

Nineteen Hundred Thirty-One
Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

Containing the text of the acts of the 1929 and 1931 Sessions of the
Legislature, both new and amendatory, and notes showing repeals,
together with annotations from the various courts, state
and federal, construing the constitution, statutes,
charters and court rules of Minnesota



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CHAPTER 49A

Trade and Commerce

Contracts and written instruments in general.

—Mutual Assent.

It is not the subjective thing known as meeting of the minds, but an objective thing, manifestation of mutual assent, which makes a contract. *Benedict v. P.*, 237NW2. See Dun. Dig. 1742(57).

In the absence of conflicting legal requirement, mutual assent may be expressed by conduct rather than words. *Benedict v. P.*, 237NW2. See Dun. Dig. 1742.

Fraud.

When the defrauded party has done nothing inconsistent, fraud inducing the contract is always a defense to an action to enforce it. *Proper v. P.*, 237NW178. See Dun. Dig. 1814.

—Action for damages

Evidence of positive oral representations as to the condition and quality of real property, made to induce a purchaser to enter into a contract of purchase, when untrue, and relied on by the purchaser with a reasonable belief in their truth, and with resulting damage, makes out a prima facie case of damages for fraud or deceit. *Osborn v. W.*, 236NW197. See Dun. Dig. 10062.

It is not necessary in deceit case that plaintiff prove that the representations were known by defendant to be untrue, or were made in bad faith. *Osborn v. W.*, 236NW197. See Dun. Dig. 3286(49).

In action for fraud in sale of corporate stock, evidence of an execution sale, later vacated, and of an agreement, not carried out by any payment, to apply the proceeds from such sale upon notes given by plaintiff held properly excluded. *Watson v. G.*, 236NW213. See Dun. Dig. 8612.

In action for fraud in sale of corporate stock,

direct evidence by plaintiff that she relied on the representations charged held not necessary under the facts shown. *Watson v. G.*, 236NW 213. See Dun. Dig. 8612.

Legality

Contract between attorneys for throwing corporations into hands of receivers and splitting fees is against public policy. *Anderson v. G.*, 237NW9. See Dun. Dig. 1870.

Rescission and cancellation.

—Placing in status quo.

If a contractor, induced by the fraud of the other party to enter into the contract, makes prompt demand for a rescission and tenders a restoration of the status quo when such restoration can be had, but is prevented only by the refusal of the perpetrator of the fraud to permit it, the latter cannot thereafter object to a rescission because through mere lapse of time restoration of the status quo has become impossible. *Proper v. P.*, 237NW178. See Dun. Dig. 1810.

Agency.

—Scope and extent of authority.

Agent authorized to sell personal property in principal's name was guilty of conversion in selling it in its own name. *Nygaard v. M.*, 237 NW7. See Dun. Dig. 201(98), 1935(26).

—Ratification and waiver.

Owner of foxes held not to have waived his right to have defendant fur farm sell his foxes in plaintiff's name. *Nygaard v. M.*, 237NW7. See Dun. Dig. 205.

Owner of foxes held not to have ratified act of fur farm in selling plaintiff's foxes under its own name. *Nygaard v. M.*, 237NW7. See Dun. Dig. 190.

CHAPTER 50

Weights and Measures

§7035-2. Bread to be wrapped.—Each loaf or twin loaf of bread sold within this state shall be wrapped in a clean wrapper and/or clean wrapping paper in such manner as to completely protect the bread from dust, dirt, vermin or other contamination, said wrapping to be done in the bakery where made at any time prior to or at the time of sale of such bread, provided, however, that where three or more loaves of bread are sold and delivered at the bakery for personal use, then and in that case said bread may be wrapped in bulk.

Every loaf or twin loaf of bread sold within this state shall have affixed on said loaf or on the outside of the wrapper in a plain state-

ment the weight of the loaf or twin loaf of bread, together with the name and address of the manufacturer. (As amended Apr. 24, 1931. c. 322, §1.)

