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1927

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CHAPTER 51

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INTEREST

7036. Rate of interest—The interest for any legal indebtedness shall be at the rate of six dollars upon one hundred dollars for a year, unless a different rate is contracted for in writing; and no person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater sum, or any greater value, for the loan or forbearance of money, goods, or things in action, than eight dollars on one hundred dollars for one year; and in the computation of interest upon any bond, note, or other instrument or agreement interest shall not be compounded, but any contract to pay interest, not usurious, upon interest overdue, shall not be construed to be usury. Contracts shall bear the same rate of interest after they become due as before, and any provision in any contract, note, or instrument providing for an increase of the rate of interest after maturity, or any increase therein after making and delivery, shall work a forfeiture of the entire interest; but this provision shall not apply to notes or contracts which bear no interest before maturity. (R. L. '05 § 2733, G. S. '13 § 5805, amended '23 c. 70 § 1)

In General.

An oral contract for interest in excess of six per cent. is void as to the excess (63-258, 65+452; 72-536, 75+744). A contract in an instrument to pay interest on interest overdue thereon is illegal (2-350, 302; 3-339, 238; 4-51, 26; 19-67, 45; 24-267; 93-4, 100+379). But interest on overdue interest may be recovered if the contract therefor is in the form of interest coupons (25-314; 29-68, 77, 11+228; 39-122, 124, 39+74, 140; 93-4, 100+379). A contract for a greater rate of interest after maturity is illegal (3-339, 238; 3-347, 246; 22-19; 24-43, 33-144, 22+633; 39-122, 39+74, 140; 51-485, 53+767). But such a stipulation does not render the entire contract void but simply works a forfeiture of all interest (51-485, 53+767; 62-498, 65+84). A note with no provision as to interest bears the legal rate of interest after maturity (18-429, 386). Interest is recoverable at the legal rate on a "legal indebtedness" (15-217, 169; 67-180, 69+715, 1069; 78-129, 133, 80+831).

Interest as a legal incident to demand for damages (124-266, 144+954). Validity is presumed; and the law of the state governs upholding validity of notes as against laws of state rendering same usurious, when no express or actual interest appears in the instruments (128-35, 150+231). A person has no vested rights in the defense of usury (132-20, 155+765). Test of usury (132-325, 156+667). Parties residents of Wisconsin, there executed notes and mortgage on land security in Minnesota, transaction construed a Minnesota contract (141-

402, 170+346). Compounding of interest on policy liens (151-41, 185+946). Highest legal rate of interest besides collection and attorney's fees, not usurious (155-30, 192+111). Rate of interest increase, if unpaid at maturity, does not render note non-negotiable, but works a forfeiture (195+284).

See also 293 Fed. 60.
212+1; 212+408.

A note is not rendered non-negotiable by a provision for reasonable attorney's fees if not paid at maturity, nor by a provision for an increase in the rate of interest if not paid at maturity; but under our statute a provision for an increase in the rate of interest after maturity works a forfeiture of all interest. 156-453, 195+281.

A provision in a promissory note for a higher rate of interest after maturity than before works a forfeiture of the interest, but does not render the note non-negotiable as to the principal sum. 161-10, 200+849.

Usury.

To constitute "usury" there must be a loan with an agreement to repay with greater than legal interest. 159-580, 199+240.

If that be the transaction, no matter what device or shift is used to conceal it, there is usury. 159-580, 199+240.

A mere discount or sale of commercial paper, though the buyer makes more than the legal rate, is not usurious; but a transaction in the form of a sale or discount, at a rate greater than the legal rate of interest, if in fact a loan, is usurious. 159-580, 199+240.

Record examined and found to sustain the findings of fact resulting in a usurious transaction. 161-525, 201+442.

The evidence was sufficient to sustain the verdict 162-235, 202+727.

Usury does not exist in the absence of a loan, nor in the absence of a contract. 162-235, 202+727.

The contract must be usurious at its inception. 162-235, 202+727.

It is not usury to pay excessive interest for the past use of money. 162-235, 202+727.

Guaranty contracts. 163-76, 203+518.

Purchase of mortgage. 165-342, 206+645.

The evidence sustains the verdict finding a loan usurious, and that it was exacted by the bank. 165-396, 206+728.

Payment of a commission to an agent of the borrower by the lender does not render the loan usurious. 167-1, 208+191.

The retaining by the lender with the assent of the borrower of a sum out of the amount loaned, for services rendered by the lender to the borrower, and not for the use of the money, does not render the transaction usurious. 167-1, 208+191.

The evidence sustains the finding that the compensation to be paid defendant above the legal rate of interest on the money advanced was for other services to be performed by him and that the contract was not usurious. 211+828.

Burden of Proof.

The burden is upon the party alleging the charge of usury to negative, by competent proof, every fact which, if true, would render the transaction lawful. 167-1, 208+191.

Questions for Jury.

Usury is a question of fact and must be left to the jury. Where there is no dispute in the testimony and the evidence shows a direct contract whereby, for a loan, the lender exacts a usurious bonus or excessive interest, the intent to evade the law is presumed, and then, only, usury becomes a question of law. 162-235, 202+727.

7037. Usurious interest—Recovery—Every person who for any such loan or forbearance shall have paid or delivered any greater sum or value than in § 7036 allowed to be received may, by himself or his personal representatives, recover in an action against the person who shall have received the same, or his personal representatives, the full amount of interest or premium so paid, with costs, if action therefor be brought within two years after such payment or delivery: Provided, that one-half of the amount so recovered shall be paid by the officer collecting the same into the treasury of the county where collected, for the use of common schools. (2734) [5806]

53-191, 54+1062; 61-490, 492, 63+1031.

See also notes under § 7036.

Dealings under two written contracts, one for building construction and the other for the joint operation of a hotel, held to show no usury, because there was no exaction of or agreement to pay any sum in excess of lawful interest for the loan or forbearance of money. 167-319, 209+21.

7038. Usurious contracts invalid—Exceptions—All bonds, bills, notes, mortgages, and all other contracts and securities whatsoever, and all deposits of goods, or any other thing, whereupon or whereby there shall be reserved, secured, or taken any greater sum or value for the loan or forbearance of any money, goods, or things in action than hereinbefore prescribed, shall be void except as to bona fide purchasers of negotiable paper, in good faith, for a valuable consideration and before maturity, as hereinafter provided. But no merely clerical error in the computation of interest, made without intent to avoid the provisions of this chapter, shall constitute usury. Interest at the rate of one-twelfth of eight per cent. for every thirty days shall not be construed to exceed eight per cent. per annum; nor shall the payment of interest in advance of one year, or any less time, at a rate not exceeding eight per cent. per annum, constitute usury; and nothing herein shall prevent the purchase of negotiable mercantile paper, usurious or otherwise, for a valuable consideration, by an innocent purchaser, at any price before the maturity of the same, when there has been no intent to evade the provisions of this chapter, or where such purchase has not been a part of the original usurious transaction; but where the original holder of a usurious note sells the same to an innocent purchaser the maker thereof, or his representatives may recover back from the original holder the amount of principal and interest paid by him on said note. (R. L. '05 § 2735; G. S. '13 § 5807, amended 23 c. 283 § 1)

Maximum interest rate payment and also mortgage registry tax (125-218, 146+350; 132-20, 155+765). Note is valid but mortgage invalid (132-323, 156+667). Disguising transaction as a sale to avoid usury (155- , 195+279).

1. In general—Usury is the taking of a greater rate of interest for the loan or forbearance of money, goods, or things in action, than is allowed by law (28-211, 9+734. See 35-312, 29+134; 35-456, 29+154; 46-360, 365, 49+55). The three essentials of usury are (1) a loan; (2) an agreement for its return at all events; and (3) an agreement to pay more than the legal rate of interest for the use of it (59-468, 475, 61+560). There can be no usury without a loan of money (53-350, 353, 55+555; 69-199, 71+913); or without a contract (35-312, 29+134). The test is, will the contract, if performed, result in producing to the lender a rate of interest greater than is allowed by law, and was that result intended by the lender (55-520, 526, 57+311). To be usurious a contract must be so when it is made (55-466, 57+205; 55-520, 526, 57+311). A contract to pay for the past use of money cannot be usurious (21-530; 68-210, 70+978). Usury laws are enacted to protect the weak and necessitous from oppression (37-441, 443, 35+265).

See also notes under § 7036.

156-407, 195+39; 211+470.

To constitute usury an agreement to repay the principal sum at all events is essential; if it be payable only on some contingency, the transaction is not usurious. 156-160, 194+321.

Where corporate stock is in form sold at a price in excess of its stock exchange value, the stock being listed and readily salable on any business day, and a note is taken for the purchase price at the highest legal rate, the purpose being to make a loan on which the vendor gets more than the legal rate, the devise of a sale being a cover for usury, the form will be disregarded and the transaction will be held usurious as it is in substance. 156-442, 195+278.

That a promissory note was sold at a usurious discount does not relieve the makers from their obligation, if in fact they were not parties to the usury, but received full value for their obligation. 211+161.

2. Intent—Presumptions—It is of the essence of usury that there be a corrupt intent to take or reserve a

greater compensation for the future use of money than is allowed by law (31-304, 17+630; 42-438, 44+316; 49-496, 498, 52+135; 66-343, 69+3; 70-380, 388, 73+165). But the law raises a presumption of usury from the fact that the lender reserves greater compensation than the law allows (46-400, 49+189), and the rule that a person is presumed to have intended the necessary consequences of his acts applies (92-128, 133, 99+415). The intent or knowledge of the borrower is immaterial (37-441, 35+265; 42-438, 44+316; 46-400, 49+189).

3. Usurious contracts void.—Except as to bona fide purchasers usurious contracts are absolutely void as well as all security given therefor (31-495, 18+450; 36-306, 31+213; 63-258, 65+452). Executory usurious contracts are non-enforceable (21-415). Any amount however small above the lawful rate is fatal (49-496, 52+135).

4. Form not controlling.—Forms and names are not controlling. Courts look to the substance and effect of transactions. There is no shift or device on the part of the lender to evade the statute under or behind which the law will not look in order to ascertain the real object of the transaction (34-409, 26+229; 37-441, 35+265; 40-329, 42+20; 42-438, 44+316; 52-356, 54+591; 59-468, 61+560; 60-303, 62+260; 69-199, 202, 71+913; 89-386, 390, 94+1088; 92-128, 99+415; 99-468, 61+560; 83-114, 117, 85+939; 97-265, 106+911). Unusual clauses always excite suspicion (52-356, 54+591; 59-468, 61+560).

5. Question of fact.—Whether a transaction is usurious is a question of fact (46-360, 49+55; 49-111, 51+816; 59-468, 474, 61+560; 56-155, 57+462; 64-3, 65+959; 64-162, 66+269; 66-343, 69+3; 70-89, 72+817; 97-265, 106+911), to be submitted to the jury (35-312, 29+134; 49-496, 52+135; 102-166, 112+1009, 1067; 104-510, 116+919), except where only one reasonable inference can be drawn from the evidence (40-329, 42+20; 60-422, 62+544).

6. Burden of proof.—The burden of proving usury is on him who asserts it (40-200, 41+1030; 49-111, 118, 51+816; 64-162, 164, 66+269; 70-89, 93, 72+817). He must negative by his proof every supposable fact which if true would render the transaction lawful (60-422, 62+544). The burden rests on a principal to prove that the acts of his general agent in taking unlawful interest were without his knowledge or consent (43-307, 310, 45+439; 48-69, 50+1015; 85-242, 88+845).

7. Degree of proof required.—All that is required to prove usury is a fair preponderance of evidence (37-441, 35+265; 40-329, 42+20; 43-307, 45+439; 60-303, 62+260). But as usury works an absolute forfeiture of the entire debt the proofs on which it rests should be scrutinized and the rule as to the effect of a fair preponderance of evidence applied, with more strictness than in ordinary civil actions (61-452, 63+1093; 64-162, 167, 66+269). Especially is this true where the adverse party is dead (80-419, 83+379). The evidence must warrant something more than a mere suspicion (40-329, 42+20). See 59-468, 61+560). Evidence may be wholly circumstantial (59-468, 61+560).

8. Effect of commission or bonus to lender.—34-409, 26+229; 35-312, 29+134; 40-200, 41+1030; 43-517, 45+1100; 55-520, 57+311; 58-473, 59+1103; 60-303, 62+260; 64-3, 65+959; 64-457, 67+355; 90-377, 97+113.

9. Sale of property as a cover for usury.—43-307, 45+439; 49-111, 51+816; 51-523, 53+754; 61-83, 63+250; 64-162, 66+269; 70-89, 72+817; 83-114, 85+939; 97-265, 106+911; 98-420, 108+951; 98-489, 108+877.

10. Effect of collateral contract.—49-111, 51+816; 55-466, 57+205; 90-377, 97+113.

11. Effect of including in note more than received.—34-409, 26+229; 35-312, 29+134; 44-121, 46+327; 46-8, 48+412; 46-400, 49+189; 49-111, 51+816; 49-496, 52+135; 60-534, 63+108; 83-203, 85+1012; 84-286, 87+774; 90-377, 97+113.

12. Liability of principal for acts of agent.—37-441, 35+265; 43-307, 45+439; 44-121, 46+327; 44-218, 46+360; 49-431, 52+39; 60-534, 63+108; 85-242, 88+845. See cases under note 13.

13. Effect of commission or bonus to loan agent.—28-211, 9+734; 31-495, 18+450; 33-194, 22+295; 35-456, 29+154; 35-513, 29+337; 40-329, 42+20; 43-307, 45+439; 44-121, 46+327; 44-218, 46+360; 45-448, 48+185; 46-360, 49+55; 48-69, 50+1015; 49-431, 52+39; 58-137, 59+985; 58-487, 60+132; 62-295, 64+898; 66-343, 69+3; 70-542, 73+514; 85-242, 88+845; 89-386, 94+1088; 92-149, 99+641.

14. Repayment contingent.—59-468, 61+560; 69-318, 72+121.

15. Payment of interest in advance.—55-520, 527, 57+311; 70-380, 73+165; 89-386, 391, 94+1088.

16. Miscellaneous.—Delay in delivering loan (43-517, 45+1100). Retention of part of loan for past services (51-276, 53+648). Note for services in procuring loan (39-339, 40+358). Provision for attorney's fees (31-182, 17+274; 55-341, 56+1119). Renewal of note (44-419, 46+908; 49-496, 52+135). Removal of taint of usury (37-182, 33+567). Pretended agency (52-356, 54+591).

17. Effect of new security.—Where a new contract is substituted for a usurious one the taint of usury will affect the new security (31-495, 18+450; 37-441, 35+265).

18. Clerical mistake.—31-304, 17+630. See 69-178, 71+929.

19. Extensions.—If a note is not originally usurious it cannot be made so by a subsequent extension granted in consideration of usurious interest (35-456, 29+154; 65-37, 67+655; 68-210, 70+978). An agreement at the time of the original loan for an extension at the option of the borrower at an illegal rate does not render the original loan usurious if not intended as an evasion of the usury law (44-218, 46+360).

20. Who may assail.—44-218, 46+360; 70-380, 73+165; 71-351, 74+146.

21. Estoppel.—36-57, 29+674; 42-438, 44+316; 71-351, 74+146.

22. Bona fide purchasers.—The term "innocent purchaser" means a bona fide indorsee or bearer within the law merchant (27-87, 6+422; 61-490, 63+1031; 62-62, 64+90; 62-295, 64+898. See 40-329, 42+20; 53-267, 55+123). Exception in favor of bona fide purchasers limited to negotiable paper. Does not extend to mortgages securing negotiable paper (36-460, 32+89, 864; 55-520, 57+311). A bona fide purchaser at a foreclosure sale of a usurious mortgage is protected (31-495, 18+450; 53-350, 55+555).

23. Discounting commercial paper.—53-350, 55+555; 63-459, 65+928.

24. Liability of national banks.—66-257, 68+1092; 76-458, 79+509; 79-266, 82+1118.

25. Conflict of laws.—36-323, 31+348; 55-520, 57+311; 74-335, 77+230.

26. Pleading.—36-333, 31+348; 45-448, 48+185; 46-8, 48+412; 58-385, 59+1038; 60-422, 424, 62+544; 61-490, 63+1031; 64-3, 65+959; 66-257, 68+1092; 72-229, 75+106; 90-377, 97+113.

27. Evidence.—46-360, 49+55; 67-510, 70+799.

28. Chattel mortgages held usurious.—35-496, 29+196; 36-123, 30+439; 43-270, 45+443; 45-448, 48+185; 52-356, 54+591; 73-94, 80+862.

29. Real estate mortgages held usurious.—37-182, 33+567; 55-520, 57+311; 70-542, 73+514; 83-114, 85+939; 85-242, 88+845; 92-128, 99+415.

30. Real estate mortgages held not usurious.—40-200, 41+1030; 43-517, 45+1100; 64-162, 66+269; 68-183, 70+1077; 68-210, 70+978; 69-178, 71+929; 77-97, 79+609; 89-386, 94+1088.

7039. Offenders to answer on oath.—Every person offending against the provisions of this chapter shall be compelled to answer on oath the complaint in any action brought against him in the district court of the proper county for the discovery of any sum of money, goods, or things in action so taken, accepted, or received in violation of any of the foregoing provisions. (2736) [5808]

7040. Usurious contracts — Cancellation.—Whenever it satisfactorily appears to a court that any bond, bill, note, assurance, pledge, conveyance, contract, security, or evidence of debt has been taken or received in violation of the provisions of this chapter, it shall declare the same to be void, enjoin any proceeding thereon, and order it to be canceled and given up. (2737) [5809]

Plaintiff need not repay what he has received (36-460, 32+89, 864; 37-182, 33+567; 69-318, 72+121; 77 Fed. 32; 172 U. S. 351. Requisites of complaint (51-274, 53+647; 69-318, 72+121; 71-112, 73+513). Cited (68-183, 70+1077). See 155-445, 195+278.

The plaintiffs may have affirmative relief under our statute, which makes a usurious transaction void, and provides for a cancellation, without restoring as a condition to relief the money received. 156-442, 195+278.

A lender of money, innocent of all intent to exact a usurious return, held not responsible for the act of a loan broker in exacting from the borrower an unauthorized commission, which, if added to the interest, would make the loan usurious. 156-478, 195+455.

The rule that it is largely within the discretion of the trial court to grant or deny an application for a temporary injunction is applicable in a case where the injunction is sought to restrain the negotiation of a promissory note alleged to be tainted with usury and the enforcement of a mortgage given to secure the note. 167-330, 209+5.

7041. Agreements to share profits.—Building associations.—Nothing in this chapter shall be construed as in any way affecting any contract whereby one party advances money to be used in business or other ven-

tures mutually determined upon, and whereby the party receiving such money agrees to refund the same, with lawful stipulated interest, and in addition thereto agrees to share, equally or otherwise, with the party so advancing the money, the profits of such business or ventures; nor shall its provisions apply to mutual building associations. (2738) [5810]

60-422, 62+544; 77-97, 79+609.
212+408.

