most noticeable of which is the Statute of Frauds (29 Car. II., C. 3). Under that statute the following contracts must be in writing:—

(1) Special promise by an executor or administrator to answer damages out of his own estate.

(2) Any promise to answer for the debt, default, or miscarriage of another person.

Thus, I go into a shop with a friend and say to the shopkeeper, "Supply my friend with goods; I will pay you." That is not a promise to answer for the debt of another, it is a simple case of contract for the sale of goods between me and the shopkeeper. But if I say "Supply him with goods, if he does not pay you, I will," that is a clear promise to answer for the debt of another, and is not enforceable unless it is in writing.

(3) Agreement made in consideration of marriage—e.g., promise to settle money on A in the event of his marriage; this is not enforceable unless it is in writing.

(4) Contract or sale of lands or hereditaments or any interest in or concerning them.

(5) Agreement not to be performed within the space of one year from the making thereof.

(6) No contract for the sale of any goods, wares, and merchandises for the price of £10 sterling or upwards shall be allowed to be good, except the buyer shall accept part of the good so sold and actually receive the same; or give something in earnest to bind the bargain, or in part payment; or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract or their agents thereunto authorised.

One further point—Where contracts are reduced into writing, all their terms must appear in writing, for it is a distinct rule of evidence that no verbal evidence shall be received to contradict, vary or add to the terms of written contract.

Although writing is not necessary for the validity of some contracts, I should strongly advise all who enter into contracts to have those contracts put in writing. When the Lord Chancellor required Stephen to produce an affidavit from a thunderstorm or a few words on oath from a shower of rain, Iolanthe's son thought he was asked to perform an impossibility in the way of evidence; experience in modern law courts shows us that it is comparatively easy to perform impossibilities in the matter of obtaining evdence— witnesses are, unfortunately, easily procurable who can testify to the making of terms of a contract which never entered into the heads of the parties at the time of the making of the contract. Therefore, to defeat the liar, put your contracts in writing. Quite apart from the difficulty that we may be defeated by lying testimony, the human memory is such a frail and fickle thing that writing is the

only safeguard that is afforded to us. A few years ago a University Law professor told his class of law students that he had arranged for a quarrel to take place in their presence, and particularly requested them to note all its details with a view of standing a cross-examination after the event. No two of the students agreed even in the important points, and they were about equally divided to which of the actors struck the first blow—and yet they had been specially warned to fit themselves. Their examinations were written down and kept for some weeks, when they were again examined by the professor. There were more startling differences this time—hardly any, if any at all, fully agreed with the previous testimony. I hope I shall not be thought ungallant if I record that the professor found, in this second examination, that the lady members of his class were twice as positive but only half as accurate as the male members. Therefore, I say again, have all your contracts in writing—the contract need not be in one document; it is quite sufficient if it can be spelled out from a number of documents, provided that these documents, on their face, contain connecting links with one another—e.g., "in answer to your letter of 25th inst." would be sufficient to connect that document with the letter of the 25th inst., and to allow of their being read as one document for the purpose of spelling the contract out from them.

Of course, in order that a contract may be binding, the parties must be capable of contracting; incapacity arises in various ways. Thus an *alien enemy* cannot enforce contracts during the continuance of hostilities without a license from the Crown—his political status prevents him from doing so.

Infants' contracts are voidable at the infants' option—unless they are ratified after the infant comes of age, or are contracts for necessaries; and, in some few cases, they are binding if they are for the infants' benefit. *Corporations*, as already pointed out, must contract under seal, except in the case of trifling matters or matters of daily recurrence. Contracts made by *lunatics and drunken persons* (i.e., persons who are not in such a state as to understand the meaning and effect of what they are doing), are enforcable, if the other party did not at the time of the contract know of their state. Women married before 17th April, 1893, could only make contracts which were enforceable against their separate estate, but women married since that date may acquire, hold, and dispose of real or personal property in the same way as unmarried women; but their liability in contracts is not a personal one—it cannot come into existence unless there is separate estate, and it does not extend beyond their separate estate. A married woman can only bind her husband where she acts as his agent, or where she is contracting for things that are necessaries according to the rank and station in life of her husband.

It is hardly necessary to remind my readers that any consent given to a contract must be a real consent—if the consent is given by mistake or is obtained by misrepresentation or fraud or undue influence or duress, it is hardly necessary to say that the contract is not enforceable.

Furthermore, contracts must have a legal object—if the object for which they are made is illegal either by the Common Law or by virtue of some statute, the contract cannot be enforced. It sometimes happens that a contract is partly legal and partly illegal—in such a case, if the legal parts can be clearly severed from the illegal (in other words, if the taint of illegality does not affect the whole contract), the parties will be bound to perform the legal parts, though the Courts will give a plaintiff no assistance in the matter of an illegal contract.

Once a contract has been formed between two persons, those persons are the only ones affected by it; a promisor cannot assign his liabilities under a contract. But though a contract is not assignable at law, the parties can, by consent, arrange a practical assignment by what is called novation of contract; thus I am bound by contract to A.; we are both willing that my liabilities should be passed on to X., who is willing to undertake them. I can do this by making a tripartite agreement, whereby I am released from my agreement, and X. takes my place—but such agreement is subject to all the rules affecting the formation of a valid contract. But, though the Common Law rule is clear that contracts are not assignable, in some few cases an assignment holds good in Equity; in Equity a man may assign *rights* which he has under a contract, provided the rights relate to money or property specified or capable of being rendered specific. But certain conditions affect the rights of the assignee:—

1. The assignment will not be supported unless the assignee has given consideration.

2. The person liable is not bound by the assignment of it, until he has received notice of it; although as soon as the assignment takes place it is effectual as between assignor and assignee.

