon the agent. It is not his duty to find out what the powers of a general agent are, but simply whether he is a general agent or not.

But the rule is very different that applies to the liability of a principal who employs a special agent. In such cases it is the duty of the person doing business with him to inquire what his powers are, for the principal will not be bound beyond these. Such an inquiry, therefore, must be made. He must ask the agent to show the authority under which he is appointed, or in some way clearly convince the other what his powers are before any business can be safely done.

The authority of a special agent is often stated in writing, and the paper is called A POWER OF ATTORNEY. *In selling land an agent should always have such a power,* because a good title to land can only be given in writing, and this power of attorney should be copied in the records kept for this purpose with the deed itself to show by what authority the agent acted in selling the land. Every now and then when a person buys a piece of land and examines the title to find out whether it is perfect or not, he discovers that somewhere in the chain of title a deed was made by the agent of the seller instead of the seller himself, and the buyer had forgotten to put the power of attorney on record with his deed. The omission to do this is often serious. It is in truth just as important for an agent to have a proper power of attorney in such a case as to give a proper deed for his principal, and the one paper should be recorded quite as much as the other, as both are parts of the same story.

Sometimes an agent appoints a subagent. This may be orally or in writing. A good illustration is that of the collection of a cheque deposited with a bank. Suppose a

cheque is deposited in a bank in Chicago drawn on a bank in Newark, N. J. The Chicago bank is, in the first instance, the agent for collecting it. The bank would send the cheque to another in New York, which would be its subagent, and that bank in turn would send it to a third bank in Newark, which would be a subagent of the New York bank. Thus there would be two subagents, besides the agent, employed in collecting the cheque.

There is an important question relating to the liability of one of these agents or subagents in the event of the negligent performance of the duty; which is responsible? Generally, it is said, if the general agent appoints a subagent he is nevertheless responsible for his act. Suppose a street contractor employs a subagent to repair a street and he digs a hole and improperly guards it and some one falls into the place and is injured, can the person thus injured look to the contractor or to the subcontractor for compensation for his injury? The contractor is liable in such cases. It may be added, however, that although he is liable to the person injured, he may be able to recover of the subcontractor or subagent. But this rule does not apply to the banks in every State. In some of them the first bank in which the cheque was deposited is liable for the negligence of others that may be afterward employed in collecting it, and this rule prevails in the federal courts. In a larger number of States the first bank fully performs its duty in selecting a proper or reputable agent, and in sending the cheque to it for collection. Should the second or subagent be neglectful, the depositor of the cheque could compel that agent, and not the first, to make its loss good.

COMMERCIAL LAW

XIV. THE LAW RELATING TO BANK CHEQUES

A CHEQUE has come to be one of the most common of all writings. Almost everybody receives more or less of them. There are some principles that ought to be understood by every holder or receiver of a cheque which, we fear, are not as well known as they should be.

First of all, a person ought to present his cheque for payment soon after receiving it. Some people are quite negligent in this matter and carry cheques around in their pocket-books for several days before presenting them for payment. It may not be convenient to take them to a bank, and so they are carried around; perhaps their owners forget they have them. They ought not to do so, for the reason that the maker of a cheque really says to the holder: "This is an order that I give to you on my bank for the money mentioned. If you go at once you can get payment, but I do not promise to keep it there always for you — only for a short time." Now if a person is willing to accept a cheque at all, he ought to present it within the time the holder intended, and if he does not and the bank fails, the loss falls on the holder and not on the maker.

What time does the law fix for presenting cheques for payment? The rule everywhere is that the holder must present a cheque received by him, if drawn on a bank in the place where he lives, on the day of receiving it or

on the next day. If the cheque is drawn on a bank at a distance, out of town, then he should send it to that bank, either directly or by leaving it with another bank for that purpose, on the same day as he received it or the next day. In other words, *he must take steps to collect the cheque either on the day of receiving it or the following one.*

A friend of mine gave a cheque to a merchant in payment of a small bill. Both lived in the same town, where the bank on which the cheque was drawn was also located. About a week afterward the bank failed and the merchant wrote to him, stating the unwelcome fact and that the cheque had not been collected and desired him to send another. I asked my friend if he complied with the request, and he said: "Certainly." I told him that he ought not to have done so, for he was under no obligation either in law or morals to do such a thing. Had he known the above rule he would not have sent the second cheque, for it was pure negligence on the part of the merchant in not presenting it — in fact, on the same day it was received.