7042. Salary loans and chattel mortgage loans—The words "salary loan" as used in this act shall mean a loan in a case where the lender shall take as security for the repayment thereof a promissory note or other written agreement secured by an endorsement, or by an assignment, transfer or pledge of the whole, or any part of any wages or salary whether earned or to be earned. The words "chattel mortgage loan" shall mean a loan in a case where the lender shall loan money upon a promissory note or other written agreement secured by mortgage or other lien upon any personal property.

It shall be lawful for any corporation organized under the laws of the state of Minnesota, and carrying on a "salary loan" or "chattel mortgage loan" business or both a "salary loan" and a "chattel mortgage loan" business in any city of the first class in this state, upon complying with all the provisions of this act, to charge and collect on loans in sums not exceeding two hundred dollars (\$200.00) to any one person, any rate of interest, not exceeding the rate of one per cent (1%) per month thereon, and in cases where a chattel mortgage is taken and possession or control over the possession of the property mortgaged is not taken at the time of making the loan, a fee in addition to the interest allowed by this act of any sum not exceeding in the aggregate \$1.75 on loans of \$20 or less, \$2.75 on loans over \$20 and not over \$45, \$3.75 on loans over \$45 and not over \$75, \$4.75 on loans over \$75 and not over \$150, and \$5.75 on loans over \$150. No sum shall be directly or indirectly charged to or received from the borrower, either as a bonus, attorney's fee, or as a charge for examining or valuing the property offered as security, or for filing or recording of instruments or otherwise, in excess of said fees hereinbefore specified. It shall not be lawful to divide or split up loans in any transaction whatsoever for the purpose of requiring or exacting any other or greater charges than those prescribed herein, nor to make any such charge for renewals or extensions, or for any transfer or change of the loan within one year from the date of the original loan, or oftener than once in each year thereafter, except in cases where a new and additional sum shall be loaned at the time of making such renewal or change, at the request of the borrower in each case the fee above prescribed may be charged for such additional amount loaned. ('13 c. 439 § 1) [5811]

7043. License—Before any such corporation shall engage in the business of making such loans, and charge the rates and fees permitted by this act, it shall first obtain and have in force and effect a license for carrying on such business in the city in which such business shall be transacted. Such license shall be issued by the city clerk or corresponding officer of such city, and it shall be renewed annually, and shall not be transferable. Such license shall be granted on application to such city clerk or corresponding officer in writing pursuant to such form as such clerk or corresponding officer, or city council, or corresponding body may prescribe, for which license the licensee shall pay annually to the treasurer of said city at

the time of taking out said license or renewal a uniform fee of \$25.00 per year. Such licenses shall not be granted until the applicant therefor shall file a statement under oath by its treasurer or some other officer, stating the place in the city where the business is to be carried on, the names of the corporation's officers and manager, and also an affidavit by its treasurer that in the fiscal year of said corporation next preceding the date of said application, the corporation did not pay its stockholders upon their shares in money or money's worth dividends in excess of eight per cent (8). ('13 c. 439 § 2, amended '15 c. 117 § 1) [5812]

TITLE I. NEGOTIABLE INSTRUMENTS IN GENERAL

ARTICLE I. FORM AND INTERPRETATION

7044. Form of negotiable instrument—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 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; and
- (5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. ('13 c. 272 § 1) [5813]

"An act to make uniform the law of negotiable instruments." By section 198 the act takes effect July 1, 1913.

The act enacts the so-called "Negotiable Instruments Law" recommended to the legislatures of the states by the National Conference of State Boards of Commissioners for Promoting Uniformity of Legislation in the United States and now in force in most of the states.

Section 195 departs from the draft in one particular. 144-364, 175+612; 154-250, 191+415.

A "customer's acceptance" (282 Fed. 920).

Unconditional Promise or Order.

"Customer's acceptance" held a negotiable instrument. 282 Fed. 920.

The trust deed provided that the trustee and the mortgagor might alter the terms of the deed if it was deemed consistent with the best interests of the bondholders. The promise to pay, contained in the bonds, was subject to this provision and ceased to be unconditional, an essential of negotiability. 158-481, 198+798.

Custom of Treating Instruments as Negotiable.

Custom of generally treating instruments as negotiable is inadmissible. 158-481, 199+437.

Statement of or Reference to Other Transaction.

A statement of the transaction which gave rise to an instrument negotiable in form does not destroy its negotiability if the statement amounts to nothing more than a mere reference to the transaction or to some other instrument. 158-481, 199+437.

A reference in a note or bond to a mortgage or deed of trust given as security does not destroy the negotiability, unless it appears to have been the purpose of the parties to burden the instrument with the conditions of the mortgage or deed. 158-481, 199+437.

Certainty as to Sum.

A provision in a promissory note for a higher rate of interest after maturity than before works a forfeiture of the interest, but does not render the note nonnegotiable as to the principal sum. 161-10, 200+849

Signature.

Signature. 209+892.

County Warrants.

County warrants are not negotiable under the law merchant, but the transferee takes them subject to all defenses which existed against them in the hands of the payee. 167-458, 209+638.

Note as Payment.

The instruction was necessarily based on the unwarranted assumption that promissory notes given by the purchaser of a stock of goods were accepted by the seller as the equivalent of cash in hand. 162-341, 202+738.

A note given for an antecedent debt is not payment unless given and received as such; and the finding of the jury that the note in suit was not payment is sustained. 165-492, 206+929.

Guaranty of Notes.

Guaranty of notes. 163-76, 203+518.

Real Party in Interest.

The bank remained the holder of the note and the real party in interest, notwithstanding the fact that the note had been charged to plaintiff's president to avoid appearance of the papers being carried as overdue. 211+163.

Mental Competency.

The evidence sustains the verdict to the effect that the maker of the promissory note in suit was mentally incompetent to transact business when he executed the same. 211+206.

Paper Deposited in Bank.

Commercial paper, deposited in a bank for collection, remains the property of the depositor, and the bank is merely his agent to collect it. 211+332.

7045. Certainty as to sum—What constitutes—The sum payable is a sum certain within the meaning of this act, although it is to be paid:

- (1) With interest or
- (2) By stated instalments; or
- (3) By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or
- (4) With exchange, whether at a fixed rate or at the current rate on or at a given place; or
- (5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity. ('13 c. 272 § 2) [5814]

133-230, 158+253; 153-248, 190+182; 155- , 195+284; 282 Fed. 920.

A note is not rendered nonnegotiable by a provision for reasonable attorney's fees if not paid at maturity, nor by a provision for an increase in the rate of interest if not paid at maturity; but under our statute a provision for an increase in the rate of interest after maturity works a forfeiture of all interest. 156-453, 195+281.

7046. When promise is unconditional—An unqualified order or promise to pay is unconditional within the meaning of this act though coupled with:

- (1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
- (2) A statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional. ('13 c. 272 § 3) [5815]

144-364, 175+612; 145-149, 176+496; 154-250, 191+415; 282 Fed. 920.

Although the indorsement of the payee made them transferable by delivery, merely intrusting them to an agent for collection is not such conduct on the part of the owner as will estop him from reclaiming them from a purchaser from such agent. 158-57, 196+809.

County warrants drawn on a special fund and indorsed by the treasurer, "Not paid for want of funds," are not negotiable instruments. 158-57, 196+809.

Where such warrants, indorsed in blank by the payee, are sold to a person who thereafter places them in the hands of an agent for collection, and such agent, instead of collecting them, wrongfully sells them to a good-faith purchaser, the owner may recover them from such purchaser. 158-57, 196+809.

Mere statement of transaction which gave rise to instrument negotiable in form does not destroy its negotiability. 158-481, 199+437.

Parol evidence is not admissible to show that a promissory note was not to be paid according to its terms.

but only on the happening of a contingent future event and out of a special fund. 160-205, 199+905.

7047. Determinable future time—What constitutes—An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

- (1) At a fixed period after date or sight; or
- (2) On or before a fixed or determinable future time specified therein; or
- (3) 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.

An instrument payable upon a contingency is not negotiable and the happening of the event does not cure the defect. ('13 c. 272 § 4) [5816]

7048. Additional provisions not affecting negotiability—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

- (1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
- (2) Authorizes a confession of judgment if the instrument be not paid at maturity; or
- (3) Waives the benefit of any law intended for the advantage or protection of the obligor; or
- (4) Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal. ('13 c. 272 § 5) [5817]

7048-1. Bonds, notes, debentures and promises to pay secured by mortgage, deed of trust, indenture or lien deemed negotiable—That any bond, note, debenture, or promise to pay, which shall be secured by a mortgage, deed of trust, indenture, or lien upon any property, real, personal or mixed, and which shall have been authenticated, certified or approved by the authorized signature of a duly authorized mortgagee, trustee, registrar, or fiscal agent, when otherwise so drawn as to fall under and within the provisions of the uniform Negotiable Instruments Act (Chapter 272, General Laws of 1913), shall be deemed to be a "negotiable instrument" as defined by law and shall be held and construed to be such "negotiable instrument" notwithstanding the fact that it shall refer to or recite that it is issued under, in connection with, or secured by such mortgage, deed of trust, indenture, or other lien of any kind or nature, and whether or not the terms of said mortgage, deed of trust, indenture, or lien, purport to be incorporated therein or made a part thereof, or otherwise. ('27, c. 416, § 1)

7048-2. Same—Pending actions not affected—This act shall not be construed to affect any action now pending in any of the courts of this state. ('27, c. 416, § 2)

7049. Omissions — Seal — Particular money —The validity and negotiable character of an instrument are not affected by the fact that:

- (1) It is not dated; or
- (2) Does not specify the value given, or that any value has been given therefor; or
- (3) Does not specify the place where it is drawn or the place where it is payable; or
- (4) Bears a seal; or
- (5) Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of

the consideration to be stated in the instrument. ('13 c. 272 § 6) [5818]

7050. When payable on demand—An instrument is payable on demand:

- (1) Where it is expressed to be payable on demand; or at sight, or on presentation; or
- (2) In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand. ('13 c. 272 § 7) [5819]

149-47, 182+724.

A demand of payment is not a prerequisite to the enforcement of a note payable on demand. 164-57, 204+546.

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 some 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. ('13 c. 272 § 8) [5820]

7052. When payable to bearer—The instrument is payable to bearer:

- (1) When it is expressed to be so payable; or
- (2) When it is payable to a person named therein or bearer; or
- (3) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or
- (4) When the name of the payee does not purport to be the name of any person; or
- (5) When the only or last indorsement is an indorsement in blank. ('13 c. 272 § 9) [5821]

7053. Terms when sufficient—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. ('13 c. 272 § 10) [5822]

7054. Date, presumption as to—Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement as the case may be. ('13 c. 272 § 11) [5823]

7055. Ante-dated and post-dated—The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. ('13 c. 272 § 12) [5824]

7056. When date may be inserted—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date. ('13 c. 272 § 13) [5825]

7057. Blanks—When may be filled—Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie author-

ity to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. ('13 c. 272 § 14) [5826]

7058. Incomplete instrument not delivered—Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery. ('13 c. 272 § 15) [5827]

7059. Delivery—When effectual—When presumed—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved. ('13 c. 272 § 16) [5828]

144-190, 174+890.

Where one indorses a promissory note, made by another, before delivery, and the note then passes from the maker to the payee, that is prima facie a delivery. But, when the answer of such indorser alleges an oral agreement, to the effect that the note should not become operative until indorsed by certain other parties, which never occurred, it is competent to show such agreement by parol evidence. 165-82, 205+699.

Where promissory notes are given to a payee pursuant to a written contract, and it is orally agreed that the notes are to be used by the payee with a particular person for a certain purpose, it does not, in law, constitute a "conditional delivery." 165-87, 205+696.

7060. Construction where instrument is ambiguous—Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

- (1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;
- (2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;
- (3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;
- (4) Where there is a conflict between the written

and printed provisions of the instrument, the written provisions prevail;

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

(6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. ('13 c. 272 § 17) [5829]

Subd. 1. (152-204, 188+262).

Former rule abrogated; third party signing promissory note before delivery is not a maker, but an indorser. 155-192+493.

166-472, 208+186.

Where a plain promissory note is executed by one who fully understands its terms and there is neither mutual mistake, nor mistake by the maker and deception by the payee, nor fraud, there can be no reformation by the incorporation of a parol agreement which varies or contradicts the terms of the note. 163-31, 203+444.

The general rule is that a written instrument, including promissory notes, cannot be varied by parol evidence as to a prior or contemporaneous oral agreement. 166-50, 207+20.

7061. Liability of person signing in trade or assumed name—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. ('13 c. 272 § 18) [5830]

7062. Signature by agent—Authority—How shown—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency. ('13 c. 272 § 19) [5831]

7063. Liability of person signing as agent, etc.—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. ('13 c. 272 § 20) [5832]

A person who executes a promissory note in a representative capacity without authority is personally liable thereon to the payee, if he took it without knowledge of such lack of authority, but not if he took it knowing all the facts. 160-341, 200+300.

7064. Signature by procuration—Effect of—A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. ('13 c. 272 § 21) [5833]

7065. Effect of indorsement by infant or corporation—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. ('13 c. 272 § 22) [5834]

7066. Forged signature—Effect of—When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party,

against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority. ('13 c. 272 § 23) [5835]

135-174, 160+667.

ARTICLE II. CONSIDERATION

7067. Presumption of consideration—Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value. ('13 c. 272 § 24) [5836]

54-323, 56+38; 124-532, 144+1135; 137-264, 163+516; 147-80, 179+645.

157-348, 196+275, notes under § 7098; 210+84.

In a suit on promissory notes, the evidence examined, and held to support a verdict for defendant on his two defenses of failure of consideration and duress. 156-460, 195+275.

Drafts. 160-102, 199+519.

Neither the claim that the consideration for the note had failed, nor the claim that defendant had agreed to surrender it under a subsequent contract, is sustained by the evidence. 163-173, 203+603.

The defendant failed to sustain the burden of proving that the note was without consideration and was not an actual obligation of the maker. 163-288, 204+36.

7068. Consideration, what constitutes—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time. ('13 c. 272 § 25) [5837]

123-208, 143+353; 127-390, 149+658; 128-241, 150+870. 211+820.

Where a promissory note given for a previously existing and past-due debt is payable at a future day, the extension of time is a sufficient consideration to support a guaranty of payment made by third parties before delivery of the note. 153-108, 196+963.

A bank which takes by indorsement an accommodation promissory note, knowing it to be accommodation, as collateral security to an antecedent liability of a bank as an indorser on discounted paper, is protected against defenses of the maker just as a bona fide purchaser of negotiable paper for which a present consideration is given is protected. 153-140, 197+271.

If a depositor's account with a bank shows a balance in his favor, when the bank receives from him a draft made payable to its order, and credits it to his account, and thereafter the bank is closed before the depositor draws out any portion of the proceeds of the draft, there is a failure of consideration for the draft. 160-102, 199+519.

The indebtedness of the payee to the indorsee, existing at the time when the draft was received and credited, was a valuable consideration for the taking of the draft. 160-102, 199+519.

If there was a promise to make advances, such promise was a sufficient consideration for the note. 163-288, 204+36.

Subscription to college fund. 164-57, 204+546.

The evidence amply justifies the finding that there was a valuable consideration for the indorsement of the notes in controversy. 165-330, 206+646.

The rule that permits inquiry as to a recital of consideration has no application to the contractual obligation in a promissory note to pay a definite sum of money. 166-50, 207+20.

Action on a promissory note, given by the decedent for a part of the loss resulting from forgeries of one Hanscome. The cause of action arising out of the forgeries having previously been released and discharged, there was no valid consideration for the note. 166-392, 208+15.

There was no error in charging the jury that it might find that a note given for a tractor, which was taken back by the vendors and another delivered to the vendee, was by the understanding of the parties given for the second one. 167-60, 208+422.

Where paper is executed without consideration for a special purpose, taking security does not change the nature or effect of the transaction. 167-93, 208+805.

The finding that the note of a third party, signed by plaintiff after it became due, was signed without consideration, is sustained by the evidence. 209+899.

The agreement in the new note to pay interest accruing in the future is a sufficient consideration to support the contract for extension. 213+375.

7069. What constitutes holder for value—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. ('13 c. 272 § 26) [5838]

122-215, 142+139.

See also notes under § 7095.

158-140, 197+271, note under § 7068.

The defendants gave their separate notes to one Gugisberg, who was the president of the plaintiff bank, and heavily interested in the Gugisberg Incubator Company. At the same time, and as a part of the same transaction, Gugisberg gave his note to each of the defendants for the same amount and upon the same terms as such defendant's note to him. They now have such notes. Gugisberg made out the deposit slips. His overdrawn account was credited with two of the notes. There was still left an overdraft. The other note was credited to the Incubator account, thus paying its overdraft, and leaving a small credit balance. The three notes were carried to the bills receivable account in the usual way. It is held that the notes of Gugisberg were a consideration for the notes of the defendants, that the notes of the defendants were not an accommodation for the bank, and that the defendants are liable thereon. 156-136, 194+98.

7070. When lien on instrument constitutes holder for value—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. ('13 c. 272 § 27) [5839]

7071. Effect of want of consideration—Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. ('13 c. 272 § 28) [5840]

123-66, 142+1041; 125-215, 145+785; 147-80, 179+644.

163-288, 204+36, notes under §§ 7067, 7068.

The signing of such note by the son, after it was past due, without any new consideration, did not create a valid obligation on his part. 156-332, 194+769.

Unless plaintiff is holder in due course failure of consideration is a defense. 160-102, 199+519.

7072. Liability of accommodation party—An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. ('13 c. 272 § 29) [5841]

156-332, 194+769.

A bank which takes by indorsement an accommodation promissory note, knowing it to be accommodation, as collateral security to an antecedent liability of a bank as an indorser on discounted paper, is protected against defenses of the maker just as a bona fide purchaser of negotiable paper for which a present consideration is given is protected. 158-140, 197+271.

Plaintiff was a holder in due course, and the admitted truth of the allegations of the answer in respect to plaintiff's full knowledge of the land deal and the agreement between the party accommodated and defendant, that the latter should incur no personal liability upon the indorsements, does not defeat a recovery. 161-310, 201+440.

In an action upon a promissory note brought by the payee, therein named, against the maker, where it is alleged in the answer that the note was made and delivered as an accommodation note, oral testimony that it was so executed does not vary or contradict the written contract within the rule excluding parol evidence, held, that the answer stated a defense. 163-151, 203+604.

The Negotiable Instruments Law makes an accommodation maker primarily liable to a holder for value. In consequence, he cannot avail himself of the defenses, such as extension of time of payment without his con-

sent, which are available only to a surety. 166-472, 208+186.