Thus I have a certain specific sum of money due to me from A. I assign my rights to X. for valuable consideration. As soon as I make that contract with X. I am bound to him—but A. is not bound to pay X.; he may pay me, as he knows nothing of any assignment. So X., in order to protect himself, should immediately give notice of the assignment to A.—if A. pays me after receiving such notice, X. can make him pay over again.

3. The assignee takes subject to all equities existing between the assignor and the person liable. Thus, in the example given above, if at the time A. (the person liable) receives notice of the assignment he has a contra claim on the fund against me, the assignee only takes subject to that claim. In other words, an assignor cannot give a better title than he has got.

In England the Judicature Act of 1873 has gone far towards making all debts or legal choses in action (i.e., contractual rights which a person can enforce at law) freely assignable, on the conditions mentioned in the Act; but N.S.W. has never adopted that branch of English Law. In one or two cases local Statutes make contracts assignable—e.g., fire policies are assignable on the terms mentioned in the Life, Fire and Marine Insurance Act;

and there are one or two other cases. But the general rule still holds good, that liabilities under a contract cannot be assigned, and that rights under a contract can only be assigned in Equity in the special case I have already mentioned.

I need hardly remind my hearers that "negotiability" is a very different thing from "assignability." Promissory notes and bills of exchange are negotiable—thus, I make a P.N. in favour of A. or bearer. A. can pass this P.N. on to anybody he likes, and the holder in due course can sue me when the note becomes due without any notice ever having been given to me; nor is it necessary, in order to make me liable, that the holder should have given value for it, if value was ever given, for a note either at its making or at any endorsement of it, the maker is liable; in fact, he is liable even if he received no value for it at all, provided the holder gave value for it to the person from whom he got it. In one other respect also, a negotiable instrument differs from an assigned contract—the holder in due course does not take it (as in the case of assignment) subject to Equities subsisting between the maker and the payee. Thus, I make a P.N. in favour of A. for value; A. endorses the note to X. X. can sue me on it, although I have large contra claims subsisting against A.

The subject of P.N.'s and B.E.'s is itself a very big one—it would be out of place to go into it more fully in a lecture in contracts; but the points I have mentioned will, I hope, serve to show the broad line of distinction between a negotiable instrument and an equitable assigned contract.

Before concluding what I have to say I have thought that it would not be out of place in a lecture to a society of engineers whose business carries them into all quarters of the States, to submit a rough sketch of the effect of local or trade usages on the terms of a contract. If I go into the office of a house, land, and estate agent, and put property into his hands for sale, the usage of the trade (at all events in Sydney) is that I agree to pay him 2½ per cent. on the purchase price by way of commission; if I buy shares on the Stock Exchange, I contract subject to the rules of the Exchange. I may never have heard of these rules, or of the fact that the land and estate agent's commission is 2½ per cent., yet, in the absence of agreement to the contrary I am bound by them. Instances might be multiplied of customs that have grown up and become thoroughly established; but one example that brings this subject home to my hearers is to be found in a case in which a person set up a custom in a particular district that tank sinkers should receive pay only for the days on which they actually worked. Of course, a day labourer might object strongly that no such custom existed—but if his employer proved it, the Court would, other conditions hereafter mentioned being fulfilled, give effect to it. That being so, it is important to notice the rule of

law that, evidence of the existence of customs or usages in a particular trade is admissible to import into contracts made with reference to such trade incidents or additional terms, which the evidence shows to be usual, provided these are not repugnant to the expressed terms of the contract; and also to explain the meanings of epression used in the contract. The principle upon which this evidence is admitted is that the parties did not mean to express the whole of the contract by which they intended to be bound, but to contract with reference to known usages. Eminent judges have often protested against the adoption of a principle which involves a departure from the actual contract made, but the rule has long been definitely settled.

1. The usage need not be ancient—trade usages, e.g., are constantly coming into eistence, and they change from time to time.

2. The usage must be general—i.e., it must be the rule in all cases to which it is applicable, and where it is not expressly or by implication excluded by the parties. A practice which is merely common is not a usage in the sense in which the term is used—it must be a definite and binding rule capable of proof by specific instances.

3. The usage must be reasonable—e.g., if it alters the nature of the contract it would be unreasonable. Thus, a usage whereby the contractee can settle the account with the agent of the contractor by set off of the agent's personal debt, is unreasonable. Of course, if parties expressly agree to incorporate a particular usage in their contract, it binds them whether it is reasonable or not.

4. It is not necessary that the party should have known of the usage, if he dealt in the market where it prevailed or authorised his agent to deal there.

5. The usage must not be repugnant to the expressed terms of the contract, or to a necessary implication from them.

6. If the contract is in writing, evidence cannot be given of a verbal agreement to exclude the incorporation into it of a customary incident.

There are very many other topics which could be usefully dealt with in a lecture on contracts. But, if what I have said has the effect of showing my hearers that in order to make a contract they must consider the subject from all points of view, must clearly make up their minds what it is that they are contracting for, and clearly express their intentions in writing, then one of the main lessons in the law of contracts will have been fully learnt.