

NOTES PAYABLE TO THE MAKER

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An instrument in which the maker promises to pay money to himself obviously can be a promissory note only in a formal sense. Nevertheless such instruments—frequently called “myself” notes—are now quite common and have given rise to some very interesting legal questions. When does such a formal promissory note first become a legal promissory note? Does it, upon completion, necessarily become a negotiable promissory note? Are words of negotiability—usually found on the face of such instruments—necessary to the maker’s ability to complete them? May the holder of such an instrument unindorsed recover against the maker as upon a promissory note? Is the taker of such a note from the maker-payee a purchaser or a payee? Does the payee’s indorsement preclude him as maker from setting up the ordinary defenses against the person to whom he delivers it? These and other questions to which this awkward instrument has given rise seem to justify its analysis, particularly in view of the fact that none of the standard works upon negotiable instruments has critically discussed it.

The definition of a promissory note is simple and usually not difficult of application. The general requisites of negotiability, applicable to all instruments, are well understood and succinctly stated in the first section of the *Negotiable Instruments Law*.¹ Equally clearly—and necessarily with much repetition of idea—the *Act* sets forth the requisites of the negotiable

¹“An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer;
2. Must contain an unconditional promise or order to pay to pay a sum certain in money;
3. Must be payable on demand, or at a fixed or determinable future time;
4. Must be payable to order or to bearer;
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.” *NEGOTIABLE INSTRUMENTS LAW, § 1.*

promissory note.² The eighth section of the *Negotiable Instruments Law* seems to suggest the validity as an order promissory note of an instrument drawn by the maker payable to his own order.³ But it is clear that this section must be read in the light of the limitation in Section 184 that a note "drawn to the maker's own order, is not complete until indorsed by him."⁴ Yet the courts, because they seem not to have appreciated clearly the function of the maker's indorsement of such paper, have assumed that, since the instrument in form complies with Section 1, it becomes a promissory note (and negotiable), when indorsed, *because* it is payable to order on its face.

Section 184, above quoted, merely codified what was obvious and well settled by the cases, namely, that a written promise by one person to another is essential to the existence of a promissory note and that the promisor and promisee in such a promise must be different human beings, capable of having legal relations with each other. This requirement is satisfied where *A* promises in writing to pay *B*. In this particular respect, negotiable and non-negotiable promissory notes are judged by the same measure; neither can be valid unless the promise is to pay some one other than the maker.⁵

In order that a promissory note may be negotiable, among other things, it must appear *from the instrument* that the maker intended or expected that it might pass out of the hands of the promisee named. Written words, evidencing this intention, are all that the phrase, "words of negotiability," suggests and they

²"A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him." NEGOTIABLE INSTRUMENTS LAW, § 184.

³"The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of . . . (2) The drawer or maker; . . ." NEGOTIABLE INSTRUMENTS LAW, § 8.

⁴Moore v. Cary, 138 Tenn. 332, 197 S. W. 1093 (1917); L. R. A. 1918D 963; BRANNAN, NEGOTIABLE INSTRUMENTS LAW (4th ed. 1926) 75.

⁵Hooper v. Williams, 2 Ex. 13 (1848); Navin v. McCarty, 240 Mass. 447, 134, N. E. 232 (1922); First Nat. Bank v. Payne, 111 Mo. 291, 20 S. W. 41 (1892); Norfolk Nat. Bank. v. Griffin, 107 N. C. 173, 11 S. E. 1049 (1890).

are all that the law requires.⁶ This requirement is by no means necessary, in the sense that it is required in order that negotiable instruments may circulate as substitutes for money, as is shown by the fact that, prior to the adoption of the *Negotiable Instruments Law*, there were statutes under which promissory notes were negotiable whether expressed to be so or not.⁷ It is clear that an unconditional promise to pay a certain sum in money at a fixed or determinable future time can circulate as a substitute for money without words of negotiability inasmuch as merchants would have no difficulty in precisely appraising its worth.⁸ The presence of the required words of negotiability does not determine the degree to which commercial paper circulates as a substitute for money nor is its desirability affected thereby, provided the purchaser in due course knows that no defenses of the maker can be asserted against him, as was the case before the adoption