One who, without consideration, executes paper for the accommodation of another, may impose as a condition that it shall be used only for a designated special purpose, and, if it be used for a different purpose, he is not liable thereon unless it passes to a holder in due course. 167-93, 208+805.

Under the Negotiable Instrument Law, accommodation parties are liable in the capacity in which they appear upon the instrument, whether as maker or as indorsers. 212+2.

ARTICLE III. NEGOTIATION

7073. What constitutes negotiation—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery. ('13 c. 272 § 30) [5842]

Although the indorsement of the payee made them transferable by delivery, merely intrusting them to an agent for collection is not such conduct on the part of the owner as will estop him from reclaiming them from a purchaser from such agent. 158-57, 196+809.

It is not error to exclude, testimony corroborating a telephone talk which is in substance admitted. 158-280, 197+282.

The agreement in controversy did not create a contract to sell, but merely gave plaintiff an option to sell which expired without being exercised. 163-1, 203+434.

Held, under the proofs, that the transactions had between the plaintiff and defendant banks amounted to a discount and sale of the notes in question. 165-285, 206+459.

Under the proofs, it is held that the transaction between the two banks amounted to a discount and sale of the promissory notes in question, and that the plaintiff is not entitled to recover in this action. 165-428, 206+708.

7074. Indorsement—How made—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. ('13 c. 272 § 31) [5843]

158-280, 197+282, note under § 7073.

7075. Indorsement must be of entire instrument—The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue. ('13 c. 272 § 32) [5844]

7076. Kinds of indorsement—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional. ('13 c. 272 § 33) [5845]

7077. Special indorsement—Indorsement in blank—A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery. ('13 c. 272 § 34) [5846]

7078. Blank indorsement—How changed to special indorsement—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. ('13 c. 272 § 35) [5847]

7079. When indorsement restrictive—An indorsement is restrictive, which either:

(1) Prohibits the further negotiation of the instrument; or

(2) Constitutes the indorsee the agent of the indorser; or

(3) Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive. ('13 c. 272 § 36) [5848]

7080. Effect of restricting indorsement—Rights of indorsee—A restrictive indorsement confers upon the indorsee the right:

(1) To receive payment of the instrument.

(2) To bring any action thereon that the indorser could bring.

(3) To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement. ('13 c. 272 § 37) [5849]

7081. Qualified indorsement—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. ('13 c. 272 § 38) [5850]

210+84.

An indorsement "without recourse" on a negotiable instrument protects the indorser against liability by reason of the indorsement, but has no tendency to relieve the indorser from his obligation arising from his separate contract of guaranty. 160-129, 199+901.

7082. Conditional indorsement—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally. ('13 c. 272 § 39) [5851]

7083. Indorsement of instrument payable to bearer—Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. ('13 c. 272 § 40) [5852]

7084. Indorsement where payable to two or more persons—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others. ('13 c. 272 § 41) [5853]

7085. Effect of instrument drawn or indorsed to a person as cashier—Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer. ('13 c. 272 § 42) [5854]

7086. Indorsement where name is misspelled et cetera—Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature. ('13 c. 272 § 43) [5855]

122-215, 145+785.

7087. Indorsement in representative capacity—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms

as to negative personal liability. ('13 c. 272 § 44) [5856]

7088. Time of indorsement—Presumption—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. ('13 c. 272 § 45) [5857]

7089. Place of indorsement—Presumption—Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated. ('13 c. 272 § 46) [5858]

7090. Continuation of negotiable character—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. ('13 c. 272 § 47) [5859]

7091. Striking out indorsement—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument. ('13 c. 272 § 48) [5860]

7092. Transfer without indorsement—Effect of—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transferee vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. ('13 c. 272 § 49) [5861]

128-215, 142+139.

7093. When prior party may negotiate instrument—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. ('13 c. 272 § 50) [5862]

ARTICLE IV. RIGHTS OF THE HOLDER

7094. Right of holder to sue—Payment—The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument. ('13 c. 272 § 51) [5863]

7095. What constitutes a holder in due course—A holder in due course is a holder who has taken the instrument under the following conditions:

(1) That it is complete and regular upon its face.

(2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact.

(3) That he took it in good faith and for value.

(4) That at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. ('13 c. 272 § 52) [5864]

123-374, 143+980; 127-291, 149+467; 137-46, 162+1051; 137-123, 162+1076; 154-133, 191+587; 195+283.

Plaintiff is not in a position to claim the rights of a good-faith purchaser, for value, in due course, and before maturity, for the evidence shows that the purchase price of the note in suit was placed to the credit of the payee, the seller of the note, and fails to show that such credit was exhausted before notice of the defense. 156-424, 195+141.

The undisputed evidence conclusively established that plaintiffs were holders in due course under the Negotiable Instruments Act. 156-453, 195+281.

A purchaser of a note or bond does not acquire the rights of a holder in due course unless the instrument

is complete and regular upon its face. When the language of a bond not only refers to the provisions of the trust deed securing it, but makes the bond subordinate to the conditions of the deed, the bond shows upon its face that it is not a complete and regular instrument. 158-481, 199+437.

A broker, who had bonds for sale to investors, held some of them as collateral to a note he had paid for the issuer of the bonds and separated them from the note and repledged them to secure another debt. This amounted to a conversion of the bonds repledged and the subpledgee got no better title than the broker. 158-481, 198+798.

Evidence established as a matter of law that plaintiff was a holder in due course and was entitled to a directed verdict. 159-469, 199+91.

A promissory note, which complies with all the conditions required to make it negotiable, and which discloses nothing to indicate that it has been altered or was not intended to be operative according to its terms, is regular on its face. 161-10, 200+849.

Plaintiff was a holder in due course, and the admitted truth of the allegations of the answer in respect to plaintiff's full knowledge of the land deal and the agreement between the party accommodated and defendant, that the latter should incur no personal liability upon the indorsements, does not defeat a recovery. 161-310, 201+440.

The payee named in a promissory note, indorsed in blank before delivery by the person to be held, with notice to the payee that such indorsement was made under an oral agreement that the note should not become operative until indorsed by a third party, is not a holder in due course. 165-82, 205+699.

7096. When person not deemed holder in due course—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. ('13 c. 272 § 53) [5865]

157-348, 196+275, notes under § 7098; 2 F. (2d) 348.

7097. Notice before full amount paid—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. ('13 c. 272 § 54) [5866]

Existing debt is a valuable consideration. 160-102, 199+519.

7098. When title defective—The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. ('13 c. 272 § 55) [5867]

143-281, 173+661; 143-388, 173+804; 144-410, 175+614; 149-267, 183+832; 150-260, 185+261; 150-316, 185+374; 153-250, 190+183.

158-140, 197+271, note under § 7102; 161-231, 201+318, note under § 7102; 161-310, 201+440, note under § 7095; 2 F. (2d) 348.

Where a straight promissory note is executed and delivered by the maker to the payee as collateral to an open running account upon which there is a balance owing from the maker to the payee, the note becomes an enforceable obligation. 157-348, 196+275.

Where a promissory note for \$4,000, payable upon demand, is given in the manner stated, and the amount thereof is credited to the open account by the payee, the payee acquires an interest in the note, which he may assign. 157-348, 196+275.

Where a promissory note is given as collateral to an open account, under an alleged oral agreement not to negotiate the same, and where the payee thereafter negotiates the same to an innocent purchaser, the transaction does not render the title to the note defective within the meaning of the statute. 157-348, 196+275.

The record fails to disclose or warrant an inference that the note in suit was negotiated by the payee in breach of faith or under circumstances amounting to a fraud. 157-348, 196+275.

Where a negotiable promissory note is executed and delivered to the payee, for value, under an alleged oral agreement that it should not be negotiated, parol evidence is inadmissible to show such oral agreement as against an innocent holder. 157-348, 196+275.

The record shows conclusively that the plaintiff received the note for value, before maturity, and in the usual course of business. 157-348, 196+275.

The mere fact that the payee was a regular patron of the bank is, of itself, no evidence of bad faith on the part of the plaintiff in acquiring the instrument. 157-348, 196+275.

Pleading and proof. 160-102, 199+519.

Where a grain buying corporation's manager, whose honesty and fidelity plaintiff had insured, without authority drew a draft in the name of the corporation, and fraudulently procured a bill of lading from a common carrier purporting to cover a full car of wheat, naming the corporation consignor and the drawee in the draft consignee, but which car was empty, and the defendant bank in good faith exchanged its cashier's check payable to the order of the corporation for the draft with the bill of lading attached, the corporation obtained no title to the check, and its payment by defendant to a holder to whom the manager had negotiated it was not a conversion of the corporation's funds. 161-204, 201+431.

One is the holder in due course of a negotiable note, notwithstanding he bought with notice of a warranty, provided he had no notice of a breach of that warranty. 163-18, 203+427.

If the note was supported by a consideration and was an actual obligation of the maker, the negotiation of it by the payee would not be in breach of faith or under circumstances which amounted to a fraud. 163-288, 204+36.

7099. What constitutes notice of defect—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith. ('13 c. 272 § 56) [5868]

127-105, 149+4; 137-46, 162+1051; 142-69, 170+928; 143-284, 173+661; 143-389, 173+804; 144-289, 175+545; 144-364, 175+612; 153-246, 190+183; 154-129, 191+587; 195+283.

160-102, 199+519; 166-400, 208+24, note under § 7102.

Burden and time of proof. 2 F. (2d) 348.

The undisputed evidence conclusively established that plaintiffs were holders in due course under the Negotiable Instruments Act. 156-453, 195+281.

A purchaser of a promissory note is not chargeable with notice of defenses to it, unless he has actual knowledge thereof, or of such facts that his action amounts to bad faith. 161-10, 200+849.

The doctrine of *lis pendens* does not apply to negotiable paper, and filing a notice of his *pendens*, in an action to cancel a note and a mortgage securing it, does not operate as constructive notice of defenses to the note. 161-10, 200+849.

7100. Rights of holder in due course—A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. ('13 c. 272 § 57) [5869]

If the facts necessary to establish the defense given by section 6015, G. S. 1913, are proved, a holder in due course cannot recover from the maker of a promissory note whose signature thereto was obtained by fraudulent representations. 160-255, 199+819.

7101. When subject to original defenses—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. ('13 c. 272 § 58) [5870]

141-438, 170+596; 144-289, 175+545.

166-472, 208+186.

The receiver of a corporation may sell notes representing unpaid stock subscriptions and pass to the purchaser whatever title he has. If in a given case the makers of such notes cannot rescind the same as against the receiver, they cannot do so as against a purchaser from him. 156-487, 195+489.

Paper executed to a bank without consideration, for the sole purpose of being held until the bank makes an assessment upon its capital stock to replace worthless paper, and which is transferred to another bank which took it after the assessment had been made and with knowledge of the purpose for which it was given, cannot be enforced by the second bank. 167-93, 208+805.

7102. Who deemed holder in due course—Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. ('13 c. 272 § 59) [5871]

122-215, 142+139; 127-291, 149+467; 138-76, 163+770; 144-289, 175+545; 144-411, 175+614; 150-260, 185+261; 150-316, 185+374; 153-248, 190+182.

157-348, 196+275, notes under § 7098; 158-481, 199+437, note under § 7095; 210+84.

The evidence that the notes had their inception in fraud was sufficient to cast upon plaintiffs the burden of showing that they were holders in due course. 156-453, 196+281.

Although the indorsement of the payee made them transferable by delivery, merely intrusting them to an agent for collection is not such conduct on the part of the owner as will estop him from reclaiming them from a purchaser from such agent. 158-57, 196+809.

Where there is fraud in the inception of a note, so that the indorser takes through a defective title, the burden is upon him to prove that his purchase was in good faith without notice. 158-140, 197+271.

Drafts. 160-102, 199+519.

The evidence does not sustain the defendant's claim that the plaintiff, the purchaser of a draft accepted by the defendant, and the drawer of the draft, were together conducting a business in connection with which the draft was drawn so that the plaintiff was not an innocent purchaser. 161-231, 201+318.

The plaintiff, though it be held that under the Negotiable Instruments Act it had the burden of proving good faith, was an innocent purchaser as a matter of law. 161-231, 201+318.

Fraud in the inception of a promissory note being conceded, in an action brought by the owner claiming to be a holder in due course, the plaintiff's burden of showing that he is such holder is not fully met merely by proof that he acquired it before maturity and for value. He must show that he acquired it in good faith. 166-400, 208+24.

It is only where the holder of a promissory note has proven affirmatively that he was a holder in due course that the maker is required to show bad faith on the part of the holder before proving a defense to it. 210+869.

Defendant was entitled to prove that plaintiff acquired the note after maturity and that neither he nor the payee gave any consideration for it. 210+869.

ARTICLE V. LIABILITIES OF PARTIES

7103. Liability of maker—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse. ('13 c. 272 § 60) [5872]

Evidence held sufficient to make the question whether promissory notes given by a third party and indorsed by defendant were given and accepted for the purpose of releasing defendant from liability for the original debt a question of fact for the jury. 158-236, 197+216.

Giving notes for antecedent debt is presumed to be conditional payment only and does not discharge the debt unless expressly given and received as absolute payment, though third parties join in the notes. 158-236, 197+216.

A promissory note, given to cover the amount of the indebtedness of a corporation as shown by an open

account, is competent evidence to show that the account was stated and that the amount actually due thereon is represented by the note, although the note was executed by an officer of the corporation without authority. 160-405, 200+630.

Where the time of payment has been extended to a specified date by a written agreement, proof of a contemporaneous oral agreement for a further extension is inadmissible. 162-445, 203+212.

7104. Liability of drawer—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder. ('13 c. 272 § 61) [5873]

165-417, 206+725.

7105. Liability of acceptor—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(2) The existence of the payee and his then capacity to indorse. ('13 c. 272 § 62) [5874]

7106. When person deemed indorser—A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. ('13 c. 272 § 63) [5875]

192+493.

166-472, 203+186.

Guaranty of note by bank was valid. 165-278, 206+453.

7107. Liability of irregular indorser—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery he is liable as indorser, in accordance with the following rules:

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee. ('13 c. 272 § 64) [5876]

135-209, 160+676, 192+493.

In this action against an irregular indorser of promissory notes, the defense proved that the maker executed and delivered the notes to the payee absolutely and unconditionally that the notes were given for a past-due debt of the maker for which the indorser was in no way liable, and that after such delivery, without any new consideration, defendant indorsed the notes, and, since there is nothing in the record authorizing the jury to hold such proof insufficient, the court rightly directed a verdict for defendant. 158-348, 197+489.

7108. Warranty where negotiation by delivery, et cetera—Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

(1) That the instrument is genuine and in all respects what it purports to be;

(2) That he has a good title to it;

(3) That all prior parties had capacity to contract;

(4) That he has no knowledge of any fact which

would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes. ('13 c. 272 § 65) [5877]

145-325, 177+135.

165-330, 206+646; 210+84.

7109. Liability of general indorser—Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

(1) The matters and things mentioned in subdivision one, two and three of the next preceding section; and

(2) That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. ('13 c. 272 § 66) [5878]

165-330, 206+646.

The guarantors were not parties to the foreclosure action, and their liability may be enforced in the present action. 158-108, 196+963.

A promissory note executed and payable in this state is a Minnesota contract, and an action upon it in our courts is governed by our laws. A statute of another state prohibiting bringing more than one action upon such an obligation has no application here, although a mortgage securing the note was foreclosed by action in that state and a deficiency judgment against the primary debtor was rendered therein. 158-108, 196+963.

Where a person unconditionally guarantees payment of a promissory note, the holder has the right to look to him for payment, and is under no obligation to resort to the security or to take steps to preserve it for his benefit. 158-269, 197+283.

7110. Liability of indorser where paper negotiable by delivery—Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. ('13 c. 272 § 67) [5879]

7111. Order in which indorsers are liable—As respects one another indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorseees who indorse are deemed to indorse jointly and severally. ('13 c. 272 § 68) [5880]

7112. Liability of an agent or broker—Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section sixty-five [7108] of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent. ('13 c. 272 § 69) [5881]

ARTICLE VI. PRESENTMENT FOR PAYMENT

7113. Effect of want of demand on principal debtor—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. ('13 c. 272 § 70) [5882]

136-104, 161+398.

A demand of payment is not a prerequisite to the enforcement of a note payable on demand. 164-57, 204+546.

7114. Presentment where instrument is not payable on demand and where payable on demand—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. ('13 c. 272 § 71) [5883]

This section supersedes R. L. § 2741.

149-47, 182+724.

7115. What constitutes a sufficient presentment—Presentment for payment, to be sufficient, must be made:

(1) By the holder, or by some person authorized to receive payment on his behalf;

(2) At a reasonable hour on a business day;

(3) At a proper place as herein defined;

(4) To the person primarily liable on the instrument or if he is absent or inaccessible, to any person found at the place where the presentment is made. ('13 c. 272 § 72) [5884]

Under the established practice of banks belonging to a clearing house association to exchange checks and adjust balances through the clearing house, the presentment for payment of a check drawn upon a member bank and held by another member bank is sufficient when the check is presented through the clearing house in accordance with the rules of the association. 160-89, 199+514.

7116. Place of presentment—Presentment for payment is made at the proper place:

(1) Where a place of payment is specified in the instrument and it is there presented;

(2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

(3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

(4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. ('13 c. 272 § 73) [5885]

7117. Instrument must be exhibited—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. ('13 c. 272 § 74) [5886]

160-89, 199+514, note under § 7115.

7118. Presentment where instrument payable at bank—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. ('13 c. 272 § 75) [5887]

160-89, 199+514, note under § 7115.

7119. Presentment where principal debtor is dead—Where a person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found. ('13 c. 272 § 76) [5888]

7120. Presentment to persons liable as partners—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. ('13 c. 272 § 77) [5889]

7121. Presentment to joint debtors—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all. ('13 c. 272 § 78) [5890]

7122. When presentment not required to charge the drawer—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. ('13 c. 272 § 79) [5891]

7123. When presentment not required to charge the indorser—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented. ('13 c. 272 § 80) [5892]

7124. When delay in making presentment is excused—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence. ('13 c. 272 § 81) [5893]

7125. When presentment may be dispensed with—Presentment for payment is dispensed with:

(1) Where after the exercise of reasonable diligence presentment as required by this act cannot be made;

(2) Where the drawee is a fictitious person;

(3) By waiver of presentment, express or implied. ('13 c. 272 § 82) [5894]

136-104, 161-398.

The evidence warranted the conclusion that the indorser of a check impliedly waived presentment and notice of dishonor. 160-449, 200-468.