§7035-3. To be net weight.—The weights herein specified shall be construed to mean net weights within a period of 24 hours after baking. A variation at the rate of one ounce per pound over or one ounce per pound under the specified weight of each individual loaf shall not be a violation of this law, providing that the total weight of 25 loaves of bread of a given variety shall in no case fall below 25 times the unit weight. (As amended Apr. 24, 1931, c. 322, §2.)

CHAPTER 51

Interest and Negotiable Instruments

INTEREST

§7036. Rate of interest.

1. In general.

172M349, 215NW781.

It was error to charge a bank with interest on money under control of another bank. 172M 24, 214NW750.

Notes made by makers and guarantors in Minnesota and delivered to payees in Chicago,

where payable, were governed with respect to interest and usury by the laws of Illinois. 174 M68, 216NW778.

Where a partner contributes more than his share of partnership funds, he is not entitled to interest on the excess, in the absence of an agreement to that effect. 177M602, 225NW924.

Rate after maturity. 180M326, 230NW812.

2. Usury.

An agreement by borrower to pay expense of title insurance and expense of a guaranty of

payment of his notes by a surety company is not usury. 174M241, 219NW76.

Where broker is agent of borrower, agreement by borrower to pay commission does not constitute usury. 174M241, 219NW76.

Evidence held to show conveyance and contract to repurchase was a device to cover usury. 174M204, 219NW86.

Finding that person was a trader acting for himself in the buying and selling of mortgages and was not the agent of either party, sustained. 177M491, 225NW443.

§7037. Usurious interest—Recovery.

A bonus forfeited for usury goes in reduction of the loan as made and not in payment of it afterwards, and borrower has nothing to say as to its application. 174M68, 218NW451.

§7038. Usurious contracts invalid—Exceptions.

1. In general.

Notes made by makers and guarantors in Minnesota and delivered to payees in Chicago, where payable, were governed with respect to interest and usury by the laws of Illinois. 174M68, 216NW778.

A note tainted with usury may be purged thereof by a compromise and a settlement. 173M524, 218NW102.

172M126, 214NW924.

Usury is negated by finding that there was no loan or forbearance of money to a borrower, but instead a purchase at a discount in good faith of the security in question from a third party. 175M468, 221NW720.

6. Burden of proof.

Burden of proof is on party asserting usury to negative every reasonably supposable fact which if true would render transaction lawful. 179M381, 230NW258.

7. Degree of proof required.

Finding that execution and delivery of mortgage and trust deed was a joint venture and that there was no usury involved, held sustained by evidence. 175M560, 222NW278.

Finding that transaction was a loan wherein the note and mortgage were assigned as security, sustained. 177M321, 225NW115.

10. Effect of collateral contract.

All instruments designed as part of the loan transaction are invalidated. 180M358, 230NW819.

13. Effect of commission or bonus to loan agent.

180M358, 230NW819.

19. Extensions.

Subsequent extensions did not affect legal result where usury was in the original transaction. 177M321, 225NW115.

20. Who may assail.

Personal to borrower, but sureties may make defense. 180M358, 230NW819.

22. Bona fide purchasers.

Rights of bona fide purchaser of accommodation paper discounted at a rate sufficient to constitute usury. 177M491, 225NW443.

30. Real estate mortgages held not usurious.

Mortgage held not usurious by reason of deduction of expenses from amount loaned. 174M474, 219NW878.

§7040. Usurious contracts—cancellation.

Finding that usury vitiated two certain notes secured by second mortgages justified by evidence, but when the mortgages and notes were cancelled, court should have granted defendant relief by reviving liens he had discharged. 176M427, 223NW777.

§7041. Agreements to share profits—Etc.