* "So commonly are the terms 'or order,' 'or bearer,' employed in commercial instruments, that we are apt to suppose them essential to negotiability. It is otherwise. Words are but the signs; thought is chiefly valuable; and when for a sufficient consideration minds of the parties have concurred in an agreement, that is a contract, and it must be executed as they intended, unless forbidden by law. 'Order' or 'bearer' are convenient and expressive, but clearly not the only words which will communicate the quality of negotiability. . . . 'Words in a bill, from which it can be inferred that the person making it, or any other party to it, intended it to be negotiable, will give it a transferable quality against that person'; *United States v. White*, 2 Hill, 59. The concession therefore may be made, that if the makers of this note having omitted the usual words to express negotiability, had said, 'this note is, and shall be negotiable,' it would have been negotiable." Porter, J., in *Raymond v. Middleton & Co.*, 29 Pa. 529 (1858).

"The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof." NEGOTIABLE INSTRUMENTS LAW, § 10.

⁶ See *Gilley v. Harrell*, 118 Tenn. 115, 101 S. W. 424 (1907).

⁸ It would clearly be otherwise if the promise were conditional, or did not engage to pay a sum certain in money on demand or at a fixed or determinable future time. Legislative enactment may make such paper negotiable in law, so that an indorsee of it takes free from defenses, but it cannot make it circulate freely in business as a substitute for money. It is well known that the free circulation of notes payable at an uncertain future time has not been the result of the general adoption of § 4 of the *Negotiable Instruments Law*, which contains the provision that 'An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable . . . on or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain,' a provision doubtless traceable to the erroneous decision in *Cooke v. Colehan*, 2 Strange 1217 (1744), that "a note to pay to A or order, six weeks after the death of the defendant's father," was a negotiable note within the statute 3 Anne, c. 9, "for there is no contingency, whereby it may never become payable." The recent Georgia Act, modifying the N. I. L., contains a similarly futile provision that "a promissory note may be made payable in cotton or other articles of value."

of the *Negotiable Instruments Law* in the few states where words of negotiability were made unnecessary by statute. Why, then, are words of negotiability required? No reason is apparent other than the generally prevailing notion that the maker's defenses should not be destroyed in the interest of business convenience unless he consents that the instrument may circulate in commercial channels. This appears to be ample justification for the requirement. At any rate, no case has been found, since the adoption of the *Negotiable Instruments Law*, where an instrument was held to be negotiable when made payable by the maker to another person, unless the maker's language was believed to have shown that he contemplated that the instrument might pass out of the payee's hands.

Is the requirement that an instrument shall contain words of negotiability—normally satisfied on its face—applicable to an undorsed note payable to the maker or to the maker or his order? Is it required by the *Negotiable Instruments Law* that such an instrument contain words of negotiability on its face? Are the words of negotiability, usually appearing on its face, the required evidence of the maker's intention that it may pass or that makes it negotiable or is this important evidence to be found on some other part of such an instrument? If the latter, are the formal words of negotiability on the face of any legal importance?

So-called promissory notes payable to the order of the maker have been common for a century or more.⁹ Courts invariably have taken the view that such notes are not complete until indorsed by the maker, the formal payee,¹⁰ and statements are abundant that such an instrument is a nullity until indorsed and delivered.¹¹ The most important difference between *B's*

⁹ See *Smalley v. Wright*, 44 Me. 442 (1857).

¹⁰ In a few states, however, it was provided by statute that a note payable to the order of the maker, when negotiated by him, had the same effect against the maker and all persons having knowledge of the facts as is payable to bearer and the maker's indorsement was held unnecessary. 8 C. J. 176, n. 15.

