However, no doubt, as the law now stands, if no notice of non-payment by the acceptor were given to the drawer till that time, he would be discharged by the *laches* of the holder. "The essence of a bill of exchange is, that it is negotiable, or payable to order, and that it is payable generally, not out of a particular fund," *per* Lord Mansfield in White v. Sedwick, 4 Doug. 247; therefore the words "value received" are not necessary to constitute a bill of exchange, and see Hatch v. Trages, 11 A. & E. 702. Under the 6th section of 3 & 4 Ann. c. 9, if these words are omitted, protest either for non-payment or non-acceptance is not necessary; such bills remain, therefore, as they were at common law, and need not be protested to charge the drawer with interest.

The third section of the Statute is taken from a practice which subsisted in France. There, however, no bills were transferrable by general indorsment, and there were also consular judges exercising a summary jurisdiction in commercial cases. "Before the Stat. 9 & 10 W. 3, there was great difficulty about recovering upon such bills. This matter therefore being uncertain, the merchants procured that Act; the nature of the provision thereby being, that if an inland bill of exchange, payable to himself and never indorsed, be lost, and he comes to the person drawing, he is not bound to pay, without security given in case the bill be found. And yet what danger could there be in general? For if a bill is payable to A. and A. makes affidavit and shews the loss, and the bill never indorsed, there is little danger; because it is common amongst merchants to draw *several bills, viz. pay the second, first not paid*, which is a security, and is the **637** constant course of merchants. Then consider the *intent of the 3 & 4 Anne, relating to promissory notes: the title of the Act is to give the same remedy, and to make those notes of the same effect as inland bills of exchange, &c.," *per* Lord Hardwicke in Walmsley v. Child, 1 Ves. 346; see *Ex parte* Greenway, 8 Ves. Jun. 812, from which it appears that the most extensive indemnity must be given. The whole subject is discussed in 2 Parsons on Bills and Notes, 255 *et seq.* In Maryland it has been held that if any one is called on to pay a lost negotiable bill or note, the loss and consequent non-production of it constitute a good defence at law; but when an instrument is lost, upon which, either from its original character or want of negotiability at the time of the loss, the debtor could set up any equitable defence against a subsequent *bona fide* holder, claiming title through the finder, the jurisdiction may be properly exercised at law, but *in all other cases* the remedy is in equity, Fells Point Savings Institution v. Weedon, 18 Md. 320.[10] If the declaration do not set out the instrument as a negotiable note, the *onus probandi* will be on the defendant to shew that it was so, Yingling v. Kohlhass, 18 Md. 148.

A question arose under the Act of 1785, ch. 38, in Bryden v. Taylor, 2 H. & J. 396, whether the value of the sum of money, &c., should be at the time of the protest or time of the *notice;* but the Court held, that the plaintiff is to recover so much money as will purchase a similar bill at

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[10] But see now the Act of 1876, ch. 345, (Code 1911, Art. 13, sec. 11; Art. 75, sec. 14); C. & O. Canal Co. v. Blair, 45 Md. 112; Councilman v. Towson Bank, 103 Md. 478.