Rates of interest otherwise usurious may be engaged by building and loan association. Minn. Bldg. & Loan Ass'n. v. C., 234NW872. See Dun. Dig. 1169

TITLE I.—NEGOTIABLE INSTRUMENTS IN GENERAL

ARTICLE I. FORM AND INTERPRETATION.

§7044. Form of negotiable instrument.

Evidence requiring finding that it was agreed that collateral to a note made upon a loan should stand as collateral to a prior unsecured note. 177M187, 224NW841.

3. Statement of or reference to other transaction.

Negotiability of a note is not destroyed by a recital that it is secured by mortgage. 181M294, 232NW336. See Dun. Dig. 886.

10. Mental competency.

Insane person signing as surety or accommodation party is not liable. 178M545, 227NW654.

§7046. When promise is unconditional.

A statement of the transaction which give rise to the instrument does not render the promise conditional, and, standing alone, does not put the purchaser upon inquiry. 172M126, 214NW924.

172M126, 214NW924 cited and disapproved by Iowa Supreme Court in First Nat. Bank v. Power Equip. Co., 233NW103.

§7051. When payable to order.—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:

- (1) A payee who is not maker, drawer, or drawee; or
- (2) The drawer or maker; or
- (3) The drawee; or
- (4) Two or more payees jointly; or
- (5) One or more of several payees; or
- (6) The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

An instrument payable to the estate of a deceased person shall be deemed payable to the order of the administrator or executor of his estate. (As amended Apr. 25, 1929, c. 353.)

§7052. When payable to bearer.

A certificate of deposit payable to the order of "Christian Hanson Estate" was payable to bearer. 175M453, 221NW873.

§7059. Delivery—When effectual—When presumed.

Finding sustained that there was an unconditional delivery of check. 181M487, 233NW7. See Dun. Dig. 990.

In action on note, given upon delivery of a contract to convey land, court did not err in admitting evidence that it was understood that deal was not to be completed until defendant's husband returned from another state. 181M487, 233NW7. See Dunn. Dig. 3377.

§7061. Liability of person signing in trade or assumed name.

In a suit against a bank on a negotiable note given by one of its directors and his wife the bank is not liable under this section. 181M294, 232NW336. See Dun. Dig. 861a, 6915.

§7066. Forged signature—Effect of.

No title is required to a promissory note transferred by a forged indorsement. 173M554, 218NW106.

ARTICLE II. CONSIDERATION.

§7067. Presumption of consideration.

Endorsement of note, held supported by ample consideration. 177M325, 225NW113.

§7068. Consideration, what constitutes.

Finding that note was executed without consideration and through mistake sustained. 173M491, 496, 217NW595.

After failure of bank on which check was drawn, held that promissory note given for the indebtedness was without consideration. 173M533, 217NW934.

Lack of consideration in note given for work to be subsequently done, held not shown. 177M477, 225NW388.

Preexisting debts was ample consideration for notes and mortgages. 172M612, 225NW908.

Release of pecuniary demand is consideration for note. 180M13, 230NW128.

Evidence held to sustain finding that earnest money contract was a legal consideration for check, where payee of check was able, ready and willing to convey good title to the property. 181M487, 233NW7. See Dun. Dig. 992.

To constitute a compromise and settlement sufficient to make consideration for a note given, there must be a bona fide mutual concession by each of the parties. Goodhue Co. Nat. Bk. v. E., 236NW629. See Dun. Dig. 869, 1767.

Note given a bank upon a claim by the bank that defendant was liable to it for an obligation he had assumed on guaranties, held without consideration. Goodhue Co. Nat. Bk. v. E., 236NW629. See Dun. Dig. 869, 1767.

§7072. Liability of accommodation party.

180M326, 230NW812.

Payee of negotiable note for accommodation of third party who pays full consideration direct to such third party knowing that it is accommodation paper, is a "holder for value" entitled to recover against maker. 173M14, 216NW314.

A person who loans commercial paper for the accommodation of another may limit the use to be made thereof unless it passes to a holder in due course. 173M554, 218NW106.