¹¹ *Lea & Landon v. The Branch Bank at Mobile*, 8 Port. 199 (Ala. 1838); *Benedict v. Berger*, 64 Ill. App. 173 (1896); *Rice v. Goldstein*, 234 Ill. App. 448 (1924); *Louisa County Nat. Bank v. Burr*, 198 Iowa 4, 199 N. W. 359 (1924); *Ewan v. Brooks-Waterfield Co.*, 55 Ohio 506, 45 N. E. 1904 (1897); *Roach v. Sanborn Land Co.*, 135 Wis. 354, 115 N. W. 1102 (1908). See also cases cited in note 4, *supra*.

unindorsed note payable to "myself or order" and his note payable to "A," to the "order of A" or to "A or bearer" is that the three latter instruments are promises to pay another person. The first note has a promisor and a formal promisee, both the same person. This manifestly is not a contract and cannot be a promissory note, negotiable or otherwise. It lacks, however, only a payee, who is a person other than the maker and such a payee is designated when B indorses, the instrument then becoming in legal effect the same as some one of the three latter instruments above referred to but, prior to B's indorsement, it could not be known which particular one it would ultimately be like.¹² If B indorses in blank, it will be in legal effect like his note payable on its face "to A or bearer",¹³ if he indorses, "Pay to the order of A," it will be like his note payable on its face "to the order of A."¹⁴ In either case, the completed promissory note is negotiable. If, however, B indorses "Pay to A," it is like his promissory note payable on its face "to A," and, like it, non-negotiable.¹⁵ The maker has the power to specify his payee and, since the *Negotiable Instruments Law*, he likewise has the power to determine whether his note will be negotiable or not by including in or leaving out of his promise words of negotiability, but it must be obvious that he has this power because all makers now have it and not because he has conferred it on himself as payee by using words of negotiability. If his indorsement, which

¹² In *Smalley v. Wright*, *supra* note 9, it was argued that the defendant's intention to make the instrument negotiable was as well indicated by signing once as twice. May, J., said: "The fact that it is payable to his own order manifestly shows the purpose of appointing for himself, by his own order, the person to whom it shall be paid, and of fixing the extent of the power of negotiation with which his appointee shall be clothed. If it had been his intention to make the paper itself negotiable by delivery, without any order or indorsement of his own, the insertion of the word bearer would have been the natural and appropriate mode of doing it."

¹³ *First Nat. Bank v. Payne*, *supra* note 5; *Ewan v. Brooks-Waterfield Co.*, *supra* note 11; *Hooper v. Williams*, *supra* note 5; *People's Nat. Bank v. Taylor*, 17 Ariz. 215, 149 Pac. 763 (1915).

¹⁴ In *Madison Square Bank v. Pierce*, 137 N. Y. 444, 446, 33 N. E. 557 (1893), 20 L. R. A. 335, 336, an action on a note made by Pierce payable to his own order, indorsed by him to the order of the Bates Company, Limited, and by the latter indorsed to the plaintiff, the Court said: "The form of the transaction is equivalent to what it would have been if the Bates Company had been named as payee and loses none of its force by the intervention of the maker as first indorser."

¹⁵ See the reasoning in notes 12 and 14, *supra*.