7126. When instrument dishonored by non-payment—The instrument is dishonored by non-payment when:

(1) It is duly presented for payment and payment is refused or cannot be obtained; or

(2) Presentment is excused and the instrument is overdue and unpaid. ('13 c. 272 § 83) [5895]

7127. Liability of person secondarily liable, when instrument dishonored—Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder. ('13 c. 272 § 84) [5896]

7128. Payment of negotiable instruments when falling due on holidays or Saturdays—Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday; and if presented after 12 o'clock noon on Saturday when that entire day is not a holiday may at the option of the payor be then paid. ('13 c. 272 § 85, amended '17 c. 204 § 1) [5897]

7129. Time—How computed—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the

time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment. ('13 c. 272 § 86) [5898]

7130. Rule where instrument payable at bank—Where the instrument is made payable at a bank it shall not be equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. ('13 c. 272 § 87) [5899]

7131. What constituted payment in due course—Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. ('13 c. 272 § 88) [5900]

ARTICLE VII. NOTICE OF DISHONOR

7132. To whom notice of dishonor must be given—Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. ('13 c. 272 § 89) [5901]

7133. By whom given—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given. ('13 c. 272 § 90) [5902]

7134. Notice given by agent—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. ('13 c. 272 § 91) [5903]

7135. Effect of notice given on behalf of holder—Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. ('13 c. 272 § 92) [5904]

7136. Effect where notice is given by party entitled thereto—Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given. ('13 c. 272 § 93) [5905]

7137. When agent may give notice—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice himself the same time for giving notice as if the agent had been an independent holder. ('13 c. 272 § 94) [5906]

7138. When notice sufficient—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. ('13 c. 272 § 95) [5907]

7139. Form of notice—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails. ('13 c. 272 § 96) [5908]

7140. To whom notice may be given—Notice of dishonor may be given either to the party himself or to his agent in that behalf. ('13 c. 272 § 97) [5909]

7141. Notice where party is dead—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased. ('13 c. 272 § 98) [5910]

7142. Notice to partners—Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution. ('13 c. 272 § 99) [5911]

7143. Notice to persons jointly liable—Notice to joint parties who are not partners must be given to each of them unless one of them has authority to receive such notice for the others. ('13 c. 272 § 100) [5912]

7144. Notice to bankrupt—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. ('13 c. 272 § 101) [5913]

7145. Time within which notice must be given—Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act. ('13 c. 272 § 102) [5914]

7146. Where parties reside in same place—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;

(2) If given at his residence, it must be given before the usual hours of rest on the day following;

(3) If sent by mail, it must be deposited in the postoffice in time to reach him in usual course on the day following. ('13 c. 272 § 103) [5915]

7147. Where parties reside in different places—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

(1) If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

(2) If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision. ('13 c. 272 § 104) [5916]

7148. When sender deemed to have given due notice—Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. ('13 c. 272 § 105) [5917]

7149. Deposit in postoffice—What constitutes—Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department. ('13 c. 272 § 106) [5918]

7150. Notice to subsequent party—Time of—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. ('13 c. 272 § 107) [5919]

7151. Where notice must be sent—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not

given such address, then the notice must be sent as follows:

(1) Either to the postoffice nearest to his place of residence, or to the post-office where he is accustomed to receive his letters; or

(2) If he live in one place, and have his place of business in another, notice may be sent to either place; or

(3) If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section. ('13 c. 272 § 108) [5920]

7152. Waiver of notice—Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied. ('13 c. 272 § 109) [5921]

7153. Whom affected by waiver—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only. ('13 c. 272 § 110) [5922]

7154. Waiver of protest—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor. ('13 c. 272 § 111) [5923]

7155. When notice is dispensed with—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged. ('13 c. 272 § 112) [5924]

7156. Delay in giving notice—How excused—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to this [his] default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence. ('13 c. 272 § 113) [5925]

7157. When notice need not be given to drawer—Notice of dishonor is not required to be given to the drawer in either of the following cases:

(1) Where the drawer and drawee are the same person;

(2) When the drawee is a fictitious person or a person not having capacity to contract;

(3) When the drawer is the person to whom the instrument is presented for payment.

(4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;

(5) Where the drawer has countermanded payment. ('13 c. 272 § 114) [5926]

149-47, 182+724.

7158. When notice need not be given to indorser—Notice of dishonor is not required to be given to an indorser in either of the following cases:

(1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

(2) Where the indorser is the person to whom the instrument is presented for payment;

(3) Where the instrument was made or accepted for his accommodation. ('13 c. 272 § 115) [5927]

7159. Notice of non-payment where acceptance refused—Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor

by non-payment is not necessary, unless in the meantime the instrument has been accepted. ('13 c. 272 § 116) [5928]

7160. Effect of omission to give notice of non-acceptance—An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission. ('13 c. 272 § 117) [5929]

7161. When protest need not be made—When must be made—Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange. ('13 c. 272 § 118) [5930]

ARTICLE VIII. DISCHARGE OF NEGOTIABLE INSTRUMENTS

7162. Instrument—How discharged—A negotiable instrument is discharged:

- (1) By payment in due course by or on behalf of the principal debtor;
- (2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
- (3) By the intentional cancellation thereof by the holder;
- (4) By any other act which will discharge a simple contract for the payment of money;
- (5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right. ('13 c. 272 § 119) [5931]

210+892.

In a suit brought to cancel a promissory note, the evidence justified the court in finding that at the time of the execution of the note it was agreed between the maker and the payee that, when the former assigned and delivered a certain mortgage to the latter, the note should be surrendered. 153-119, 196+962.

A note is not discharged by the maker's tender of money which, at the time being, was not his to tender; the property therein being in another. Such a tender cannot be unconditional. 166-472, 208+186.

A bank is not estopped from enforcing a promissory note, by reason alone of the fact that its cashier, upon an informal inquiry from the maker, told the latter that the bank had none of his paper, even though the maker may have acted to his detriment upon the assumption of the truth of the information. 166-472, 208+186.

The renewal of a note and mortgage does not necessarily discharge the first note and mortgage. 211+838.

7163. When persons secondarily liable on, discharged—A person secondarily liable on the instrument is discharged:

- (1) By any act which discharges the instrument;
- (2) By the intentional cancellation of his signature by the holder;
- (3) By the discharge of a prior party;
- (4) By a valid tender of payment made by a prior party;
- (5) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;
- (6) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved. ('13 c. 272 § 120) [5932]

124-541, 145+164.

166-472, 208+186; 210+892.

The mere expression of a willingness to let a note run pending the collection of another note, there being no agreement to forbear collection until the other note is due or paid, does not constitute a promise to extend time of payment. 212+2.

The pledge of a collateral note, being something to which the holder of the principal obligation was not entitled, is a sufficient consideration for an agreement to extend time of payment of the latter. 212+2.

The mere taking of another note as collateral to the original obligation will not discharge a guarantor. Where a new note is taken, and the original note is not surrendered, there is no presumption that the former is collateral to the latter. 213+375.

When a person by a separate written instrument guarantees the payment of a promissory note when due, the stipulations in the note, wherein the guarantors agree that renewal or extensions may be granted the maker without their consent, cannot be read into the contract of guaranty unless they are set forth or identified by reference. 213+375.

The acceptance of renewal notes for a definite period constitutes a definite agreement of extension of time of payment to the maturity of the notes. 213+375.

7164. Right of party who discharges instrument—Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

- (1) Where it is payable to the order of a third person, and has been paid by the drawer; and
- (2) Where it was made or accepted for accommodation, and has been paid by the party accommodated. ('13 c. 272 § 121) [5933]

7165. Renunciation by holder—The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. ('13 c. 272 § 122) [5934]

A "renunciation" to be in writing or accompanied by a delivery back of the instrument, applies only to the unilateral act of the holder, usually, if not always, without consideration, whereby he expresses the intention of abandoning his rights on the instrument or against one or more parties thereto. 210+892.

7166. Cancellation—Unintentional—Burden of proof—A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority. ('13 c. 272 § 123) [5935]

7167. Alteration of instrument—Effect of—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor. ('13 c. 272 § 124) [5936]

135-173, 160+668.

160-250, 199+970, note under § 7168.

Where one of several indorsers of a promissory note, as surety, after indorsing the note, intrusts it to the maker, and the maker, before delivery to the payee, permits such indorser to mark his name off by drawing a pen through it, without the knowledge or consent of the other indorsers, is not such an alteration of the instrument as to discharge the other indorsers, where the payee had no notice or knowledge, when he took the note, of the circumstances under which the name was so marked off. 165-330, 206+646.

Where an erasure of the name of one of several indorsers of a promissory note is apparent upon the back of the note, the legal presumption is that the erasure was made prior to the delivery of the note. 165-330, 206+646.

The burden of proof that a material alteration, apparent upon the face of a note, was made after delivery is upon the defendant asserting it. 167-507, 209+632.

7168. What constitutes a material alteration—Any alteration which changes:

- (1) The date;
- (2) The sum payable, either for principal or interest;
- (3) The time or place of payment;
- (4) The number or the relations of the parties;
- (5) The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. ('13 c. 272 § 125) [5937]

128-519, 151+529.

167-507, 209+632, note under § 7167.

The evidence sustains a finding that the words "without recourse" above an indorsement by the payee of a note were erased and the words "demand and protest waived" substituted. Such change was a "material alteration" and avoided the instrument except as against one making or assenting to the alteration, and subsequent indorsers, and except that a holder in due course, not a party to the alteration, can enforce payment according to the original tenor of the instrument. 160-250, 199+970.

TITLE II. BILLS OF EXCHANGE

ARTICLE I. FORM AND INTERPRETATION

7169. Bill of exchange defined—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. ('13 c. 272 § 126) [5938]

150-304, 185+498.

165-339, 206+930; 166-481, 208+413, note under § 7170.

7170. Bill not an assignment of funds in hands of drawee—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. ('13 c. 272 § 127) [5939]

The order was in the form of a bill of exchange, but was not accepted by the garnishee in writing. Held, that the transaction operated as an equitable assignment of the garnishee's indebtedness to the defendant in the amount represented by the order. 166-481, 208+413.

7171. Bill addressed to more than one drawee—A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession. ('13 c. 272 § 128) [5940]

7172. Inland and foreign bills of exchange—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. ('13 c. 272 § 129) [5941]

7173. When bill may be treated as promissory note—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of

exchange or a promissory note. ('13 c. 272 § 130) [5942]

7174. Referee in case of need—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit. ('13 c. 272 § 131) [5943]

ARTICLE II. ACCEPTANCE

7175. Acceptance—How made, et cetera—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. ('13 c. 272 § 132) [5944]

151-244, 186+575.

165-339, 206+930; 166-481, 208+413, note under § 7170.

7176. Holder entitled to acceptance on face of bill—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored. ('13 c. 272 § 133) [5945]

7177. Acceptance by separate instrument—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. ('13 c. 272 § 134) [5946]

7178. Promise to accept—When equivalent to acceptance—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who upon the faith thereof, receives the bill for value. ('13 c. 272 § 135) [5947]

7179. Time allowed drawee to accept—The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance if given, dates as of the day of presentation. ('13 c. 272 § 136) [5948]

The retention by the drawee bank of a check for more than 24 hours after its presentment constitutes acceptance. 165-492, 205+929.

7180. Liability of drawee retaining or destroying bill—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder he will be deemed to have accepted the same. ('13 c. 272 § 137) [5949]

165-339, 206+930.

7181. Acceptance of incomplete bill—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. ('13 c. 272 § 138) [5950]

7182. Kinds of acceptances—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. ('13 c. 272 § 139) [5951]

7183. What constitutes a general acceptance—An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere. ('13 c. 272 § 140) [5952]

7184. Qualified acceptance—An acceptance is qualified, which is:

(1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

(2) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(3) Local, that is to say, an acceptance to pay only at a particular place;

(4) Qualified as to time;

(5) The acceptance of some one or more of the drawees, but not of all. ('13 c. 272 § 141) [5953]

7185. Rights of parties as to qualified acceptance—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto. ('13 c. 272 § 142) [5954]

ARTICLE III. PRESENTMENT FOR ACCEPTANCE

7186. When presentment for acceptance must be made—Presentment for acceptance must be made:

(1) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

(2) Where the bill expressly stipulates that it shall be presented for acceptance, or

(3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. ('13 c. 272 § 143) [5955]

7187. When failure to present releases drawer and indorser—Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged. ('13 c. 272 § 144) [5956]

7188. Presentment—How made—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and:

(1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

(2) Where the drawee is dead, presentment may be made to his personal representative;

(3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. ('13 c. 272 § 145) [5957]

7189. On what days presentment may be made—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two [7115] and eighty-five [7128] of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day. ('13 c. 272 § 146) [5958]

7190. Presentment where time is insufficient—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers. ('13 c. 272 § 147) [5959]

7191. Where presentment is excused—Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:

(1) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

(2) Where, after the exercise of reasonable diligence, presentment cannot be made.

(3) Where, although presentment has been irregular, acceptance has been refused on some other ground. ('13 c. 272 § 148) [5960]

7192. When dishonored by non-acceptance—A bill is dishonored by non-acceptance:

(1) When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

(2) When presentment for acceptance is excused and the bill is not accepted. ('13 c. 272 § 149) [5961]

7193. Duty of holder where bill not accepted—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers. ('13 c. 272 § 150) [5962]

7194. Rights of holder where bill not accepted—When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary. ('13 c. 272 § 151) [5963]

ARTICLE IV. PROTEST

7195. In what cases protest necessary—Where a foreign bill appearing on its face to be such is dishonored by non-acceptance it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. ('13 c. 272 § 152) [5964]

7196. Protest—How made—The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify:

(1) The time and place of presentment;

(2) The fact that presentment was made and the manner thereof;

(3) The cause or reason for protesting the bill;

(4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. ('13 c. 272 § 153) [5965]

7197. Protest—By whom made—Protest may be made by:

(1) A notary public; or

(2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. ('13 c. 272 § 154) [5966]

7198. Protest—When to be made—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. ('13 c. 272 § 155) [5967]

7199. Protest—Where made—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary. ('13 c. 272 § 156) [5968]

7200. Protest both for non-acceptance and non-payment—A bill which has been protested for non-acceptance may be subsequently protested for non-payment. ('13 c. 272 § 157) [5969]

7201. Protest before maturity where acceptor insolvent—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. ('13 c. 272 § 158) [5970]

7202. When protest dispensed with—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. ('13 c. 272 § 159) [5971]

7203. Protest where bill is lost, et cetera—When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. ('13 c. 272 § 160) [5972]

ARTICLE V. ACCEPTANCE FOR HONOR

7204. When bill may be accepted for honor—Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party. ('13 c. 272 § 161) [5973]

7205. Acceptance for honor—How made—An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. ('13 c. 272 § 162) [5974]

7206. When deemed to be an acceptance for honor of the drawer—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. ('13 c. 272 § 163) [5975]

7207. Liability of the acceptor for honor—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. ('13 c. 272 § 164) [5976]

7208. Agreement of acceptor for honor—The acceptor for honor, by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given him. ('13 c. 272 § 165) [5977]

7209. Maturity of bill payable after sight—Accepted for honor—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor. ('13 c. 272 § 166) [5978]

7210. Protest of bill accepted for honor, et cetera—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need. ('13 c. 272 § 167) [5979]

7211. Presentment for payment to acceptor for honor—How made—Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

(2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four [5916]. ('13 c. 272 § 168) [5980]

7212. When delay in making presentment is excused—The provisions of section eighty-one [7124] apply where there is delay in making presentment to the acceptor for honor or referee in case of need. ('13 c. 272 § 169) [5981]

7213. Dishonor of bill by acceptor for honor—When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him ('13 c. 272 § 170) [5982]

ARTICLE VI. PAYMENT FOR HONOR

7214. Who may make payment for honor—Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn. ('13 c. 272 § 171) [5983]

7215. Payment for honor—How made—The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it. ('13 c. 272 § 172) [5984]

7216. Declaration before payment for honor—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays. ('13 c. 272 § 173) [5985]

7217. Preference of parties offering to pay for honor—Where two or more persons offer to pay a bill for the honor of different parties, the person whose

payment will discharge most parties to the bill is to be given the preference. ('13 c. 272 § 174) [5986]

7218. Effect on subsequent parties where bill is paid for honor—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. ('13 c. 272 § 175) [5987]

7219. Where holder refuses to receive payment supra protest—Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment. ('13 c. 272 § 176) [5988]

7220. Rights of payer for honor—The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. ('13 c. 272 § 177) [5989]

ARTICLE VII. BILLS IN A SET

7221. Bills in sets constitute one bill—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill. ('13 c. 272 § 178) [5990]

7222. Right of holders where different parts are negotiated—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him. ('13 c. 272 § 179) [5991]

7223. Liability of holder who indorses two or more parts of a set to different persons—Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. ('13 c. 272 § 180) [5992]

7224. Acceptance of bills drawn in sets—The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. ('13 c. 272 § 181) [5993]

7225. Payment by acceptor of bills drawn in sets—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. ('13 c. 272 § 182) [5994]

7226. Effect of discharging one of a set—Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. ('13 c. 272 § 183) [5995]

TITLE III. PROMISSORY NOTES AND CHECKS

ARTICLE I

7227. Promissory note defined—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. ('13 c. 272 § 184) [5996]

7228. Check defined—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check. ('13 c. 272 § 185) [5997]

160-89, 199+514, note under § 7115; 165-339, 206+930; 165-417, 206+725. Accord and satisfaction. 163-329, 203+960.

7229. Within what time a check must be presented—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. ('13 c. 272 § 186) [5998]

143-423, 174+416.

A school-teacher received, in exchange for school orders issued to her for wages, two checks drawn by the district treasurer on a bank located several miles from the place where she taught and boarded. She held them for three days while she continued to teach before she attempted to present them to the bank for payment. Held, that it was for the jury to determine whether the checks were presented within a reasonable time. 162-357, 203+46.

7230. Certification of check—Effect of—Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance. ('13 c. 272 § 187) [5999]

7231. Effect where the holder of check procures it to be certified—Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon. ('13 c. 272 § 188) [6000]

7232. When check operates as an assignment—A check of itself does not 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, unless and until it accepts or certifies the check. ('13 c. 272 § 189) [6001]

Where a vendee draws a check on his bank payable to the bank for the vendor and delivers it to the bank with instructions to pay the amount thereof to the vendor on delivery of the deed, but thereafter withdraws his funds from the bank before they have been so applied, the bank is not liable to the vendor for the amount of the check. 163-344, 204+31.

Following Security Bank v. Northwestern Fuel Co., 58 Minn. 141, 59 N. W. 987, it is held, that the deposit referred to in the opinion was absolute and passed the title of the check and its proceeds to the defendant bank. 164-484, 205+447.

Where a depositor draws a check upon one bank, and deposits it in another, which credits it to his account, it may be charged back to him, if not paid, unless a loss resulted from negligence on the part of the payee or holder. 165-417, 206+725.

7233. Banks permitted to forward a check direct to payor—[Repealed.]

This section (Laws 1919, c. 319, § 1) is repealed by Laws 1927, c. 382, § 2. See § 7233-2, herein.

Section does not include authority for the collecting bank to accept a draft in payment of such check. 212+16.

A collecting bank is liable to the payee named in a check where it accepts a draft in payment of such check. 212+16.