Notes held signed by accommodation maker for an individual and not as accommodation makers for banks. 174M261, 219NW93.

Evidence held to support finding that promissory note was accommodation paper to be used for designated special purpose. 176M425, 223NW682.

Party giving note for work to be subsequently done, held not shown to be an accommodation party. 177M477, 225NW388.

Notes and securities executed to a bank to deceive examiner by making an appearance of assets, could be collected by receiver representing creditors, though probably not enforceable by the bank itself. 177M529, 225NW891.

Insane person is not liable. 178M545, 227NW654.

Evidence held to show that note given to bank was without consideration and as accommodation. Stebbins v. F., 228NW150.

Maker of notes for accommodation of officer at bank, held liable to bank purchasing paper. 179M77, 228NW348.

Note given by director and stockholder of closed bank to enable the bank to open, held not an accommodation note, irrespective of understanding with bank officials, Markville State Bk. v. S., 228NW757.

Where one took deed to land from bank, executed note and mortgage, and then reconveyed land to bank, his obligation is primary, and he cannot compel the holder of the note to first exhaust the mortgage security. 181M82, 231NW403.

ARTICLE III. NEGOTIATION.

§7073. What constitutes negotiation.

The transfer of a promissory note operates as an equitable assignment of a real estate mortgage securing the same. 173M554, 218NW106.

Where a person steals a certificate of deposit and forges the payee's indorsement thereon and cashes it at the bank which in turn delivers it to the issuing bank and receives the amount thereof, both banks are liable to the payee in an action for conversion. Moler v. S., 223NW780.

The indorser's warranty, under §7109, relates to the face of the instrument and not to the indorsements upon the back thereof. Moler v. S., 223NW780.

The rule that a bank must know the signature of its customer has a direct reference to the ordinary depositor having a checking account, and is not applicable to the indorsement of a certificate of deposit by the payee therein. Moler v. S., 223NW780.

Assignment of interest in note payable to third persons, held to pass title to assignee, though the note was subsequently renewed between the original parties thereto. 180M1, 230NW260.

One pledging note and mortgage which were subsequently sold by bank holding them as collateral could not recover because the note was not indorsed without restoring the benefits received by him. Rohwer v. Y., 233NW851. See Dun. Dig. 931.

§7077. Special indorsement—Indorsement in blank.

The words "to draw 7 per cent interest from 3-5-1920," following a special indorsement on the back of a 6 per cent note was surplusage and without legal significance between the endorsee and the maker, and was not of such character as to place the endorsee upon inquiry. 175M287, 221NW10.

§7079. When indorsement restrictive.

The words "to draw 7 per cent interest from 3-5-1920," following a special indorsement on the back of a 6 per cent note was surplusage and without legal significance between the endorsee and the maker, and was not of such character as to place the endorsee upon inquiry. 175M287, 221NW10.

§7081. Qualified indorsement.

The words "to draw 7 per cent interest from 3-5-1920," following a special indorsement on the back of a 6 per cent note was surplusage and without legal significance between the endorsee and the maker, and was not of such character as to place the endorsee upon inquiry. 175M287, 221NW10.

§7092. Transfer without indorsement—Effect of.

A person who acquires a promissory note without a valid indorsement cannot be a holder in due course. 173M554, 218NW106.

Title to promissory note in custody of third person may be transferred by oral agreement. 176M18, 222NW509.

Title to a promissory note can be transferred by delivery without endorsement though the new owner is not entitled to the privileges of a bona fide holder. 176M246, 223NW287.

ARTICLE IV. RIGHTS OF THE HOLDER.

§7094. Right of holder to sue—Payment.

One receiving stolen bonds as collateral security has burden of proving that he gave value. 28F(2d)463.

Pledgee is proper party to bring action on bills payable pledged by bank, that has since closed. Op. Atty. Gen., May 22, 1929.

§7095. What constitutes holder in due course.