specifies a payee and is a writing, indicates an expectation that the instrument may pass into the hands of another, the requirement of negotiability is satisfied. The blank indorsement is generally understood to signify that the indorser assents to and orders payment to the bearer of the instrument. The blank indorsement of *B*, without which the first note was incomplete, has the same significance; otherwise notes so indorsed could not be held to be payable to bearer. His second indorsement, "Pay to *A* or order," clearly expresses his intent to pay either *A* or anyone to whom *A* orders payment and a note so completed is uniformly held to be an order note.¹⁶ In the third case, when *B* indorses the instrument, "Pay to *A*," there is a written promise to pay another. The fundamental requirement that a promissory note must contain a promise by one person to another, is now satisfied but the evidence, essential to negotiability, that the maker intended that it might pass on to another is lacking. Such an instrument so indorsed would clearly be non-negotiable under the *Negotiable Instruments Law* as well as the law prior to its adoption, except in the few states where words of negotiability were made unnecessary by statute.¹⁷ If this is correct, it is clear that the unindorsed note drawn "to the maker's own order" is not a negotiable promissory note, although in form it meets the requirements of Section 1 and has been thought to be recognized by Section 8. What is the legal effect of the formal words of negotiability on the face of the third instrument? It is not a promissory note before indorsement because there is no "promise in writing made by one person to another"; when indorsed, so that the necessary payee is added it becomes a promissory note but non-negotiable because of the absence of words of nego-

¹⁶ The forgery of *A*'s indorsement in such a case would be a defense to *B* against any subsequent holders. *Madison Square Bank v. Pierce*, *supra* note 14.

¹⁷ In *Pickering v. Busk*, 92 Ind. 306, 308 (1883), the Court said: "A promissory note must have a maker, and it must have a payee who is another person than the maker. Until a promissory note made payable to the order of the maker has been indorsed and delivered by the maker, there is no payee or promisee, and the instrument is in the nature of a written promise to pay to the person to whom the maker shall, by endorsement, order payment to be made. By special indorsement a particular person may be made payee, as if his name were originally inserted as such in the note." See I DANIEL, *NEGOTIABLE INSTRUMENTS* (5th ed. 1903) 152.

tiability. It seems, therefore, clear that the formal words of negotiability *on the face* of the "myself or order" note have no legal effect at all, unless they are essential to the maker's power to specify his payee.

Section 1 of the *Negotiable Instruments Law* requires that an instrument to be negotiable "must be payable to order or to bearer" and it has sometimes been assumed that this section requires that words of negotiability appear in all cases *on the face of the instrument*.¹⁸ None of the language in the *Act* justifies this assumption and it has been demonstrated that the words "or order" on the face of a "myself" note can have no effect whatever in determining whether it is or ever will be negotiable. Moreover, there is ample ground for the view that this initial section was intended to apply only to bills of exchange and promissory notes. They were the only types of instruments used in business as substitutes for money. No definition of or provision concerning any instrument that does not belong to one type or the other appears in the *Act*. That its draftsmen and the vari-

¹⁸ In *Foley, Receiver, v. Hardy*, 119 Kans. 183, 237 Pac. 925 (1925), 42 A. L. R. 1064, an action was brought upon the following instrument, as upon a negotiable promissory note:

\$2500.00	Little River, Kansas, March 31, 1920.
	Six months after date I promise to pay, myself\$2500.00
	Twenty-five hundred dollars for value received with interest at rate of 6 per cent. per annum.
	JOHN HARDY.
50c canceled stamps.	
Indorsements: John Hardy.	

Holding that a demurrer to the plaintiff's petition was properly overruled, the court said: "When his name upon the back of the instrument he adopted the promise made upon its face, and transferred it for value, and whether the instrument is negotiable or non-negotiable, the petition states a cause of action." After this decision, it was stipulated that the plaintiff should recover if the instrument was negotiable; otherwise, the defendant. The lower court held it to be non-negotiable and the decision was affirmed. 122 Kans. 616, 253 Pac. 238 (1927). The effect of the first decision necessarily was that the instrument was at least a promissory note. Under the pleadings, it was not then necessary to decide whether it was negotiable but it had no payee except such as was indicated by the maker's indorsement and this obviously was the bearer. The Court's opinion on the second appeal disavows any intention to overrule its former decision and makes it clear that the Court thought that the two could stand together. This is possible only in case a promissory note payable to bearer can be non-negotiable for want of words of negotiability—a patent absurdity. Because the instrument did not comply with either § 1 or § 184, the final view of the court seems to be that the maker's blank indorsement could not have the ordinary effect of making it payable to bearer.