A check, drawn upon one bank, deposited by the payee in another bank, is presumed to be for collection. 212+16.

7233-1. Banks receiving items for deposit or collection—Acting only as collecting agent for depositor—**Liability**—Any bank, savings bank or trust company (hereinafter called "bank") doing business in this state, in receiving items for deposit or collection, in the absence of a written agreement to the contrary, shall act only as the depositor's collecting agent and shall have no responsibility beyond the exercise of due care. All such items shall be credited subject to final

payment in cash or solvent credits. Such bank shall not be liable for default or negligence of its duly selected correspondents nor for losses in transit, and each correspondent so selected shall not be liable except for its own negligence. Such bank or correspondent may send items, directly or indirectly, to any bank including the payer, and accept its draft, check, or credit as conditional payment in lieu of cash. It may charge back any item at any time before final payment whether returned or not. ('27, c. 138, § 1, effective 30 days after passage by § 3)

7233-2. Same—Laws repealed—Chapter 319 of Laws of 1919 and all other Acts or parts of Acts in so far as they are inconsistent herewith, are hereby repealed. ('27, c. 138, § 2, effective 30 days after passage by § 3)

7233-3. Same—Pending actions or proceedings—Provided that the provisions of this act shall not apply to or affect any action or proceeding now pending in any of the courts in this state. ('27, c. 138, § 4, effective 30 days after passage by § 3)

TITLE IV. GENERAL PROVISIONS

ARTICLE I

7234. Short title—This act may be cited as the Uniform Negotiable Instruments Act. ('13 c. 272 § 190) [6002]

7235. Definitions and meaning of terms—In this act, unless the context otherwise requires,—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counter-claim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print. ('13 c. 272 § 191) [6003]

It is within the scope of the implied power of the cashier of a bank to indorse negotiable paper in the ordinary transaction of banking business. 167-394, 209+311.

An unqualified indorsement of a promissory note, by means of a rubber stamp, is sufficient and satisfies the requirement of the statute, if made by some one having authority so to do. 167-394, 209+311.

7236. Person primarily liable on instrument—The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are “secondarily” liable. ('13 c. 272 § 192) [6004]

65-107, 67+803; 151-351, 186+794.

166-472, 208+186; 212+2, note under § 7072.

7237. Reasonable time, what constitutes—In determining what is a “reasonable time” or an “unreason-

able time,” regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. ('13 c. 272 § 193) [6005]

143-422, 174+416.

157-348, 196+275, notes under § 7098; 162-357, 203+46, note under § 7229; 2 F. (2d) 348.

7238. Time, how computed—When last day falls on holiday—Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. ('13 c. 272 § 194) [6006]

7239. Application of act—The provisions of this act do not apply to negotiable instruments made and delivered prior to the taking effect hereof, nor shall they be construed as modifying, repealing or superseding any of the terms and provisions of section 2747, Revised Laws, 1905 [7247]. ('13 c. 272 § 195) [6007]

150-259, 185+260.

164-425, 205+286.

7240. Cases not provided for in act—In any case not provided for in this act the rules of (law and equity including) the law merchant shall govern. ('13 c. 272 § 196) [6008]

2 F. (2d) 348.

Custom of generally treating certain instruments as negotiable is inadmissible. 158-481, 199+437.

7241. Repeals—All acts and parts of acts inconsistent with this act are hereby repealed. ('13 c. 272 § 197) [6009]

2 F (2d) 348.

MISCELLANEOUS PROVISIONS

7242. Contracts due on holidays, etc.—Bills of exchange, promissory notes, and other contracts payable or to be performed on Sunday, Good Friday, Thanksgiving Day, or on any legal holiday, shall be payable or performable on the next succeeding business day. (2739) [6010]

139-420, 166+1075.

7243. Following day deemed holiday, when—All promissory notes, drafts, checks, acceptances, bills of exchange, or other evidences of indebtedness, falling due or maturing on Good Friday, Thanksgiving Day, Sunday, or on any legal holiday, shall be deemed due or maturing on the next succeeding business day; and when Sunday and one or more legal holidays, or two or more legal holidays, fall on the same day, the following day shall be deemed a legal holiday, and when Sunday and one or more legal holidays, or two or more legal holidays, immediately succeed each other, then such instrument, paper or indebtedness shall be deemed as due or maturing on the day following the last of such days. ('05 c. 345 § 1) [6011]

Section 2 of 1903 c. 261 was amended, as above set forth, by section 1 of 1905 c. 345.

1903 c. 261 was repealed by § 9456, its provisions being incorporated in part in the preceding section. So far as the above section differs from the Revised Laws, it is to be construed, by virtue of § 9398, as amendatory or supplementary.

7244. Corporate bonds—Seal—Bonds and other obligations under seal for payment of money to bearer, or to some designated person or bearer, or to order, issued by any corporation or joint stock company, shall be negotiable in the same manner and to the same extent as promissory notes. (2740) [6012]

28-291, 9+799.

The finding of misrepresentation in the sale of bonds secured by a trust deed running to defendant, in that defendant stated to plaintiff that he had signed the bonds and stood back of them, is sustained by the evidence. 166-195, 207+305.

7245. Damages on international bills—Whenever any bill of exchange, drawn or indorsed in the state, and payable without the United States, is duly protested for non-acceptance or non-payment, the party liable for the contents thereof, on due notice and demand, shall pay the same at the current rate of exchange at the time of the demand, and damages at the rate of ten per cent. upon the contents, together with the interest on such contents, computed from the date of protest. The amount of such contents, damages, and interest shall be in full of all damages, charges, and expenses. (2743) [6013]

7246. Rate of damage on interstate bills—Whenever any bill of exchange drawn upon any person out of the state, but within the United States, is duly presented for acceptance or payment, and is protested for non-acceptance or non-payment, the drawer or indorser thereof, after due notice of such dishonor, shall pay said bill according to its tenor, with interest and five per cent. damages, together with charges of protest. (2744) [6014]

7247. Instrument obtained by fraud—No person, nor the heirs or personal representatives of any person, whose signature is obtained to any bill of exchange, promissory note, or other paper negotiable under the law merchant, shall be held liable thereon if it be made to appear that the signature was obtained by fraudulent representation, trick, or artifice as to the nature and terms of the contract so signed, that at the time of signing he did not believe it to be a bill of exchange, promissory note, or other paper negotiable under the law merchant, and that he was not guilty of negligence in signing such paper without knowledge of its terms. The question of negligence in any suit on such contract shall in all cases be one of fact for the jury, and the person sought to be charged thereon shall be entitled to have the question of his negligence submitted to a jury. (2747) [6015]

51-480, 53+766; 57-391, 59+486; 63-525, 65+952; 88-401, 93+307; 89-473, 477, 95+308; 102-414, 113+1011; 104-438, 116+928; 112-239, 127+940; 113-397, 129+770; 115-414, 132+911; 122-24, 141+1096; 123-375, 143+980; 126-42, 147+823; 138-74, 163+769; 141-501, 169+228; 143-284, 173+661; 143-386, 193+803; 150-256, 185+259.

164-425, 205+286; 164-507, 205+436; 165-87, 205+696; 209+869; 211+964.

The maker's defense to an action on his notes was fraud on the part of the payee in obtaining them. The evidence offered to establish the defense was not sufficient to justify its submission to the jury. 159-406, 199+89.

The trial court did not err in instructing the jury that in determining whether defendants were negligent in signing the notes in suit they might consider evidence tending to show that the payee induced them to drink intoxicating liquor to facilitate the accomplishment of a fraudulent design to obtain their signatures. 160-255, 199+819.

If the facts necessary to establish the defense given by section 6015, G. S. 1913, are proved, a holder in due course cannot recover from the maker of a promissory note whose signature thereto was obtained by fraudulent representations. 160-255, 199+819.

The evidence sustains the finding of the jury that the signature of the defendant to the note upon which suit is brought was procured by fraud, that he did not believe it to be a note, and that he was not negligent in signing. 163-216, 203+610.

The defendant did not affirm the note, as a matter of law, after obtaining knowledge of the fraud. 163-216, 203+610.

Evidence considered and held to sustain the findings that defendant is not a bona fide owner of the note and mortgage in question; that they were obtained by fraud. 164-86, 204+926.

The evidence made a case for the jury upon the issue of fraud, where it appeared that the president of a city bank agreed to sell to a county bank "good bankable paper" and charge the amount thereof against the latter's deposit account; the selection of the paper being intrusted to the president. 164-293, 204+963.

The verdicts finding that defendant Graden had defrauded plaintiff by means of certain cashier's checks and by means of an exchange of certain promissory notes are not sustained by the evidence. 165-462, 206+706.

The defense of want of consideration and fraud in obtaining defendant's signature to a promissory note were not sustained by the evidence, and the court properly ordered judgment notwithstanding the verdict. 209+484.

Evidence considered and held ample to justify a finding that defendant's signature was obtained to the note in question by fraudulent representations, trick, and artifice, as to whether at the time of signing he believed the paper to be a promissory note and whether he was negligent in signing the same. 210+625.

The evidence supports a finding that certain representations made by the defendant to induce the plaintiffs to purchase bonds secured by a mortgage on certain land were substantially true and correct. 212+892.

7247-1. Transfer of security receipts and equipment trust certificates—Definitions—For the purpose of this act: 1. The term "security receipt" means any writing in and by which the signer sets forth that the person named therein or the bearer is entitled to receive a specified principal amount, par value or number of bonds, notes, debentures, shares of stock, voting trust certificates for shares, of stock, scrip or other security or securities of any kind or character, identified or described therein, absolutely or when, as and if received by the signer or upon any other contingency stated or referred to therein.

2. The term "equipment trust certificate" means any writing in and by which the signer sets forth that the person named therein or the bearer is entitled to an interest or a share of a specified principal amount or par value in money in a trust under an identified trust indenture pursuant to the terms of which the title to rolling stock or equipment for use by or on the lines or routes of common carriers or to vessels or other marine equipment, is held by the trustees for the benefit of all the holders of the interests or shares.

For the purposes of this act, the character of any such security receipt or equipment trust certificate is not affected by the inclusion therein of other provisions not limiting the right of transfer and the negotiable quality thereof as in this act provided. ('27, c. 433, § 1)

7247-2. Same—Manner of transfer—1. The title to any security receipt or equipment trust certificate which by its terms entitles the bearer to the benefits thereof, may be transferred by the delivery thereof by any person in possession of the same how so ever such possession may have been acquired.

2. The title to any security receipts or equipment trust certificate which, by its terms, entitles a person named therein to the benefits thereof and which provides, in substance, that title thereto is transferable with the same effect as in the case of a negotiable instrument, may be transferred by delivery thereof by any person in possession of the same, how so ever such possession may have been acquired if endorsed in blank, or if it is endorsed to a specified person and the delivery is made to such person.

3. A person to whom title may be transferred, as in this section provided, and who shall have taken any such instrument from any other person for present or antecedent value and without notice of prior defenses or equities or claims of ownership enforceable against such other person, shall have absolute title thereto free of any defense enforceable against or claims of

ownership of the signer or any prior holder. Any holder of any such security receipt or equipment trust certificate, unless the same has been endorsed to a specified person other than the holder and has not been endorsed in blank by such specified person, shall be deemed prima facie to have title thereto as aforesaid; but when it is shown that the title of any person who has negotiated such instrument is defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder for value and without notice as aforesaid.

4. The provisions of this section shall not be applicable to the transfer of any security receipt or equipment trust certificate when it is shown that such trans-

fer was made after the date fixed therein for the performance by the signer or his obligations thereunder or, if no date is fixed, after the expiration of a reasonable time after the happening of the contingency upon which the signer became obligated to perform. ('27, c. 433, § 2)

7247-3. Same—Negotiability of instruments not affected—This act shall not be construed to limit or impair the negotiability or quasi negotiability by agreement or otherwise of any instrument whether or not defined therein. The provisions of this act shall apply only in respect of instruments issued after the date of the taking effect thereof. ('27, c. 433, § 3)

CHAPTER 52

PARTITION FENCES

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7248. Fence viewers—Supervisors in their respective towns, aldermen of cities in their respective wards, the Commissioner of Public Works in cities having a commission form of government, and village trustees in their respective villages, shall be fence viewers. (R. L. '05 § 2748; G. S. '13 § 6016, amended '21 c. 25 § 1)

The plaintiff in an action for a permanent injunction, to which he was not found entitled, was not entitled to an injunction restraining the defendant from interfering with a division line fence built by him, the plaintiff, upon land occupied by the defendant for many years, until the true boundry should be determined in subsequent litigation. 165-415, 206+654.

7249. One barbed wire permitted with woven wire as a legal fence—All fences consisting of not less than 32-inch woven wire and two barbed wires firmly fastened to well set posts not more than one rod apart, the first barbed wire being above and not more than 4 inches from the woven wire and the second barbed wire being above and not more than 8 inches from the first wire; all fences consisting of not less than 40-inch woven wire and one barbed wire firmly fastened to well set posts not more than one rod apart, the said barbed wire being above and not more than 4 inches from the said woven wire; all fences consisting of woven wire not less than 48 inches in height, and one barbed wire not more than 4 inches above said woven wire firmly fastened to well set posts not more than one rod apart; all fences consisting of not less than four barb wires with at least forty barbs to the rod, the wires to be firmly fastened to posts not more than one rod apart, the top wire to be not more than 48

inches high and the bottom wire not less than twelve inches nor more than sixteen inches from the ground; and all fences consisting of rails, timbers, wires, boards, stone walls or any combination thereof or of streams, lakes, ditches, or hedges, which shall be considered by the fence viewers as equivalent to any of the fences herein described shall be deemed legal and sufficient fences. In all cases where adjoining land owners disagree as to the kind of fence to be built on any division line, the matter shall be referred to the fence viewers who shall determine what kind of fence shall be built on such line and shall order such fence built according to law. Whenever the lands of two persons adjoin, and the land of one of such persons is enclosed on all sides except the side forming a division line between such lands by a woven wire fence, then and in such case each of such persons shall erect a fence of like character and quality along such division line for a distance of one-half the total length thereof, and shall thereafter maintain the same in equal shares. (R. L. '05 § 2749; G. S. '13 § 6017, amended '15 c. 282; '17 c. 408 § 1)

29-336, 340, 13+168; 30-1, 13+906; 30-489, 16+271; 32-88, 19+392; 80-508, 83+454; 96-176, 104+827.
130-518, 153+1086.

7250. Occupants to maintain—The adjoining owners or occupants of lands in this state when the land of one or both of such owners is in whole or in part improved and used, and one or both of such owners desires his or their land to be in whole or in part fenced, shall build and maintain the partition fence between their lands in equal shares. (R. L. '05 § 2750, amended '13 c. 525 § 1; '15 c. 173 § 1) [6018] 15-350, 283.

7251. Neglect—Complainant may build or repair—In case any person neglects to build, repair or rebuild any partition fence which of right he ought to build or maintain the aggrieved party may complain to the fence viewers who, after notice to the parties, shall examine such fence or into the need of such proposed fence and if they determine that the fence then existing is insufficient or a new fence is necessary, they shall notify the delinquent owner or occupant in writing to that effect and direct him or them to build, repair or re-build the fence within such time they deem reasonable and if the delinquent fails to comply with such directions, the complainant may build, repair or

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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edge. *Davis v. N.*, 203M295, 281NW272. See *Dun. Dig.* 3193.

Equitable estoppel is effect of voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right either of property, contract or remedy. *Clover v. P.*, 203M337, 281NW275. See *Dun. Dig.* 3185.

Doctrine of estoppel in pais is founded in justice and good conscience, and is a favorite of the law, and arises when one, by his acts or representations, or by his silence when he ought to speak, intentionally, or through culpable negligence, induces another to believe certain facts to exist, and such other rightfully acts on the belief so induced in such manner that if the former is permitted to deny the existence of such facts, it will prejudice the latter. *Id.* See *Dun. Dig.* 3187.

Estoppel in pais can only be invoked to prevent fraud and injustice, and is never carried further than is necessary than to prevent one person from being injured

by his reliance on acts or declarations of another, and its object is to prevent unjust assertion of rights existing independent of estoppel. *Beier's Estate*, 284NW833. See *Dun. Dig.* 3186.

Equitable estoppel is the effect of voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquired some corresponding right either of property, of contract, or of remedy. *Id.* See *Dun. Dig.* 3185 (2).

37. Patents.

Patentee's right is in nature of an intangible, incorporeal right, a title which continues to exist in him until divested by voluntary grant or other legal means of divestment, and such right is property personal to inventor with its situs with individual possessing it. *Grob v. C.*, 204M459, 283NW774. See *Dun. Dig.* 7417.

Protection of plans, designs, inventions, and other products of plaintiff's effort made at his expense. 14MinnLaw Rev537.

CHAPTER 50

Weights and Measures

7025. Standard weight of bushel, etc.—In contracts for the sale of any of the following articles, the term "bushel" shall mean the number of pounds avoirdupois herein stated:

Corn, in ear, 70; beans, (except lima beans, scarlet runner pole beans and white runner pole beans, and broad windsor beans) smooth peas, wheat, clover seed, Irish potatoes and alfalfa, 60; broom corn seed and sorghum seed, 57; shelled corn, (except sweet corn), rye, lima beans, flaxseed and wrinkled peas, 56; sweet potatoes and turnips 55; onions and rutabagas, 52; buckwheat, hempseed, rapeseed, beets, (GREEN APPLES), walnuts, rhubarb, hickory nuts, chestnuts, tomatoes, scarlet runner pole beans and white runner pole beans, 50; barley, millet, Hungarian grass seed, sweet corn, cucumbers and peaches, 48; broad windsor beans, 47; carrots, timothy seed and pears, 45; Parsnips, 42; spelt or spilts, 40; cranberries, 36; oats and bottom onion-sets, 32; dried apples, dried peaches and top onion-sets, 28; peanuts, 22; blue grass, orchard grass and red-top seed, 14; plastering hair, unwashed, 8; plastering hair, washed, 4; lime, 80; but if sold by the barrel the weight shall be 200 pounds. In contracts for the sale of green apples, the term "bushel" shall mean 2150.42 cubic inches. (R. L. '05, §2728; '13, c. 560, §4; G. S. '13, §5794; Apr. 24, 1935, c. 270.)

7026. Standard measurement of wood.

Cord as defined in this section governs in sale of cord wood by private parties. *Op. Atty. Gen.*, Dec. 4, 1933.

7031. Variations—Duty of railroad and warehouse commission.

Statutory provisions relative to weighing supersede any charter or ordinance provisions on same subject. *Op. Atty. Gen.* (495), Dec. 27, 1935.

7035-1. Weight of bread, etc.

Bread cannot be sold in lesser weights than as provided herein. *Op. Atty. Gen.* (495), Apr. 16, 1934.