180M326, 230NW812.

176M52, 222NW340; note under section 7098.

A person who acquires a promissory note without a valid indorsement cannot be a holder in due course. 173M554, 218NW106.

Finding that plaintiff was not good faith purchaser of note for value and before maturity,

held sustained by the evidence. 174M115, 218NW 464.

Whether plaintiff was holder of promissory notes in due course held for jury. 174M258, 219 NW95.

Whether plaintiff was holder in due course, held for jury. 174M558, 219NW905.

Where bonds were conclusively proven to have been stolen, burden shifted to defendant in replevin to show that it was a holder in due course. Commercial Union Ins. Co. v. C., 235NW 634. See Dun. Dig. 1040(64).

§7096. When person not deemed holder in due course.

An agreement not to present a check until drawer should notify payee that deposit had been made in bank may amount to a waiver by the drawer of prompt presentment and during the period of delay drawer may be liable as upon a negotiable instrument, and is not subject to garnishment. 173M504, 218NW99.

§7098. When title defective.

One receiving stolen bonds as collateral security has burden of proving that he gave value. 28F(2d)463.

Evidence held to show consideration for promissory note and that plaintiff was holder in due course. 176M52, 222NW340.

§7099. What constitutes notice of defect.

Person to whom note is negotiated must have had actual knowledge of fraud or knowledge of such facts that his action in taking the paper amounted to bad faith. 175M287, 221NW10.

The general rule is that the purchaser of negotiable paper need not make inquiry or investigation as to the maker; but this rule has its exceptions under special circumstances. 175 M287, 221NW10.

Rights of bona fide purchaser of accommodation paper discounted at a rate sufficient to constitute usury. 177M491, 225NW443.

§7100. Rights of holder in due course.

Negotiable character of note does not extend to mortgage securing it. 180M104, 230NW277.

Bank taking note secured by mortgage without knowledge that the holder took the same as indemnity, held a holder of the note in good faith. 180M104, 230NW271.

§7102. Who deemed holder in due course.

One receiving stolen bonds as collateral security has burden of proving that he gave value. 28F(2d)463.

Burden is on holder to prove that he or some person under whom he claims to have acquired the title, is a holder in due course, where it appears that the note was fraudulently procured from the maker. 175M287, 221NW10.

The fact that notes were endorsed by the payee "without recourse" does not indicate bad faith. 175M293, 221NW12.

Transferee of note given for work subsequently to be done held holder in due course. 177M477, 225NW388.

ARTICLE V. LIABILITIES OF PARTIES.

§7103. Liability of maker.

Notes and securities executed to a bank to deceive examiner by making an appearance of assets could be collected by receiver representing creditors, though probably not enforceable by the bank itself. 177M529, 225NW891.

Insane person signing as surety or accommodation party is not liable. 178M545, 227NW654.

Transaction whereby bank president gave his note guaranteed by the bank in exchange for a certificate of deposit held a transaction of the bank and it was liable on the note. 178M476, 227 NW659.

§7109. Liability of general indorser.

173M325, 217NW381.

Where a person steals a certificate of deposit

and forges the payee's indorsement thereon and cashes it at the bank which in turn delivers it to the issuing bank and receives the amount thereof, both banks are liable to the payee in an action for conversion. 223NW781.

The indorser's warranty, under this section, relates to the face of the instrument and not to the indorsements upon the back thereof. Moler v. S., 223NW780.

§7111. Order in which indorsers are liable.

Indorsers held joint and one paying was entitled to contribution. 172M52, 214NW767.

Three years' delay in suing for contribution did not bar action on theory of laches. 172M52, 214NW767.

§7112. Liability of an agent or broker.

A broker who acts for a disclosed principal is not liable for breach of the resulting contract. Only the principal is bound. Ammon v. W., 235NW533. See Dun. Dig. 1156, 217.

ARTICLE VI. PRESENTMENT FOR PAYMENT.