A person may, of course, hold a cheque for a much longer period than the time above mentioned and present it and receive payment, but the point that we are trying to make clear is that *the risk of holding it* during this period *is the holder's and not the risk of the maker of the cheque.* I suppose the merchant in the above case had, perhaps, lost the cheque. Every now and then one is mislaid and, consequently, is not presented for payment when it should be, but the maker ought not to suffer for the negligence of the receiver of his cheque. The rule of law that we have given is founded on justice, and if the receiver is negligent in not presenting it as he should, the holder ought not to suffer.

It is the duty of a bank to pay a cheque just as it is drawn, and if it makes any mistakes it must suffer.

The reason for this rule is that the maker does not expect to see his cheque again after it leaves his hand, and when he puts his money in a bank for safe-keeping the bank virtually says to him that it will pay only on his order just as he has written. It will guard his interests carefully and pay no forged cheques or cheques that have been altered in dates or amounts, to his injury. Now, it is quite a common thing for cheques to be forged, and still more common for them to be raised. A scoundrel gets a cheque that is genuine, ordering a bank to pay $18, and changes it to $1800. He presents it for payment and it is paid. By and by the depositor finds out that he has not as much money in the bank as he supposed he had there. What has happened? Some one has altered one of his cheques and drawn out too much. He goes to the bank and makes inquiry, learns that this is so, and then demands that it shall make the amount good to him. Usually a bank is obliged to pay.

There is one limit to this rule. *A man making a cheque must be careful to write it in such a way that changes or alterations cannot easily be made.* If he is careless, leaving ample space so that changes can be made in the amount, then he will be considered negligent, and a bank would not be obliged to make good his loss. If, on the other hand, he is careful in drawing his cheques then a bank's duty to protect him is plain, and it is liable in the event of neglecting to do so.

A few years ago a man drew a cheque for $250, dated it three days ahead, and left it with his clerk, directing him to draw the money on the day written in the cheque and pay the men who worked for him, and went away. The clerk thought that he would like to keep that money himself and take a little journey also, so he changed the date to one day earlier, went into the bank on that day

and drew the money, and started for the Klondike or some other place. The maker of the cheque soon found out what had happened and demanded of the bank to make the amount good. The bank said to him: "Suppose the clerk had waited one day longer and then drawn the money, you would have been the loser just the same." The man admitted all this, but replied, nevertheless, that he had not changed the date; that the bank ought to have seen the alteration before paying, and as it did not it was negligent in that regard, and the bank was obliged to lose.

When a person takes a cheque he naturally supposes that the bank on which it is drawn owes the money to him because he can truly demand it. *Suppose a bank refuses to pay, can the holder then sue the bank for money?* In six States—Illinois, South Carolina, Missouri, Kentucky, Colorado, and Texas—the holder of such a cheque can sue the bank and get his money. The courts in those States say that a cheque is an assignment or transfer of the amount of money stated to the holder of the cheque from the time that the cheque was given him. The law in all of the other States is otherwise, and a bank for a good reason can decline to pay a cheque, and, in any event, the holder cannot sue the bank for the amount. If it will not pay he must look to the maker and not the bank for payment. Of course, *a cheque must always be drawn against a deposit, and it is a fraud on the part of a person to draw a cheque on a bank when he has no money there.* Sometimes mistakes are made by banks in their bookkeeping, and they think they have not the money to pay when in truth they have. In such cases they sometimes decline to pay, but even if they had the money the law says that there is no contract between the holder of a cheque and the bank on which it is drawn,