ous legislatures that have adopted it had in mind only promissory notes and bills of exchange, when "instrument" was used in this initial section, can hardly be doubted if the antecedents of the *Act* are considered. Promissory notes were put upon the same basis as inland bills of exchange by 3 & 4 *Anne*, c. IX, 1, enacted in 1704, but its provisions were limited to notes signed by one person promising to pay money to another person, or order, or bearer. The persistent use of promissory notes in business and continuing to declare upon them upon the custom of merchants might ultimately have caused the courts to put them upon the same basis as inland bills of exchange, notwithstanding the irritation it caused such judges as Chief Justice Holt, whose decision in *Clerke v. Martin*¹⁹ probably led to the enactment of 3 & 4 *Anne*. Business is generally said, however, to owe the promissory note to this statute and none since has similarly dealt with any additional type of paper. The *Negotiable Instruments Law* is generally agreed to be a codification of the law of the cases, except where there was conflict.²⁰ If the *Act* is applicable only to bills of exchange and promissory notes, it is clear that the "myself or order" note, before indorsement, does not come within the meaning of the word "instrument" as used in section one because it is neither a promissory note nor a bill of exchange. But the fact that it does not, *before indorsement*, meet the requirements of that section is unimportant, for it is not then a promissory note and not then capable of functioning as a substitute for money. But, when indorsed, a payee is designated; it is then a legal promissory note and undoubtedly an "instrument" within the meaning of Section 1. Whether it meets the requirement that an instrument to be negotiable must be payable to order or to bearer depends upon the form of the indorsement. If it becomes negotiable, when the indorsement specifies the payee, it is of course because words of negotiability expressive of the maker's intention that it may pass on, are contained in the instrument. But the words "or order" on its face will not suffice for this purpose, because they do not indicate that the maker

¹⁹ 2 Ld. Raym. 757 (1702).

²⁰ 8 C. J. §§ 33, 35.

intends that the instrument may pass out of the hands of the person later designated in his indorsement as its payee. The effective words of negotiability can never be on the face of a "myself or order" note. The indorsement completes it and its form determines whether it is negotiable or non-negotiable. As the form of the indorsement necessary for completion is varied, the note may be made negotiable or non-negotiable. It can, therefore, be the maker's indorsement only that contains the essential words of negotiability in such cases.²¹

Does the absence of formal words of negotiability on the face of a note payable to the maker's own order make any difference?

Where the note is payable to another, if the promise includes words of negotiability, the payee may destroy the maker's defenses by an indorsement in due course, but, if such words are absent, the maker's defenses are left intact. The obvious effect of the use of words of negotiability is to create a power in the payee that he does not otherwise enjoy.

This mere statement makes it clear that the effect of the use of words of negotiability cannot be the same when the note is payable to the maker's order. The maker of such a "note" scarcely needs authority from himself to transfer the instrument; nor do the needs of business require that he, by the use of formal words of negotiability, inform himself or others, before the instrument becomes a promissory note, that he expects to pass it on to whomsoever he may later designate as payee. Consideration for the maker, the sole justification for requiring that he use words of negotiability, only requires that he show that he contemplates a transfer when he delivers his written promise to the payee so that a contract is made. But, aside from the needs of the situation, it is clear that the formal contract on the face of such an instrument gives rise to no legal relations. The obvious statement that one cannot contract with one's self is found in practically every case and it is always said that, until the maker-

²¹ That an unindorsed "myself or order note" does not comply with the requirements of §1 is clearly shown when the maker indorses "Pay to A." According to § 184 this indorsement completes the note but it is clearly non-negotiable for lack of words of negotiability.

payee indorses, the paper is a nullity.²² The correctness of this is beyond question. But if such paper can give rise to no right in the nominal payee it is equally impossible for it to create in him a power. From a legal point of view, it appears to be impossible to ascribe to words of negotiability *on the face of a "myself or order" note* any legal effect, since one cannot have legal relations with one's self.