§7113. Effect of want of demand on principal debtor.

Holder of draft payable on demand who negligently failed to present the same for payment within a reasonable time, there being funds for its payment, suffers the loss where the drawer fails; and where such draft has been sent by a debtor to his creditor on account, the debt is paid. 173M83, 216NW531.

§7114. Presentment where instrument is not payable on demand and where payable on demand.

173M83, 216NW531, note under §7113.

§7124. When delay in making presentment is excused.

173M83, 216NW531, note under §7113.

§7125. When presentment may be dispensed with.

173M325, 217NW381.

§7131. What constitutes payment in due course.

Payment of draft to bank to which sent by drawer at request of drawee, held payment to latter, though bank fails before proceeds cleared 180M199, 230NW467.

Payment to payee, of note, who does not produce it, does not operate as payment thereof where the note has been transferred to a holder in due course. Gordon v. O., 235NW875. See Dun. Dig. 903.

ARTICLE VII. NOTICE OF DISHONOR

§7152. Waiver of notice.

When the indorsers of a certificate of deposit, with full knowledge of the omission of presentment and notice of dishonor, unconditionally promise to pay the obligation or acknowledge themselves bound, the jury may find implied waiver of notice of dishonor. Instruction in this case approved. 172M574, 216NW237.

§7153. Whom affected by waiver.

Waiver of presentment, etc., on endorsement of note. 172M405, 215NW785.

ARTICLE VIII. DISCHARGE OF NEGOTIABLE INSTRUMENTS.

§7162. Instrument—How discharged.

Evidence held not to show passage of title to furniture and consequent payment of conditional sales note given for an automobile, providing that title to the car should pass when payee should receive furniture in full payment of the note. 172M16, 214NW479.

Evidence held insufficient to warrant finding

that certain note was given in payment of previous guaranteed note. 172M22, 214NW760.

County's check was paid as far as county was concerned where check was paid by bank and charged against county's account, though payee never received the money due to closing of correspondent bank receiving the money. Op. Atty. Gen., June 26, 1929.

§7163. Persons secondarily liable.

The renewal of a note is not payment unless given and received as such. 172M223, 214NW781.

One who makes an absolute guaranty of commercial paper is not relieved because the holder fails to exercise diligence in collecting from the makers or others. 176M529, 224NW149.

Evidence held to justify finding that notes were not taken as payment to an endorser who was required to pay another note. 177M325, 225NW113.

TITLE II. BILLS OF EXCHANGE

ARTICLE I. FORM AND INTERPRETATION

§7169. Bill of exchange defined.

173M83, 216NW531, note under §7113.

§7172. Inland and foreign bills of exchange.

173M83, 216NW531, note under §7113.

ARTICLE IV. PROTEST

§7202. When protest dispensed with.

Whether farmer living $7\frac{1}{2}$ miles from town presented a check for payment within reasonable time, held for jury. 181M104, 231NW789.

TITLE III. PROMISSORY NOTES AND CHECKS

ARTICLE I.

§7227. Promissory note defined.

A written agreement for the extension of a loan secured by a mortgage does not supplant the original note as the primary evidence of debt to the extent that its possession by a broker is any evidence of authority to collect on behalf of the mortgagee. 176M399, 223NW459.

Cancellation of contract for sale of land discharged liability on note. 177M174, 224NW842.

§7228. Check defined.

No person shall be adjudged a garnishee by reason of any liability incurred as maker or otherwise upon any check or bill of exchange. 173M504, 216NW249.

Where a check is unconditionally delivered, parol evidence is incompetent to show an agreement that it should not be presented until drawer should notify payee that a deposit had been made. 173M504, 216NW249.

§7229. Within what time a check must be presented.

173M83, 216NW531, note under §7113.

Drawer of check held not released by delay of presenting check to bank which became insolvent where such delay was caused by conduct of drawer. 173M389, 217NW506.

