This Statute [1] was passed in consequence of the decisions in certain cases, among which were Clerk v. Martin, 1 Salk. 129, in which it was held that the payee, and Buller v. Crips, 6 Mod. 29, in which it was held that the indorsee of a promissory note, payable to order, could not maintain an action against the maker, as such, for such a note was not within the custom of merchants. By the Statute, the payee is now empowered to sue on the note, and it is made sufficient evidence to support his action without proving the consideration, Noland v. Ringgold, 3 H. & J. 216; and such notes (if payable to "order" or "bearer") are made capable of as-
654 signment, and placed in all respects *upon the same footing with inland bills of exchange *ibid;* Bowie v. Duvall, 1 G. & J. 175; except, of course, that as a note is originally made between two parties, the maker and payee, and there is no third party, as the drawee in the case of a bill (see, however, the observations of Lord Holt in Buller v. Crips *supra*), those matters, in connection with a bill of exchange, which concern the payee and acceptance and its effect, have nothing to do with a note. However, "while a promissory note continues in its original shape of a promise from one man to pay another, it bears no similitude to a bill of exchange. When it is indorsed, the resemblance begins; for then it is an order by the indorser upon the maker of the note (*his debtor*, by the note), to pay to the indorsee. This is the very definition of a bill of exchange. The indorser is the drawer; the maker of the note is the acceptor; and the indorsee is the person to whom it is made payable. The indorser only undertakes in case the maker of the note does not pay," *per* Lord Mansfield in Heylyn v. Adamson, 2 Burr. 676. But if it be doubtful, from the ambiguity of its terms, whether an instrument is a promissory note or bill of exchange, the holder as against the maker may treat it as either, Edis v. Bury, 6 B. & C. 433.

The general rule is, that the words "order" or "bearer," or equivalent terms, must be inserted in the instrument to make it negotiable, Noland v. Ringgold *supra;* Yingling v. Kohlhass, 18 Md. 148, and, when they are inserted, a note is negotiable as well after as before maturity, Long v. Crawford, 18 Md. 220. But these words are of no importance as to a suit brought by the payee, because, as to him, the only thing essential was the enabling him to sue upon the note, and to make it evidence without further proof, and therefore a suit may be brought by the executor of the payee against the maker, though the note do not contain negotiable words, Noland v. Ringgold. As to the personal liability of an executor upon his indorsement of a note held by his testator at the time of his death, see Curtis v. Bank of Somerset, 7 H. & J. 25. So a note payable to A., omitting negotiable words, is a good note within the Statute, and may be declared on as such by the payee, and is entitled to grace, Duncan v. Md. Savings Institution, 10 G. & J. 299.

In other respects, this section is liberally construed. The words being "all notes," foreign as well as inland notes are held to be within the

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[1] The passage of the Negotiable Instruments Act of 1898, ch. 119, (Code 1911, Art. 13, secs. 13-208), makes a continuation of Mr. Alexander's note to this Statute, or to that of 9 & 10 W. 3, c. 17, unnecessary.