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 statement the weight of the loaf or twin loaf of bread, together with the name and address of the manufacturer. ('27, c. 351, §2; Apr. 24, 1931, c. 322, §1.)

Amendment (Laws 1931, c. 322) held invalid because in violation of Const., Art. 4, §27, by embracing more than one subject. *Egekvisst Bakeries v. B.*, 186M520, 243NW853. See *Dun. Dig.* 8921.

Bread sold to civilian conservation camps must be labeled in compliance with this section. *Op. Atty. Gen.*, Dec. 28, 1933.

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. ('27, c. 351, §3; Apr. 24, 1931, c. 322, §2.)

CHAPTER 51

Interest and Negotiable Instruments

INTEREST

7036. Rate of interest.

1. In general.

172M349, 215NW731.

Where bank which was depository and bondholder of railway petitioning for reorganization wrongfully deducted debt of railway from deposit, it was obligated to pay legal rate of interest as against contention agreement with railroad for a lower rate of interest presented such obligation. *Lowden v. N.*, (USCCA8), 86F(2d)376, den'g petition to mod. 84F(2d)847, 31AmB(NS)655, which rev'd 11FSupp929.

It was error to charge a bank with interest on money under control of another bank. 172M24, 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. 174M63, 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.

State is entitled to interest on preferred claims against insolvent bank in favor of surety claiming

through subrogation. *American Surety Co. v. P.*, 186M 588, 244NW74. See Dun. Dig. 9044.

Interest to which state is entitled on preferred claims against insolvent bank is that provided by deposit contract. *American Surety Co. v. P.*, 186M588, 244NW74. See Dun. Dig. 824d, 2524, 4881.

Workmen's compensation is legal indebtedness upon which interest accrues from date each installment should have been made. *Brown v. C.*, 186M540, 245NW 145. See Dun. Dig. 4879, 10413.

Surety on official bond is liable for interest only from date of notice of breach thereof or demand made thereon. *County Board of Education v. P.*, 191M9, 252NW668. See Dun. Dig. 4884, 8019.

Highest rate of interest permitted after maturity by contract in cases in which parties have agreed to pay interest before maturity is rate of interest charged before maturity. *Investors Syndicate v. B.*, 200M461, 274 NW627. See Dun. Dig. 4881.

A debtor's obligation to pay interest as damages for detention of debt is not cut off by suspension of business or receivership. *Equitable Holding Co. v. E.*, 202M529, 279NW736. See Dun. Dig. 4879.

Reason why interest is generally disallowed in bankruptcy and other similar proceedings is that equality among general creditors as of date of insolvency is thereby attained, but where ideal of equality is served, interest is properly allowed. *Id.* See Dun. Dig. 4883a.

Evidence supports a finding that manager of property was not chargeable with interest on plaintiffs' balances. *Patterson v. R.*, 199M157, 271NW336. See Dun. Dig. 4882.

Six per cent is the maximum rate of interest that may be paid on town orders. *Op. Atty. Gen.*, June 26, 1933.

2. Usury.

An agreement by borrower to pay expense of title insurance and expense of a guaranty of payment of his note by a surety company is not usury. 174M241, 219NW 76.

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, 219 NW86.

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.

Finding of usury in mortgage held not sustained by evidence. *Clausen v. S.*, 185M403, 241NW56. See Dun. Dig. 9982.

Mortgage note coupons representing annual interest did not show an increase of rate of interest after maturity which could be recovered by reason of having stamped on back thereof provision that certain discount would be allowed if paid at maturity. *Bolstad v. H.*, 187M60, 244NW338. See Dun. Dig. 4881, 7462, 9991.

Where a creditor intentionally exacts or takes a note or instrument for forbearance of money, providing for payment to him of a sum greater than amount owing and \$8 on \$100 for one year, jury or trier of facts may find usury. *Cemstone Products Co. v. G.*, 187M416, 245 NW624. See Dun. Dig. 9973.

The corrupt intent is intent to take or receive more for forbearance of money than law permits, whether or not taker knows he is violating usury law. *Cemstone Products Co. v. G.*, 187M416, 245NW624. See Dun. Dig. 9964.

A mere oral promise or agreement to pay a promissory note, having a fixed due date, in installments before due, is invalid, and cannot be shown to vary terms of note for purpose of showing usury, where no usury has actually been taken or received by lender. *Blindman v. I.*, 197M93, 266NW455. See Dun. Dig. 9969.

Three elements necessary to constitute an usurious transaction are a loan or forbearance of money; an absolute agreement to return; and an agreement to pay more than legal rate of interest for its use. *Bangs v. M.*, 200M310, 274NW184. See Dun. Dig. 9961.

Law will look behind every device or shift used in an effort to defeat statute. *Id.* See Dun. Dig. 9965.

Where purchaser of automobile under conditional sales contract was in default, and went to a second finance company and entered into an extension agreement under which new company paid balance due old company and modified assigned old agreement so as to increase amount in excess of highest rate allowed by statute, conditional sales contract became void for usury. *Id.* See Dun. Dig. 9973.

Where mortgage provided for 6% interest, an acceleration clause providing that after default all sums due should bear interest "at the highest rate permitted under the laws of this state by contract" did not unlawfully increase interest rate after maturity, because under statute the highest rate would be 6%. *Investors Syndicate v. B.*, 200M461, 274NW627. See Dun. Dig. 9961.

Credit unions may not collect fines on delinquent payments in addition to interest. *Op. Atty. Gen.* (92a-28), Jan. 7, 1938.

What is usury in Minnesota? 21MinnLawRev585.

4. Questions for jury.

Question of usury held for jury. *Cemstone Products Co. v. G.*, 187M416, 245NW624. See Dun. Dig. 9994.

7037. Usurious interest—Recovery.

E. C. Warner Co. v. W. B. Foshay Co., (CCA8), 57F(2d) 656. Cert. den. 286US558, 52SCR641; note under §7038.

Purchaser under a contract for a lease was barred from recovering an alleged usurious payment where the limitation period had expired. *Nitkey v. S.* (USCCA8), 87F (2d)916. Cert. den., 301US697, 57SCR925. Reh. den., 58 SCR5.

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. 174M 68, 218NW451.

Where plaintiff in replevin alleged that he was owner and entitled to immediate possession of automobile, describing it by motor and registration number, and answer was a general denial, plaintiff could prove that defendant's sole claim of title and right of possession was based upon documents tainted with usury. *Halos v. N.*, 196M 387, 265NW26. See Dun. Dig. 9992.

When a small loan business, catering to the large class of the poor and necessitous wage earners, is so conducted that in every loan made usury statute is flagrantly and intentionally violated, and there is no adequate or effective remedy which borrowers are willing or able to use to obtain redress for violation, it constitutes a public nuisance which may be enjoined. *State v. O'Neil*, 286NW316. See Dun. Dig. 9991.

7038. Usurious contracts invalid—Exceptions.

1. In general.

172M126, 214NW924.

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.

Usury is negated by finding that there was no loan or forbearance 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.

An agreement to "finance" plaintiff, held to contemplate lending of money, within meaning of usury laws. *Fred G. Clark Co. v. E.*, 183M277, 247NW225. See Dun. Dig. 9961.

Where corporation engaged in business of advancing money to needy clients for purpose of paying pressing bills prevailed upon client and creditor dentist to both sign a note for \$190, and then prevailed upon dentist to settle client's indebtedness by accepting \$150, corporation cannot be said to have performed any service for the dentist warranting retention of \$40, and note was usurious as to dentist. *Adjustment Service Bureau v. B.*, 196 M563, 265NW659. See Dun. Dig. 9978.

In replevin to recover automobile because of a default in payments under a conditional sales contract, defendants failed to establish usury in making of contract by proof that consideration agreed upon between parties at time contract was entered into was less than that provided for in contract, it conclusively appearing from evidence that amount contended for by defendants to be correct sale price did not include an excessive sum as interest. *Minneapolis Discount Co. v. C.*, 201M111, 275 NW511. See Dun. Dig. 9961.

To constitute usury there must be a loan; an agreement for its return at all events; and an agreement to pay more than legal rate for use of it. *Id.*

A statute which applies to loans thereunder same rate of interest permitted by general statutes is not a special law regulating rate of interest. *Mesaba Loan Co. v. S.*, 203M589, 282NW823. See Dun. Dig. 1683.

2. Intent—Presumptions.

It is an essential element of usury that lender must intend to receive more for loan than law allows. *Wetsel v. G.*, 195M509, 263NW605. See Dun. Dig. 9964.

Intention of doing something which, when carried out, results in usurious compensation for loan of money, results in usury, whether or not lender, at time of making loan, considered it is usurious. *Adjustment Service Bureau v. B.*, 196M563, 265NW659. See Dun. Dig. 9964.

Where a borrower, in consideration of \$150 paid to him gives lender a note for \$190, with interest thereon at the rate of 8% per annum, loan is prima facie usurious. *Id.* See Dun. Dig. 9993.

4. Form not controlling.

Court will look beyond mere form of contract. *E. C. Warner Co. v. W. B. Foshay Co.*, (CCA8), 57F(2d)656. Cert. den. 286US558, 52SCR641.

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.

If lender performed any services for borrower which entitled it to retain a sum of \$40 and pay borrower only \$150, burden of proving that such services were reasonably worth sum so retained rested upon lender. *Adjustment Service Bureau v. B.*, 196M563, 265NW659. See Dun. Dig. 9993.

Burden of providing usury set up as a defense is on defendant. *Minneapolis Discount Co. v. C.*, 201M111, 275NW511. See Dun. Dig. 9993.

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.

Evidence held sufficient to sustain finding that mortgage was void for usury. Clausen v. S., 187M534, 246NW21. See Dun. Dig. 9996.

One who asserts usury must negative by his proof any hypothesis reasonably drawn from evidence which would render transaction lawful, but where language imports a bonus for loan of money, there is no room for a presumption that transaction was legal. Fred G. Clark Co. v. E., 188M277, 247NW225. See Dun. Dig. 9993.

Evidence held insufficient to sustain a finding that an agreement to make a loan involved a payment of a salary as fair compensation for services actually contemplated. Id. See Dun. Dig. 9971.

If bonus is paid to a lender by a third person for his own reason without knowledge of borrower, transaction will not be usurious. Id. See Dun. Dig. 9971.

8. Effect of commission or bonus to lender.

To be usurious, contract must be so when made, and a mortgage was not usurious when note was given for large commission, and it was payable out of six monthly payments to be paid throughout life of mortgage, amount paid for use of money over such term not exceeding legal rates, and debtor receiving the full amount of the mortgage at the time of execution thereof. Wetzel v. G., 195M509, 263NW605. See Dun. Dig. 9977.

9. Sale of property as a cover for usury.

Where lender of money sold property to borrower at grossly excessive value of additional inducement to loan the transaction is usurious and void where the amount received by the lender greatly exceeded the permissible rate of interest. E. C. Warner v. W. B. Foshay Co. (CC A8), 57F(2d)656. Cert. den. 286US558, 52SCR641.

10. Effect of collateral contract.

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

A mere oral promise or agreement to pay a promissory note, having a fixed due date, in installments before due, is invalid, and cannot be shown to vary terms of note for purpose of showing usury, where no usury has actually been taken or received by lender. Blindman v. I., 197M93, 266NW455. See Dun. Dig. 9969.

12. Liability of principal for acts of agent.

When an officer who is intrusted with management of corporation exacts or receives a bonus of any kind for loan of money made by corporation through him, it is presumed to be act of corporation, as regards usury. Fred G. Clark Co. v. E., 188M277, 247NW225. See Dun. Dig. 9968.

13. Effect of commission or bonus to loan agent.

Services rendered by a lender of money for purpose of getting for himself a return of more than maximum legal rate of interest on money loaned do not justify lender in retaining out of money loaned compensation for such services, in addition to lawful interest. Adjustment Service Bureau v. B., 196M563, 265NW659. See Dun. Dig. 9978.

15. Payment of interest in advance.

Retention of interest for one year in advance at 8% was not usurious. Blindman v. I., 194M462, 260NW867. See Dun. Dig. 9967.

Acceleration clause in note does not make loans usurious though interest was deducted at time loan was made. Mesaba Loan Co. v. S., 203M589, 282NW823. See Dun. Dig. 9967.

19. Extensions.

Subsequent extensions did not affect legal result where usury was in the original transaction. 177M321, 225NW116.

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.

Where one buys a certificate of mortgage foreclosure sale and pays his money without any notice of the usurious character of the mortgage, he is protected as a bona fide purchaser of the property. Kanevsky v. T., 185M93, 240NW103. See Dun. Dig. 9988.

25. Conflict of laws.

Loan to Delaware corporation under Minnesota contract, held governed by Minnesota law with respect to usury, though Delaware law precluded corporation from interposing of usury. E. C. Warner Co. v. W. B. Foshay Co. (CCA8), 57F(2d)656. Cert. den. 286US558, 52SCR641.

27. Evidence.

Evidence required finding that plaintiff was a party to alleged usurious contract. Fred G. Clark Co. v. E., 188M277, 247NW225. See Dun. Dig. 9996.

Evidence required a finding that certain corporate stock, which plaintiff claims was exacted and given as a bonus for loan of money at time of transaction, was reasonably worth at least par. Id. See Dun. Dig. 9971, 9996.

30. Real estate mortgages held not usurious.

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

7039. Offenders to answer on oath.

State v. O'Neil, 286NW316; note under §7040.

7040. Usurious contracts—cancellation.

E. C. Warner Co. v. W. B. Foshay Co., (CCA8), 57F(2d)656. Certiorari denied, 52SCR641.

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.

Where plaintiff in replevin alleged that he was owner and entitled to immediate possession of automobile, describing it by motor and registration number, and answer was a general denial, plaintiff could prove that defendant's sole claim of title and right of possession was based upon documents tainted with usury. Halos v. N., 196M387, 265NW26. See Dun. Dig. 9963.

A contract valid in its inception is not rendered usurious by lender's exercise of option to accelerate maturity of loan upon borrower's default, and where interest has been paid in advance the only question involved is how interest should be applied. Mesaba Loan Co. v. S., 203M589, 282NW823. See Dun. Dig. 9961.

In action to enjoin violation of usury statute by small loan business court did not err in retaining receiver in custody of evidence, notes and documents pertaining to defendant's usury business pending outcome of trial. State v. O'Neil, 286NW316. See Dun. Dig. 9989.

7041. Agreements to share profits—etc.

Rates of interest otherwise usurious may be enjoyed by building and loan association. Minn. Bldg. & Loan Ass'n. v. C., 182M452, 234NW872. See Dun. Dig. 1169.

Building and loan associations are exempt from operation of usury statutes. Northern Building & Loan Ass'n v. W., 286NW397. See Dun. Dig. 1169.

7042, 7043. [Repealed Feb. 15, 1939, c. 12, §24, post §7774-64, Eff. June 1, 1939.]

ANNOTATIONS UNDER REPEALED SECTIONS

7042. Salary loans and chattel mortgage loans.

See §7774-34, providing that Act Apr. 15, 1933, c. 246, relating to industrial loan and thrift companies, shall not be construed as repealing this act.

This section is applicable only to certain corporations doing business in cities of the first class and is not applicable to the person or corporation doing business in city of Alexandria, but industrial loan and thrift companies are authorized under Mason's Supp. 1934, §7774-25 to 7774-35. Op. Atty. Gen. (53a-15), Dec. 11, 1934.

TITLE I.—NEGOTIABLE INSTRUMENTS IN GENERAL

The Uniform Negotiable Instruments Law has been adopted by: District of Columbia, Hawaii, Philippine Islands, Puerto Rico and all the states.

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.

1. Unconditional promise or order.

Unconditional bond, issued and sold for the purpose of raising money for use of corporation, is in effect a promissory note for repayment of loan. Heider v. H., 186M494, 243NW699. See Dun. Dig. 862.

Evidence held to justify a finding that note sued upon was delivered conditionally. First Nat. Bank of Amboy v. O., 188M187, 246NW542. See Dun. Dig. 879.

In action on promissory note by payee, defendant could testify and defend on ground that it was orally agreed that diamond for which note was given could be returned if not satisfactory to woman. Hendrickson v. B., 194M528, 261NW189. See Dun. Dig. 3377.

Script requiring the placing of stamps thereon as condition for redemption for cash is not negotiable. Op. Atty. Gen., Mar. 20, 1933.

Effect of acceleration clauses on negotiability. 16Minn LawRev302.

Reference to extrinsic agreement as destroying negotiability of bonds. 16MinnLawRev309.

Negotiability of note payable in foreign money. 19Minn LawRev700.

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.

5. Signature.

A note sued on is prima facie proof of its execution so as to make it admissible in evidence where answer is a verified general denial with no specific denial of execution by oath or affidavit. Christianson v. L., 203M533, 282NW273. See Dun. Dig. 1039.

10. Mental competency.

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

7045. Certainty as to sum—What constitutes.

(5). Provision for attorney's fees does not affect its negotiability. *Op. Atty. Gen.* (616d-16), June 15, 1934. Interpretation of provisions for attorneys' fees. 23 *MinnLawRev*218.

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.*, 211IA153, 233NW103.

7048. Additional provisions not affecting negotiability.

This section in no way conflicts with §9414 which authorizes entry of judgment by confession. *Keyes v. P.*, 194M361, 260NW518. See *Dun. Dig.* 4973.

7050. When payable on demand.

Where demand note provided for interest payable annually, and nothing was then paid, under *La Due v. First Nat. Bank*, 31 *Minn.* 33, 16 *N. W.* 426, and *First Nat. Bank v. Forsyth*, 67 *Minn.* 257, 69 *N. W.* 909, 64 *Am. St. Rep.* 415, paper was dishonored and subsequent payment of interest could not restore its negotiability. *Mills v. C.*, 201M167, 275NW609. See *Dun. Dig.* 881.

A note which does not fix due date, but reads "after date, for value received, we promise to pay," etc. is a negotiable instrument payable on demand. *Id.*

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. (*G. S.* '13, §5820; '13, c. 272, §8; *Apr.* 25, 1929, c. 353.)

Applies only to instruments payable to estates of deceased persons and not to estates of persons under guardianship. *Kluczny v. M.*, 187M93, 244NW407. See *Dun. Dig.* 858.

7052. When payable to bearer.

A certificate of deposit payable to the order of "Christian Hanson Estate" was payable to bearer. 175M463, 221NW873.

A note payable to the estate of a named incompetent person is in legal effect payable to bearer. *Kluczny v. M.*, 187M93, 244NW407. See *Dun. Dig.* 858.

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 *Dun. Dig.* 3377.

7060. Construction where instrument is ambiguous.

Where a person signs a promissory note in lower left-hand corner thereof, and two makers sign in lower right-hand corner, below whose signatures there is a vacant line, and mortgage securing note recites that note is signed by two makers who signed in lower right-hand corner, there is an ambiguity and parol evidence is admissible to show whether he signed as a maker. *Union Cent. Life Ins. Co. v. F.*, 196M260, 264NW736. See *Dun. Dig.* 1013.