An agreement not to present a check until drawer should notify payee that deposit had been made in bank may amount to a waiver by the drawer of prompt presentation and during the period of delay drawer may be liable as upon a negotiable instrument, and is not subject to garnishment. 173M504, 218NW99.

Whether farmer living $7\frac{1}{2}$ miles from town presented a check for payment within reasonable time, held for jury. 181M104, 231NW789.

Holder of check and collecting banks, held to have used due diligence in presenting check for payment before failure of drawee bank. 181M212, 231NW928. See Dun. Dig. 985, 7445.

§7232. When check operates as an assignment.

If drawer intends to appropriate a specific portion of the fund to the payment of the check, an equitable assignment of the fund results, as between the drawer and the payee. Appointments of a receiver does not affect the rights of the parties where they dealt with each other in good faith before notice of the appointment. 172M24, 214NW750.

Surrender of drafts to be collected from the drawer constituted a "valuable consideration" for the assignment. 172M24, 214NW750.

A check of itself does not operate as an assignment of funds in the bank to the credit of the drawer, though with other circumstances, it may amount to an assignment. 173M289, 217NW365.

Bank accepting deposit to cover certain checks to be issued could not be applied on other indebtedness of the depositor. 173M289, 217NW365.

Notations on a check intended to indicate the purpose of the payment attempted to be made thereby have no effect against the bank in which the check is deposited by the payee. 173M383, 217NW366.

Where check was presented to drawee bank and bank draft was accepted for check, the debt was paid. 173M533, 217NW934.

A check does not of itself operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder of the check, unless and until it accepts or certifies the check. *Lambrecht v. M.*, 234NW869. See Dun. Dig. 554 (26).

§7233-1. Banks receiving items for deposit or collection—Liability.

Federal reserve bank held not negligent in sending check direct to payer bank, to be paid by draft. 172M58, 214NW918.

Correspondent bank was authorized to direct drawee bank to remit by exchange, and when such bank closed after it sent its draft, but before it reached the correspondent bank, the latter could charge the check back, and there was no payment received thereon, though drawee marked it paid. 181M212, 231NW928. See Dun. Dig. 986, 7446.

It is presumed that bank receiving check for deposit became the depositor's collecting agent, so that drawer of check did not become indebted to the bank, and where the bank sent the check to a correspondent bank, the drawer, stopping payment on the check, was not liable to such correspondent bank. 34F(2d)348.

Bank agreeing to remit in Russian rubles, held not liable for negligence of competent sub-agent. 180M110, 230NW280.

Where check was deposited in bank, and correspondent bank collected the check and sent a draft, and then closed, the payee must present his claim against the insolvent bank. Op. Atty. Gen., June 26, 1929.

TITLE IV. GENERAL PROVISIONS

ARTICLE I.

§7235. Definitions and meaning of terms.

A certificate of deposit payable to the order of "Christian Hanson Estate" was payable to bearer. 175M453, 221NW873.

§7237. Reasonable time, what constitutes.

Whether farmer living $7\frac{1}{2}$ miles from town presented a check for payment within reasonable time, held for jury. 181M104, 231NW789.

Holder of check and collecting banks, held to have used due diligence in presenting check for payment before failure of drawee bank. 181M212, 231NW928. See Dun. Dig. 987, 7445.

MISCELLANEOUS PROVISIONS

§7247. Instrument obtained by fraud.

Evidence sustained verdict against maker and guarantor as against claim of fraud. 171M216, 213NW902.

"Trick or artifice" must deceive, and defense was without merit where there was affirmation by signer after knowledge of the precise character of the instrument. 172M126, 214NW924.

Evidence held to show that misrepresentations were made by payee in note. 174M115, 218NW464.

Finding that there was no fraud or misrepresentation by cashier of bank in transaction in

which note was given held sustained by evidence. 174M261, 219NW93.