The legislature may, however, require any kind of formality; it may stipulate that an instrument to be negotiable must be written in green ink but such a requirement would be based solely upon legislative whim. So, it might require that a "note" drawn by the maker to himself, in order to be negotiable, must *on its face* contain words of negotiability and, in addition, be indorsed before it is either complete or negotiable. At present, however, the only justification for the view that words of negotiability on the face of such a note are necessary is the clearly implied provision in Section 184 that a note drawn to the maker's own order may be completed by indorsement. Applying the maxim, "*Expressio unius est exclusio alterius*," it must be argued that an all-inclusive enumeration of notes that can be completed by indorsement has been made, but such view necessarily ascribes to the legislature an intent to strait-jacket this part of the law with unnecessary and meaningless formalism, since such a requirement is unrelated to any consideration for the parties to the instrument or the public. Moreover, it appears to be obvious that the purpose of the negative cast of the last sentence of Section 184—following, as it does, an exhaustive definition of a promissory note—was to guard against any possible notion that an unindorsed note drawn to the maker's own order came within the preceding definition. The last sentence simply codified the law of the cases. No case had arisen presenting the question whether a note drawn to the "maker" was complete without his indorsement.²³ But neither the courts before the *Act*, nor since,

²² See cases cited in notes 5 and 11, *supra*.

²³ The reference in § 184 only to notes "drawn to the maker's own order" was doubtless due to this fact. That such notes had contained words of negotiability was probably due to the general use of commercial blank promissory notes. These generally contain words of negotiability.

would have had any difficulty in concluding that such a note was not complete as a promissory note for the same reason that it would not have been complete had it been "drawn to the maker's own order."²⁴ To say that the latter, stipulated in Section 184 to be incomplete until indorsed, is impliedly provided to be complete when indorsed is justifiable. To say, however, that the former cannot be completed by the maker's indorsement, because of the absence of words of negotiability on its face, when it is incomplete for the only reason that the latter is incomplete and when each is a nullity for the same reason, is to read into the statute a purely arbitrary requirement. The only reference in the *Negotiable Instruments Law* to an *unindorsed* "note drawn to the maker's own order" relates to completion and not negotiability—two very different matters. An unindorsed note drawn "to the maker" is not provided for in the *Act*. The same would have been true of the unindorsed "myself or order" note had the last sentence of Section 184 been omitted. Yet, it can hardly be doubted that the latter, when indorsed, would have been held by the courts to be complete and valid under Section 196 which provides that "in any case not provided for in this *Act* the rules of the law merchant shall govern." Since there is no legal difference, before indorsement, between a "note" payable to the maker and one payable to the maker's order, it follows logically that the addition of the same fact (indorsement) for the same purpose produces the same result in each case, namely, completion of the note and negotiability, the latter, however, not necessarily accompanying the former but being dependent upon the form of the indorsement.

If it has been demonstrated that words of negotiability on the face of an unindorsed note payable to the maker are not necessary in order that the "note" may be completed by the maker's indorsement, it yet remains to compare the indorsement of such a note with that of the ordinary promissory note.

²⁴ A complaint on a "myself or order" note is fatally defective if it does not allege indorsement. *Edelman v. Rams*, 58 Misc. 561, 109 N. Y. S. 816 (1908); *Simon v. Mintz*, 51 Misc. 670, 101 N. Y. S. 86 (1906). Or if the indorsement is forged. *In re Richardson's Estate*, 208 N. W. 374 (Iowa, 1926); *City Nat. Bank v. O'Leary*, 46 S. D. 101, 190 N. W. 1016 (1922).