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.

A corporation doing its business in name of another corporation, its agent, may be held as undisclosed principal of latter for loans obtained to conduct business for former, there having been no payment to or settlement with agent by undisclosed principal before lender discovered existence of undisclosed principal and presentation of claim against latter. *American Fund v. A.*, 187M300, 245NW376. See *Dun. Dig.* 2112a.

A co-owner of a farm who signed to a note names of all owners as a company, without authority, knowledge, or consent of other co-owners, will be held to have signed note in a name assumed by him, and he is personally liable thereon, as affecting right of set-off. *Campbell v. S.*, 194M502, 261NW1. See *Dun. Dig.* 874.

Bank suing co-owners of a farm as partners on a note purporting to be signed by them as a partnership was not thereafter estopped in a suit by a third party to claim that there was no partnership and that certain co-owner was alone liable on theory of having signed under an assumed name, first action being settled and there being no findings or judgment. *Id.*

7062. Signature by agent—Authority—How shown.

American Fund v. A., 187M300, 245NW376; note under §7061.

A partnership is not liable on a note given, without authority or consent of copartners, by one member of a firm for funds for his individual purposes, where payee plaintiff knew that he was borrowing money for such purposes. *Security State Bank of Hibbing v. R.*, 201M472, 276NW743. See *Dun. Dig.* 7363.

7066. Forged signature—Effect of.

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

Where plaintiff purchased stock of a corporation and put up stock of another corporation as collateral assigned in blank and a stock seller sold collateral to corporation issuing stock and received check payable to plaintiff and forged plaintiff's name to check, checks could not be recovered by plaintiff from corporation issuing them or from bank honoring them where he took no action for four years either to notify maker of check or bank of forgery. *Theelke v. N.*, 192M330, 256NW236. See *Dun. Dig.* 787a, 999.

Where a drawer of a check negligently delivers it to a person other than payee, drawer is not precluded by his negligence from asserting that indorsement of payee is a forgery, if it is not proved that person indorsing as payee was one to whom check was delivered, and if it is not proved also that check was cashed by indorsee in belief that indorser was payee. *Montgomery Ward & Co. v. C.*, 201M425, 276NW731. See *Dun. Dig.* 988.

Money paid out by bank on forged check may be recovered from bank. *Op. Atty. Gen.* (29a-11), Dec. 4, 1935.

ARTICLE II. CONSIDERATION

7067. Presumption of consideration.

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

Note given to take up prior notes and granting a reduction on principal and lowering rate of interest held supported by consideration as to third party signing. *Erickson v. H.*, 191M177, 253NW361. See *Dun. Dig.* 869.

In action on note, burden of proof rested on defendant to prove want of consideration. *Id.* See *Dun. Dig.* 1040.

Evidence held to sustain finding that note was not unconditionally delivered to and accepted by plaintiffs before defendant signed it. *Id.* See *Dun. Dig.* 879.

Evidence relative to threats by plaintiff to involve defendant in divorce proceedings, to have defendant arrested, and to bring suit against him for damages, justified submission to jury of question whether such threats so acted upon will of defendant as to constitute duress in obtaining note. *Stebly v. J.*, 194M352, 260NW364. See *Dun. Dig.* 1813a(51), 2843.

Various payments upon notes within a period of about a year after their execution, conditions respecting lack of consideration and duress which induced their execution remaining unchanged, did not constitute ratification. *Id.* See *Dun. Dig.* 869, 1813a, 2848.

Where it was shown that a person appearing to be one of makers of a note received no consideration and was not an accommodation party, plaintiff had burden of proving himself a holder in due course, and his acquiescence in an instruction that if plaintiff could not recover against her made instruction law of case, it not conclusively appearing that defendant was not entitled to prevail. *Parkin v. S.*, 203M249, 280NW849. See *Dun. Dig.* 1040.

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. 179M612, 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.*, 183M361, 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.*, 183M361, 236NW629. See Dun. Dig. 869, 1767.

Note given for corporate stock held supported by sufficient consideration. *Edson v. O.*, 190M444, 252NW217. See Dun. Dig. 869, 2061(36).

Where president of corporation loaned money to defendants who purchased stock of corporation therewith and gave plaintiff note for money borrowed, fact that sale of stock was violation of Blue Sky Law furnished no defense to action on note. *Id.* See Dun. Dig. 1125a.

Charge of the court on the question of consideration for signing of note by defendant was sufficiently clear and correct. *Erickson v. H.*, 191M477, 253NW361. See Dun. Dig. 869.

A promissory note given for an antecedent debt does not discharge debt unless expressly given and received as absolute payment; and burden of proof is upon party asserting such fact to show that it was so given and received; presumption being to contrary. The same rule applies where a third party joins in execution of new note. Taking a new mortgage does not discharge old debt unless such was intention of parties. *Hirleman v. N.*, 193M51, 258NW13. See Dun. Dig. 6264, 7444.

In suit upon promissory notes claimed to have been executed in settlement of damages sustained by plaintiff because of alleged acts of adultery committed with his wife, defense of lack of consideration was, under evidence relative to whether acts had been committed, a question of fact for jury. *Stebly v. J.*, 194M352, 260NW 364. See Dun. Dig. 869.

Where it was shown that a person appearing to be one of makers of a note received no consideration and was not an accommodation party, plaintiff had burden of proving himself a holder in due course, and his acquiescence in an instruction that if plaintiff could not recover against her made instruction law of case, it not conclusively appearing that defendant was not entitled to prevail. *Parkin v. S.*, 203M249, 280NW849. See Dun. Dig. 1040.

Any consideration sufficient to support a simple contract is value for a negotiable instrument, and may consist in any benefit to promisor, or in a loss or detriment to promisee; or to exist when at desire of promisor, promisee or any other person has done or abstained from doing, or promises to do or abstain from doing, something, the consideration being the act, abstinence, or promise. *Becker County Nat. Bank v. D.*, 204M603, 284 NW789. See Dun. Dig. 869.

7071. Effect of want of consideration.

Guardian of estate of an incompetent who by fraud obtains signature of a comaker to a note to "estate" to cover his official shortage is vulnerable to defense of lack of consideration. *Kluczny v. M.*, 187M93, 244NW 407. See Dun. Dig. 1018.

A partial want, or partial failure, of consideration is a defense, pro tanto, to a negotiable promissory note in hands of original payee, or in hands of one not a holder in due course. *Cemstone Products Co. v. G.*, 187 M416, 245NW624. See Dun. Dig. 1017.

7072. Liability of accommodation party.

180M326, 230NW218.

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. 177M 477, 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, 225NW991.

Insane person is not liable. 173M545, 227NW654.

Evidence held to show that note given to bank was without consideration and as accommodation. *Stebbins v. F.*, 178M556, 228NW150.

Maker of notes for accommodation of officer at bank, held liable to bank purchasing paper. 179M77, 228NW 348.

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.*, 179M246, 223NW757.

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. 181 M82, 231NW403.

Where father gave note for part of purchase price of property sold son and received note from son for same amount, father was not an accommodation party, notwithstanding statement of cashier of bank that he was such. *Citizens' State Bank of Franklin v. V.*, 184M506, 239NW249. See Dun. Dig. 969.

Contribution properly awarded one of two accommodation makers of a promissory note against the other, both having been found to have been accommodation makers for the third promisor. *Deden v. G.*, 185M278, 240NW 909. See Dun. Dig. 1925(67).

Whether note was made to bank for its accommodation or to cashier for his accommodation, held for jury. *First Nat. Bank of Barnum v. B.*, 187M38, 244NW340. See Dun. Dig. 969.

An action cannot be maintained by payee in an accommodation note so long as it remains in payee's hands unnegotiated. *First Nat. Bank of Barnum v. B.*, 187M 38, 244NW340. See Dun. Dig. 975.

Guardian of estate of an incompetent who by fraud obtains signature of a comaker to a note to "estate" to cover his official shortage is vulnerable to defense of accommodation. *Kluczny v. M.*, 187M93, 244NW407. See Dun. Dig. 969.

Direction of defendant to apply purchase price of shares of stock as part payment on note disproves defense that note was an accommodation note. *Boeder v. T.*, 187M337, 245NW428. See Dun. Dig. 969.

Where at request of her father, an officer of a bank, and to aid bank, defendant gave her promissory note to bank and bank issued to her its shares of capital stock for agreed price thereof, pursuant to an understanding that bank would sell stock and apply it on note, that bank would not sell note, nor require her to pay it, and stock was held by father for her, and part thereof sold and applied on note, and the note was renewed from time to time for a period of ten years, note was not an accommodation note, but was given for value, she being estopped from claiming that either note in suit is an accommodation note. *Searing v. H.*, 193M391, 258NW558. See Dun. Dig. 969, 976.

Issues of note being accommodation note and of defendant's making agreement to hold plaintiff harmless were for jury and not court. *Cashman v. B.*, 195M195, 262 NW216. See Dun. Dig. 969.

It was not error to instruct that plaintiff could recover, even though there was no proof of fraud or of a fraudulent intention not to perform agreement to hold harmless, if jury found that plaintiff signed accommodation note in reliance upon defendant's promise to hold plaintiff harmless, and breach thereof. *Id.*

Where it was shown that a person appearing to be one of makers of a note received no consideration and was not an accommodation party, plaintiff had burden of proving himself a holder in due course, and his acquiescence in an instruction that if plaintiff could not recover against her made instruction law of case, it not conclusively appearing that defendant was not entitled to prevail. *Parkin v. S.*, 203M249, 280NW849. See Dun. Dig. 1040.

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.*, 176M449, 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.*, 176M449, 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.*, 176M449, 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.*, 182M168, 233NW851. See Dun. Dig. 931.

Promissory note having been negotiated by indorsement of the holder and completed by delivery to plaintiff, its continued possession from then on necessarily invested it with authority to collect and discharge the obligation. *Northwestern Nat. Bank & Tr. Co. v. H.*, 286NW717. See Dun. Dig. 933.

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 sig-

nificance between the endorsee and the maker, and was not of such character as to place the endorsee upon inquiry. 175M287, 221NW10.

Action on a bill or note payable to bearer, or endorsed in blank, may be maintained in name of nominal holder, possession being prima facie evidence of his right to sue, and cannot be rebutted by proof that plaintiff has no beneficial interest, or that others are interested in the proceeds, or by anything else but proof of mala fides. Northwestern Nat. Bank & Tr. Co. v. H., 286NW717. See Dun. Dig. 1034.

7079. When indorsement restrictive.

The words "to draw 7 per cent interest from 3-5-1920," following a special endorsement 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.

Where at request of her father, an officer of a bank, and to aid bank, defendant gave her promissory note to bank and bank issued to her its shares of capital stock for agreed price thereof, pursuant to an understanding that bank would sell stock and apply it on note, that bank would not sell note, nor require her to pay it, and stock was held by father for her, and part thereof sold and applied on note, and the note was renewed from time to time for a period of ten years, note was not an accommodation note, but was given for value, she being estopped from claiming that either note in suit is an accommodation note. Searing v. H., 193M391, 258NW558. See Dun. Dig. 969, 976.

7080. Effect of restricting endorsement—Rights of endorsee.

An endorsee "for collection" of a negotiable instrument is real party in interest who may bring action. Farmers Nat. Bank v. B., 198M195, 269NW409. See Dun. Dig. 1034.

7081. Qualified indorsement.

The words "to draw 7 per cent interest from 3-5-1920," following a special endorsement 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.

Parol evidence is inadmissible to show that indorsement on negotiable instrument was intended to be "without recourse." Johnson Hardware Co. v. K., 188M109, 246NW663. See Dun. Dig. 1012, 3358.

7091. Striking out endorsement.

Endorsee for collection of note could remove all intervening endorsements as not necessary to title. Farmers Nat. Bank v. B., 198M195, 269NW409. See Dun. Dig. 936.

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. Paine v. St. Paul Union Stockyards Co., (USCCA8), 28F(2d)463.

In action by executor to recover on promissory note given by defendant to a bank, evidence held to sustain finding that bank had not transferred the note to the decedent prior to closing for insolvency. Rosholt v. N., 184M330, 238NW636. See Dun. Dig. 950.

Endorsement of promissory notes carried mortgage with it. Jefferson County Bank v. E., 188M354, 247NW245. See Dun. Dig. 575, 6276.

An endorsee "for collection" of a negotiable instrument is real party in interest who may bring action. Farmers Nat. Bank v. B., 198M195, 269NW409. See Dun. Dig. 1034.

Original note being valid, a renewal thereof to endorsee was likewise valid. Becker County Nat. Bank v. D., 204M603, 284NW789. See Dun. Dig. 950.

Action on a bill or note payable to bearer, or endorsed in blank, may be maintained in name of nominal holder, possession being prima facie evidence of his right to sue, and cannot be rebutted by proof that plaintiff has no beneficial interest, or that others are interested in the proceeds, or by anything else but proof of mala fides. Northwestern Nat. Bank & Tr. Co. v. H., 286NW717. See Dun. Dig. 1034.

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

Rights of remitters and other owners not within the tenor of negotiable instruments. 12MinnLawRev584.

7095. What constitutes holder in due course.

176M52, 222NW340; note under §7098. 180M326, 230NW812.

A person who acquires a promissory note without a valid endorsement 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, 218NW464.

Whether plaintiff was holder of promissory notes in due course held for jury. 174M253, 219NW95.

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., 183M1, 235NW634. See Dun. Dig. 1040(64).

Bank which bought land purchase money notes held a bona fide purchaser for value before maturity and a holder in due course. Patzward v. O., 184M529, 239NW771. See Dun. Dig. 950.

Guardian of estate of an incompetent who by fraud obtains signature of a comaker to a note to "estate" to cover his official shortage is vulnerable to defenses of fraud, lack of consideration, and accommodation. Such defenses are also available against his successor as guardian. Kluczny v. M., 187M93, 244NW407. See Dun. Dig. 1019.

If facts making a defense under §7247 are established a purchaser of note in due course is not protected. M & M Securities Co. v. D., 190M57, 250NW801. See Dun. Dig. 1019.

Where at request of her father, an officer of a bank, and to aid bank, defendant gave her promissory note to bank and bank issued to her its shares of capital stock for agreed price thereof, pursuant to an understanding that bank would sell stock and apply it on note, that bank would not sell note, nor require her to pay it, and stock was held by father for her, and part thereof sold and applied on note, and the note was renewed from time to time for a period of ten years, note was not an accommodation note, but was given for value, she being estopped from claiming that either note in suit is an accommodation note. Searing v. H., 193M391, 258NW558. See Dun. Dig. 969, 976.

Purchase of series of notes after maturity of one. 15 MinnLawRev585.

Notice of infirmity in instrument or defective title—negligence. 19MinnLawRev795.

(4) Evidence held to sustain finding that bank had actual or constructive notice that beneficial ownership of county warrants deposited by a broker was in a third person. Berg v. U., 186M529, 243NW696. See Dun. Dig. 953.

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.

Where demand note provided for interest payable annually, and nothing was then paid, under La Due v. First Nat. Bank, 31 Minn. 33, 16 N. W. 426, and First Nat. Bank v. Forsyth, 67 Minn. 257, 69 N. W. 909, 64 Am. St. Rep. 415, paper was dishonored and subsequent payment of interest could not restore its negotiability. Mills v. C., 201M167, 275NW609. See Dun. Dig. 951.

Where defendant signed note sued upon as accommodation maker after its delivery to payee and without consideration or prior arrangement, as against a holder not in due course, she may set up defense of want of consideration. Id. See Dun. Dig. 967.

7098. When title defective.

First Nat. Bank v. E., 191M318, 254NW8; note under §7678.

One receiving stolen bonds as collateral security has burden of proving that he gave value. Paine v. St. Paul Union Stockyards Co., (USCCA8), 28F(2d)463, modified (USCCA8), 35F(2d)624.

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

Bank having actual or constructive notice of beneficial ownership of county warrants delivered to it by a broker, it could not apply them upon a debt of the broker, nor could it so apply them even without knowledge of true ownership unless it changed its position or acquired a superior equity. Berg v. U., 186M529, 243NW696. See Dun. Dig. 961a.

Evidence held to sustain finding that bank receiving deposit of county warrants from broker did not change its position or acquire a superior equity over a third person having beneficial ownership of the warrants. Berg v. U., 186M529, 243NW696. See Dun. Dig. 3192.

Guardian of an estate of an incompetent who by fraud obtains signature of a comaker to a note to "estate" to cover his official shortage is vulnerable to defense of fraud. Such defense is also available against his successor as guardian. Kluczny v. M., 187M93, 244NW407. See Dun. Dig. 4114.

Evidence held to show that plaintiff was holder of promissory note in due course. First Nat. Bank v. V., 187M96, 244NW416. See Dun. Dig. 956.

Evidence required finding that plaintiff is a holder of a promissory note in due course. *Case v. F.*, 187M127, 244NW821. See Dun. Dig. 956.

It being shown that promissory note was procured under conditions making title defective, burden was on holder to prove that he was a holder for value in due course. *Chamberlin v. T.*, 195M58, 261NW577. See Dun. Dig. 956.

Mortgagor in mortgage for \$1500 was entitled to enjoin foreclosure for more than \$400 she obtained from mortgagee, and assignee of mortgage, took it subject to equities between original parties, even though a holder in due course of note. *Id.* See Dun. Dig. 6284.

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. 175M287, 221NW10.

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

Where a purchaser of negotiable paper takes it without actual knowledge of vendor's defective title, but with knowledge of facts which would deter a commercially honest person from acquiring title without investigation, his acquisition is tainted with bad faith. *Bergheim v. M.*, 190M571, 252NW833. See Dun. Dig. 953.

Evidence held to show that purchaser of note and mortgage should have known that assignor was only trustee. *Id.*

Notice of infirmity in instrument or defective title—negligence. 19MinnLawRev795.

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.

It being shown that promissory note was procured under conditions making title defective, burden was on holder to prove that he was a holder for value in due course. *Chamberlin v. T.*, 195M58, 261NW577. See Dun. Dig. 957.

Where it was shown that a person appearing to be one of makers of a note received no consideration and was not an accommodation party, plaintiff had burden of proving himself a holder in due course, and his acquiescence in an instruction that if defendant received no consideration plaintiff could not recover against her made instruction law of case, it not conclusively appearing that defendant was not entitled to prevail. *Parkin v. S.*, 203M249, 280NW849. See Dun. Dig. 1040.

7101. When subject to original defenses.

One purchasing note after maturity is holder in due course where endorser was holder in due course. *Case v. F.*, 187M127, 244NW821. See Dun. Dig. 961.

Evidence held not to show duress in obtaining check to cover indebtedness of son. *General Motors Acceptance Corp. v. J.*, 188M598, 248NW213. See Dun. Dig. 2848.

7102. Who deemed holder in due course.

One receiving stolen bonds as collateral security has burden of proving that he gave value. *Paine v. St. Paul Union Stockyards Co.*, (USCCA8), 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.