Evidence held sufficient to establish defense under this section, which creates a new defense that is not lost by the mere fact that the payee or holder of the note becomes insolvent and goes into the hands of a receiver after its execution. *Simerman v. H.*, 225NW913.

CHAPTER 52 Partition Fences

§7248. Fence viewers.

Establishment of center of section of land. 172M388, 215NW426.

CHAPTER 53

Estrays and Beasts Doing Damage

BEASTS DOING DAMAGE

§7275. Notice to owner.

Notice is not waived by a general statement of the owner of the animals to one taking them up, "to have the damages appraised and he would pay for them." *Pruka v. M.*, 234NW641. See Dun. Dig. 277, 10134.

The notice required in proceedings to distrain animals doing damage is a written notice and is jurisdictional. *Pruka v. M.*, 234NW641. See Dun. Dig. 277.

MISCHIEVOUS DOGS

§7285. Keeping after notice.

Owner of dog becomes liable on receiving notice by seeing the forbidden act or by information from any other person, oral or written. Op. Atty. Gen., Oct. 30, 1929.

§7286. Dogs worrying livestock or poultry.

Dogs may be killed under statutory authority when they are nuisances, G. S. 1923, §7287, or when they menace live stock or poultry, G. S. 1923, §7286, as amended. 175M368, 221NW430.

Common-law rule is not abrogated by this section. 175M368, 221NW430.

§7287. Nuisance, when—Procedure.

174M457, 219NW770.

Dogs may be killed under statutory authority when they are nuisances, G. S. 1923, §7287, or when they menace live stock or poultry, G. S. 1923, §7286, as amended. 175M368, 221NW430.

Common-law rule is not abrogated by this section. 175M368, 221NW430.

RUNNING AT LARGE OF CERTAIN ANIMALS

§7297-1. County board to license dogs.—

The Board of County Commissioners of any county, by a majority vote, may provide for the licensing and regulating the running at large of dogs, and create a livestock indemnity fund to be handled and disbursed as hereinafter set forth. After the plan therefor shall have been in operation in any county for at least one year, the Board of County Commissioners thereof may by a majority vote, abandon the same. In any county containing a city of the first class the Board of County Commissioners shall exclude from the

operation of this act such city of the first class. (Act Apr. 21, 1931, c. 295, §1.)

§7297-2. Owners to obtain licenses.—The owners of all dogs six months old or over, except dogs kept in kennels, in all counties providing for the licensing and regulating the running at large of dogs as provided for in Section one of this act, shall annually obtain a license therefor, as herein provided, and it shall be unlawful for the owner of any dog six months old or over to allow such dog to run at large without being so licensed or without wearing the license tag herein provided for. (Act Apr. 21, 1931, c. 295, §2.)

§7297-3. Who are owners.—For the purposes of this act, the term "owner" shall, in addition to its ordinary meaning, include any person who keeps or harbors a dog. (Act Apr. 21, 1931, c. 295, §3.)

§7297-4. County auditor to issue license.—The owner of a dog for which a license shall be required, shall on or before the 15th day of July, of each year apply to the auditor of the county in which such owner resides for a license for each dog owned by him. (Act Apr. 21, 1931, c. 295, §4.)

§7297-5. Application.—Application for license shall be made after July 15th and at any time, for a dog which has come into the possession or ownership of the applicant or which has reached the age of six months after said date. (Act Apr. 21, 1931, c. 295, §5.)

§7297-6. Contents of application.—Such application shall be in writing on blank provided therefor by the county auditor and shall state the breed, sex, age, color, markings and name, if any, of the dog, and if a female, whether or not spayed, and the address of the owner and shall be signed by him, or a duly authorized agent of such owner. (Act Apr. 21, 1931, c. 295, §6.)

§7297-7. License fee.—The annual license fee shall be \$1.00 for each male or spayed female dog and \$3.00 for each unspayed female dog. Such fee shall accompany the ap-