The effect of the ordinary indorsement is two-fold.²⁵ It invariably terminates the indorser's property in the instrument and generally, in addition, constitutes a promise by the indorser to pay if the party primarily liable does not pay when the instrument is presented to him at maturity, provided timely notice of the dishonor is given.

The indorser of a non-negotiable promissory note is said to pass whatever property he has; that is, he terminates his interest and creates in his indorsee rights against the maker no better or greater than his own, his act and its consequences all usually being called an assignment. If the instrument is negotiable, however, and the indorsement is in due course, the maker's defenses are in addition cut off, but the ordinary indorsement always extinguishes the indorser's entire interest whether the instrument is negotiable or non-negotiable.

As long ago as 1691, when *Hodges v. Steward*²⁶ was decided, it was recognized that an indorser may be liable to his indorsee when the latter may have no recourse against a prior party. "The indorsement," it was said, "is in the nature of a new bill." When a payee assigns his interest by indorsement, his act is incompatible with any legitimate intent other than that the party primarily liable shall make payment to his indorsee. His intent to terminate his interest and order payment to his indorsee is clearly shown by his endorsement and this is so whether the instrument be negotiable or non-negotiable. That the indorsement of a negotiable instrument has the additional effect of destroying the maker's defenses is due to the maker's creation of a power in the payee when the note is executed that the payee of a non-negotiable note does not enjoy; it is in no degree due to a difference of intent on the part of the indorser. He intends the same when he indorses either instrument.

But the legal consequences of the ordinary indorsement can not apply where the maker indorses a note in which he names himself as payee and this is so whether formal words of negotiability appear on the face of the instrument or not. No assign-

²⁵ See (1924) 34 YALE L. J. 144.

²⁶ 1 Salk. 125 (1691).

ment can result because the maker has acquired nothing to assign. His promise to himself creates in him no rights or powers that he did not already have because one cannot contract with one's self and this is likewise true whether words of negotiability are used or not. This is in striking contrast to a note payable to another than the maker, giving rise to legal relations—whether negotiable or non-negotiable—in which case the indorser at least passes all that he had and orders payment to his indorsee.

It is likewise clear that the indorsement of a "myself or order" note does not give rise to the ordinary indorser's undertaking. To maintain that it does is to assert that the maker-payee-indorser promises to pay if the holder presents the instrument to him (the maker) at maturity and demands payment and he (the maker) fails to pay, if he (the maker), is given reasonable notice that the note was presented to him (the maker) for payment at maturity, dishonored by him (the maker) and that the holder looks to him (the maker) for payment. The absurdity of such an undertaking makes clear the correctness of the statement in the cases that the indorsee and the maker of a note payable to the maker's order are original parties.²⁷ This is but another way in which the courts have said that no contract is completed until the maker specifies a payee and this is the sole function of the indorsement of such paper.²⁸ The writing of the maker on the back of such an instrument—commonly called an indorsement—is such only in a literal or formal sense and has no legal consequences in common with an ordinary indorsement, though each is normally found in the same position on the instrument and each expresses the writer's intent that the person to whom the instrument is delivered shall receive payment. Where the instrument is payable to the order of another than the maker, the payee-indorser, in specifying another person to receive payment, exercises a power conferred upon him by the maker; where the instrument is payable either to the maker or to the maker's order, the indorser is but the maker himself com-

²⁷ See *Navin v. McCarthy*, *supra* note 5; *Consolidated Motors Co. v. Urschel*, 115 Kans. 147, 222 Pac. 745 (1926).

²⁸ *Market & Fulton Nat. Bank v. Ettenson's Estate*, 172 Mo. App. 404, 158 S. W. 448 (1913).

pleting his promissory note by specifying the person to whom he undertakes to pay. A maker who sees fit to use the awkward myself note in the building of his promissory note has the ordinary maker's power to complete it by naming a payee in any way that makes his intention clear. Empty, formal words of negotiability on its face are not essential to this power nor do they effect the significance of the maker's act when he indorses.