Evidence held to show that plaintiff was holder of promissory note in due course. *First Nat. Bank v. V.*, 187M96, 244NW416. See Dun. Dig. 956.

Bank relying upon endorsement of payee and refusing to take notes without recourse need not make inquiry to discover infirmities. *Case v. F.*, 187M127, 244NW821. See Dun. Dig. 955.

Where defense to note is based on actual or common-law fraud merely consisting of misrepresentations as to merchandise sold, proof of absence of negligence is not essential as in case of note obtained by fraudulent trick or artifice. *M & M Securities Co. v. D.*, 190M57, 250NW 801. See Dun. Dig. 1018.

Where a purchaser of negotiable paper takes it without actual knowledge of vendor's defective title, but with knowledge of facts which would deter a commercially honest person from acquiring title without investigation, his acquisition is tainted with bad faith. *Bergheim v. M.*, 190M571, 252NW833. See Dun. Dig. 953.

Where it was shown that a person appearing to be one of makers of a note received no consideration and was not an accommodation party, plaintiff had burden of proving himself a holder in due course, and his acquiescence in an instruction that if defendant received no considera-

tion plaintiff could not recover against her made instruction law of case, it not conclusively appearing that defendant was not entitled to prevail. *Parkin v. S.*, 203M 249, 280NW849. See Dun. Dig. 1040.

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, 227NW659.

Uniform Negotiable Instruments Act does not control rights of principals and sureties arising from conveyance of mortgaged premises wherein vendees assume and agree to pay mortgage debt. *Jefferson County Bank v. E.*, 188M354, 247NW245. See Dun. Dig. 6295.

Under a note reading "I promise to pay" etc., there is a several obligation, and a several judgment could be entered against person signing for partnership. *Campbell v. S.*, 194M502, 261NW1. See Dun. Dig. 874.

7105. Liability of acceptor.

Equitable assignment resulting from drawing of draft and conduct of drawee is not nullified simply because draft, which is but part of proof, is surrendered for cancellation, where a new draft is immediately issued in its place and for same fund. *Baird v. S.*, 193M79, 258NW 579. See Dun. Dig. 896.

While a draft, drawn generally, will not of itself operate as assignment of anything in hands of the drawee, yet, if latter is given notice that draft was intended to vest in payee an interest in, or a right to receive, funds coming into his hands from designated goods, and with such notice drawee takes goods and sells them, he is liable to payee; latter being an equitable assignee of that portion of fund called for by draft. *Id.*

7106. When person deemed indorser.

Participant in transaction on purchaser's side from beginning to end, but who did not sign contract and only indorsed note, could be liable only as an indorser and not co-maker. *Allen v. C.*, 204M295, 283NW490. See Dun. Dig. 941.

Acceptance of bills of exchange by conduct. 12Minn LawRev129.

7108. Warranty where negotiation by delivery, etc.

In action to recover damages for loss sustained because of false representations in sale of note and chattel mortgage and for breach of a warranty to collect the same, evidence held to support verdict for plaintiff. *Eidem v. D.*, 185M163, 240NW531. See Dun. Dig. 941(32).

7109. Liability of general indorser.

173M325, 217NW331.

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.*, 176M449, 223NW780.

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.*, 176M449, 223NW 780.

An absolute guarantor may be joined as defendant in the same action with principal obligor. *Townsend v. M.*, 194M423, 260NW525. See Dun. Dig. 493a(60).

In action by bank against indorser of note, evidence held insufficient to raise issue for jury question whether there were items not covered by guaranty represented by an indorsement of note. *Welcome Nat. Bank v. H.*, 195M518, 263NW544. See Dun. Dig. 947.

As between owner of stock pledged by borrower without knowledge of owner and person signing as surety before delivery of note, such surety held not partner of borrower, as affecting primary liability on note, and right to exoneration of stock pledged. *Stewart v. B.*, 195M543, 263NW618. See Dun. Dig. 944.

Pledgor of stock and endorsers held cosureties and each entitled to contribution. *Id.*

Where plaintiff in action on note failed to plead that note had been presented for payment, dishonored, and that notice of dishonor had been given to indorser, or that there had been a waiver of presentment and notice of dishonor, or other circumstances showing that presentment and notice was not required, it was enough for indorser to stand upon his general denial. *Allen v. C.*, 204M295, 283NW490. See Dun. Dig. 1038.

Confirmation of a composition in bankruptcy discharges the bankrupt from his debts by operation of law by preventing a remedy against him and leaving the debt as an unenforceable legal obligation, and it does not affect the liability of the bankrupt's endorsers on notes, but renunciation by the holder of a negotiable instrument of his rights under the instrument by giving referee a receipt

In full discharges endorsers Northern Drug Co. v. A., 284NW881. See Dun. Dig. 943a.

Effect of an assignment indorsed on the back of commercial paper—liability of transferor. 16MinnLawRev 702.

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.

The statutory rule of successive liability does not apply as between joint makers of a promissory note, who are primarily liable on the instrument. Deden v. G., 185 M278, 240NW909. See Dun. Dig. 874, 1899, 1900, 1920, 1925.

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., 183M71, 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.

7116. Place of presentment.

Restatement of conflict of laws as to domicile and Minnesota decisions compared. 15MinnLawRev668.

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., 183M188, 235NW875. See Dun. Dig. 903.

ARTICLE VII. NOTICE OF DISHONOR

7139. Form of notice.

Oral notice of presentment and dishonor is enough. Allen v. C., 204M295, 283NW490. See Dun. Dig. 920.

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.

Presentment and notice may be waived. Allen v. C., 204M295, 283NW490. See Dun. Dig. 897.

7153. Whom affected by waiver.

Waiver of presentment, etc., on endorsement of note. 172M405, 216NW785.

7158. When notice need not be given to indorser.

Presentment to and dishonor by indorser is enough. Allen v. C., 204M295, 283NW490. See Dun. Dig. 897a.

7161. When protest need not be made—When must be made.

A bill of exchange both drawn and payable within the state need not be protested no matter what indorsement it bears. Op. Atty. Gen., Nov. 18, 1931.

If bill of exchange is drawn outside the state or payable outside the state, or both drawn and payable outside the state, it should be protested. Op. Atty. Gen., Nov. 18, 1931.

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.

Giving of note is conditional payment of old note only, in absence of express agreement. First Nat. Bank v. O., 188M87, 247NW387. See Dun. Dig. 7444.

A promissory note given for an antecedent debt does not discharge debt unless expressly given and received as absolute payment; and burden of proof is upon party asserting such fact to show that it was so given and received; presumption being to contrary. The same rule applies where a third party joins in execution of new note. Taking a new mortgage does not discharge old debt unless such was intention of parties. Hirtleman v. N., 193M51, 258NW13. See Dun. Dig. 6264, 7444.

Equitable assignment resulting from drawing of draft and conduct of drawee is not nullified simply because draft, which is but part of proof, is surrendered for cancellation, where a new draft is immediately issued in its place and for same fund. Baird v. S., 193M79, 258NW570. See Dun. Dig. 896.

In an action on a note evidence held sufficient to sustain judgment for defendant on a counterclaim for merchandise furnished plaintiff. Kubat v. Z., 193M522, 259 NW1. See Dun. Dig. 7611.

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.

Transfer of note to maker as collateral security as constituting a discharge. 20MinnLawRev308.

7163. When person secondarily liable on, discharged.

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.

A surety on each of a series of bonds which, by their terms and terms of a trust deed or mortgage referred to therein, authorized trustee upon default in payment of interest or principal of any of bonds to declare all bonds immediately due and payable, is not released when, upon default occurring in payment of interest, trustee accelerated maturity date of bonds remaining unpaid. First Minneapolis Trust Co. v. N., 192M108, 256NW240. See Dun. Dig. 9107.

7165. Renunciation by holder.

Confirmation of a composition in bankruptcy discharges the bankrupt from his debts by operation of law by preventing a remedy against him and leaving the debt as an unenforceable legal obligation, and it does not affect the liability of the bankrupt's endorsers on notes, but renunciation by the holder of a negotiable instrument of his rights under the instrument by giving referee a receipt in full discharges endorsers. Northern Drug Co. v. A., 284NW881. See Dun. Dig. 941, 1765, 1768.

7167. Alteration of instrument—Effect of.

First Trust Co. v. M., 187M468, 246NW1. Payee in check could not, by striking out words "in full," change offer or make payment one upon account. Ball v. T., 193M469, 258NW831. See Dun. Dig. 42.

A chattel mortgage not being a negotiable instrument, effect of alteration is not controlled by negotiable instrument law. Hannah v. S., 195M54, 261NW583. See Dun. Dig. 259.

TITLE II. BILLS OF EXCHANGE

ARTICLE I. FORM AND INTERPRETATION

7169. Bill of exchange defined.

173M83, 216NW531; note under §7113. Op. Atty. Gen., Nov. 18, 1931; note under §7161. A check is not money within meaning of §§4439, 4440. Op. Atty. Gen. (349h), Jan. 5, 1935.

7170. Bill not an assignment of funds in hands of drawee.

Equitable assignment resulting from drawing of draft and conduct of drawee is not nullified simply because draft, which is but part of proof, is surrendered for cancellation, where a new draft is immediately issued in its place and for same fund. Baird v. S., 193M79, 258NW570. See Dun. Dig. 896.

While a draft, drawn generally, will not of itself operate as assignment of anything in hands of the drawee, yet, if latter is given notice that draft was intended to vest in payee an interest in, or a right to receive, funds coming into his hands from designated goods, and with such notice drawee takes goods and sells them, he is liable to payee; latter being an equitable assignee of that portion of fund called for by draft. Id.

7172. Inland and foreign bills of exchange.

173M83, 216NW531; note under §7113. Op. Atty. Gen., Nov. 18, 1931; note under §7161.

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.

In action on note evidence held insufficient to establish agreement to extend time for payment. Northwestern Nat. Bank v. C., 195M98, 262NW161. See Dun. Dig. 902.

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.

A check is not money within meaning of §§4439, 4440. Op. Atty. Gen. (349h), Jan. 5, 1935.

Identification of the holder and tender of receipt on the counter-presentation of checks. 13MinnLawRev281.

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 presentment 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.

Delay in presentation of check as payment of debt. 16 MinnLawRev701.

Death of a drawer of a check. 14MinnLawRev124.

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. 173M333, 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., 182M442, 234NW869. See Dun. Dig. 554(26).

An unpaid check in the hands of a payee attorney, a part of the proceeds of which will, when collected, belong to his client, does not constitute garnishable money or property. Lundstrom v. H., 185M40, 239NW664. See Dun. Dig. 3967.

When does a check operate as an assignment? 14Minn LawRev157.

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

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. Schram v. Askegaard, (USDC-Minn), 34F(2d)348.

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

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

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.

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.

If federal reserve bank was negligent in forwarding checks or in securing payment, it was liable. Osage Nat. Bank v. F., 184M111, 238NW44. See Dun. Dig. 790a.

The Federal Reserve Bank of Minneapolis, under Regulation J. Series 1920, of the Federal Reserve Board, and its own Circular 228, and the custom of the region in which it operated, was authorized to forward in its district, for payment and return of proceeds, checks sent it by another federal reserve bank or directly by a member bank. It was not required to exact currency in payment. It might accept exchange. Osage Nat. Bank v. F., 184M111, 238NW44. See Dun. Dig. 7446.

In action by bank on renewal of note given either for bank's accommodation or cashier's accommodation, evidence held not sufficiently definite to justify submitting to jury defendant's contention that his note was discharged by certain transactions and settlements between bank and cashier. First Nat. Bank of Barnum v. B., 187M38, 244NW340. See Dun. Dig. 9093.

Where a check made to A was, through error or otherwise, received by B, and C endorsed check as receiver of A, and C was in fact receiver of B and had no connection with A, and gave check to defendant bank for collection, and check was subsequently collected and paid by defendant bank to C as receiver of B, as a matter of law bank had knowledge that B, whom it knew C to represent, was not the payee, and was guilty of conversion. Northwestern Upholstering Co. v. F., 193M333, 258NW724. See Dun. Dig. 794.

A bank in which a check drawn on another bank is deposited is only a collecting agent, and such agency is revoked where bank goes into hands of commissioner before check is collected, and commissioner has no authority to collect the check, and having done so the money does not become an asset of the bank but belongs to the depositor, who is entitled to a preferred claim, which he does not lose through election of remedy by filing only general claims under advice of the department. Bethesda Old People's Home v. B., 193M589, 259NW384. See Dun. Dig. 794.

A bank forwarding a draft for collection to a properly selected correspondent bank is not liable to drawer upon collection until it has had an opportunity to withdraw funds collected by its correspondent bank and credited to it. Such withdrawal, however, must be accomplished as quickly as a draft could be collected in ordinary course of business had collection been remitted by draft instead of being credited to forwarding bank's account. Bay State Milling Co. v. H., 193M517, 259NW4. See Dun. Dig. 794.

Sending check directly to drawee bank by mail. 12 MinnLawRev744.

Right of insolvent depositary bank to set-off against claim of insolvent correspondent. 18MinnLawRev792.

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.

An endorsee "for collection" of a negotiable instrument is real party in interest who may bring action. Farmers Nat. Bank v. B., 198M195, 269NW409. See Dun. Dig. 1034.

Action on a bill or note payable to bearer, or endorsed in blank, may be maintained in name of nominal holder, possession being prima facie evidence of his right to sue, and cannot be rebutted by proof that plaintiff has no beneficial interest, or that others are interested in the proceeds, or by anything else but proof of mala fides. Northwestern Nat. Bank & Tr. Co. v. H., 286NW717. See Dun. Dig. 1034.

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.

7239. Application of act.

Negotiable Instrument Act did not repeal §7247 relating to obtaining signature by deceit, trick or artifice. *Wismo Co. v. M.*, 186M593, 244NW76.
 If facts making a defense under §7247 are established a purchaser of note in due course is not protected. *M & M Securities Co. v. D.*, 190M57, 250NW801. See Dun. Dig. 1019.

MISCELLANEOUS PROVISIONS

7242. Contracts due on holidays, etc.

Public business transacted on a legal holiday is legal in case of necessity, existence of which will be presumed in absence of a showing to contrary. *Ingelson v. O.*, 199M422, 272NW270. See Dun. Dig. 3433, 3436, 9064.

7243. Following day deemed holiday, when.

Where memorial day falls on Sunday, custom of observing following day as memorial day does not warrant treasurer in accepting payment of first half of taxes without penalty on June 1st. *Op. Atty. Gen. (276f)*, May 26, 1937.

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 affirmance 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.*, 178M31, 225NW913.

This section was not repealed by Negotiable Instrument Act. *Wismo Co. v. M.*, 186M593, 244NW76. See Dun. Dig. 1019.

Evidence held to sustain finding that signature to note was obtained by deceit and artifice without negligence on part of maker. *Wismo Co. v. M.*, 186M593, 244NW76. See Dun. Dig. 1019.

In action on notes, fraud held for jury. *Wiebke v. E.*, 189M102, 248NW702. See Dun. Dig. 1019.

Burden is upon maker of showing that his signature was obtained by fraud as to nature and terms of contract; that he did not believe instrument to be a promissory note; and that he was not negligent in signing without knowledge. *M & M Securities Co. v. D.*, 190M57, 250NW801. See Dun. Dig. 1019.

If facts making a defense under §7247 are established, a purchaser of note in due course is not protected. *Id.*

Prejudicial error was not committed in permitting defendant to introduce testimony of fraud sufficient as a defense at common law without first producing affirmative proof that plaintiff was not a holder in due course and so making an issue for jury upon evidence tendered by plaintiff. *Id.* See Dun. Dig. 424.

Where defense to note is based on actual or common-law fraud merely consisting of misrepresentations as to merchandise sold, proof of absence of negligence is not essential as in case of note obtained by fraudulent trick or artifice. *Id.* See Dun. Dig. 1018.

Note given for corporate stock, held not obtained by fraud or misrepresentation. *Edson v. O.*, 190M444, 252NW217. See Dun. Dig. 2041b.

Evidence sustains finding that there was no fraud in obtaining signature of defendant to vote. *Erickson v. H.*, 191M177, 253NW361. See Dun. Dig. 1019.

A synthesis of the law of misrepresentation. 22Minn LawRev939.

CHAPTER 52

Partition Fences

7248. Fence viewers.

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

County board may compel construction of party line fences in territory where townships have been dissolved. *Op. Atty. Gen. (434a-4)*, Sept. 24, 1936.

Provisions relating to partition fences do not apply to land forfeited to state for taxes. *Op. Atty. Gen. (631h)*, May 23, 1938.

7249. One barbed wire permitted with woven wire as a legal fence.

Where owner of land fences parts of three sides, adjoining owner on fourth side is required to erect and maintain a similar fence of like character and quality for distance of one-half of fourth side. *Op. Atty. Gen. (631f)*, June 27, 1938.

7250. Occupants to maintain.

Land in part woodland, meadow and slough, adjoining other lands not under plow, held not "improved" so

as to impose obligation to build joint line fence. *Op. Atty. Gen.*, Apr. 28, 1932.

A village must maintain its share of partition fence as to land outside village limits used in connection with water system of village operating in both a proprietary capacity and governmental capacity. *Op. Atty. Gen.*, Mar. 24, 1934.

There can be no partition fence between land separated by a cartway established either under the statute or by dedication as a public road, but if third person using the way has merely a license, there may be a partition fence. *Op. Atty. Gen. (377b-10(e)) (631h)*, July 5, 1934.

Right to fence on a section line depends upon whether or not a roadway legally exists. *Op. Atty. Gen. (631h)*, July 18, 1939.

7266. Viewers in counties not divided.

County board may compel construction of party line fences in territory where townships have been dissolved. *Op. Atty. Gen. (434a-4)*, Sept. 24, 1936.

CHAPTER 53

Estrays and Beasts Doing Damage

BEASTS DOING DAMAGE

7274. Who may distrain.

Where federal government purchased and branded distressed cattle in drouth areas and turned them over to state emergency relief administration for grazing and they were contracted out to individuals under an agreement that they be grazed and cared for, owner of property damaged by such animals may not hold them in attempt to force collection of damages; such cattle belonging to the state. *Op. Atty. Gen. (400a)*, Sept. 28, 1934.

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." *Fruka v. M.*, 182M421, 234NW641. See Dun. Dig. 277, 10134.

The notice required in proceedings to distrain animals doing damage is a written notice and is jurisdictional. *Fruka v. M.*, 182M421, 234NW641. See Dun. Dig. 277.

MISCHIEVOUS DOGS

7284. Owners or keepers of dogs liable for damage done.

Liability of owners or keepers of animals. 22MinnLaw Rev1042.

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.

Section is a criminal statute and may be enforced in justice court. *Op. Atty. Gen. (146f)*, Dec. 9, 1936.

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.