

79

THE

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

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AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL
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CONTAINING THE CONSTITUTION OF THE UNITED STATES, THE ORDINANCE OF 1787,
THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE
CONSTITUTION, THE ACT OF ADMISSION INTO THE UNION, AND

Sections 1 to 4821 of the General Statutes

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CHAPTER 23.

OF MONEY, BONDS, BILLS OF EXCHANGE, AND PROMISSORY NOTES.

1. Interest on Money, §§ 2212-2219.
2. Bonds, §§ 2220-2229.
3. Bills of Exchange and Promissory Notes, §§ 2230-2239.

[TITLE 1.]

[INTEREST ON MONEY.]

§ 2212. Rate of interest.

That interest for any legal indebtedness shall be at the rate of seven dollars upon one hundred dollars for a year, unless a different rate is contracted for in writing; and no person, company, or corporation 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 ten 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: *provided*, that all contracts hereafter made shall bear the same rate of interest after they become due as before, and that any provision in any contract, note, or instrument providing for an increase of the rate of interest upon maturity, or any increase therein after the making and delivery thereof, shall work a forfeiture of the entire interest thereon: *provided, further*, that the foregoing proviso shall not apply to notes or contracts which bear no interest before maturity.

(1879, c. 66, § 1, 1 as amended 1887, c. 66; G. S. 1878, v. 2, c. 23, § 1.)

When a note draws interest from date at 5 per cent., but contains no stipulation as to interest after maturity, it is proper to allow interest by way of damages at the rate of 7 per cent. after maturity. *Moreland v. Lawrence*, 23 Minn. 84.

It is not competent for parties to a contract to stipulate for a rate of interest, after due, different from that which the contract bears before due. *Newell v. Houlton*, 22 Minn. 19, reviewing the earlier cases. For the early cases on this subject, see *Brewster v. Wakefield*, 1 Minn. 352, (Gil. 260,) reversed in U. S. supreme court, 22 How. 118; *Mason v. Callender*, 2 Minn. 350, (Gil. 302;); *Talcott v. Marston*, 3 Minn. 339, (Gil. 238;); *Kent v. Bown*, 3 Minn. 347, (Gil. 246.)

See, also, *McCutchen v. Town of Freedom*, 15 Minn. 217, 220, (Gil. 169, 171;); *Owsley v. Greenwood*, 13 Minn. 429, 431, (Gil. 386, 388;); *Daniels v. Wilson*, 21 Minn. 532.

See, generally, *Mackey v. Winkler*, 35 Minn. 513, 29 N. W. Rep. 337; *Avery v. Creigh*, 35 Minn. 456, 29 N. W. Rep. 154; *Egbert v. Peters*, 35 Minn. 312, 29 N. W. Rep. 134; *Elston v. Kelly*, 34 Minn. 409, 26 N. W. Rep. 229.

A note providing for 10 per cent. interest after maturity, with coupons for 10 per cent. interest before, bears interest at 10 per cent. after maturity, and the coupons bear interest at 7 per cent. *Holbrook v. Sims*, 39 Minn. 122, 39 N. W. Rep. 74, 140.

A note providing for an increased rate of interest after maturity is usurious on its face to the extent of the interest; and the collection of such interest cannot be enforced by the foreclosure of a mortgage. *Chase v. Whitten*, 51 Minn. 485, 53 N. W. Rep. 767.

§ 2213. Usurious interest—Recovery.

Every person who, for any such loan or forbearance, shall have paid or delivered any greater sum or value than is above allowed to be received, may, by himself or his personal representatives, recover in an action against the

¹An act relating to interest on money and usury. Approved March 5, 1879. Went into effect July 1, 1879.

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2212
62-M - 498
63-M - 30
63-M - 258
63-M - 459
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65-NW 452
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69-NW 716

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67-M - 163
68-M - 212
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72-M - 536
74-M - 385
78-M - 129
80-NW 831

2213
59-NW 1103
69-NW . 108
69-NW . 251

2213
61-M - 492
65-NW 959
66-NW 269
67-NW 655

§§ 2213-2214 OF MONEY, BONDS, BILLS OF EXCHANGE, ETC. [Ch. 23

person who shall have taken or received the same, or his personal representatives, the full amount of interest or premium so paid, with costs, if such action shall 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 county treasury of the county where such penalty is collected for the use of the common schools.

(1877, c. 15, § 2; G. S. 1878, c. 23, § 3; as re-enacted 1879, c. 66, § 2.)

Prior to the passage of this section, it was held that one who voluntarily paid a rate of interest greater than that which the statute enabled parties to stipulate for could not recover the excess. *Woolfolk v. Bird*, 22 Minn. 341, followed afterwards in *Cornell v. Smith*, 27 Minn. 132, 6 N. W. Rep. 460; *Taylor v. Burgess*, 26 Minn. 547, 550, 6 N. W. Rep. 350.

It has been held that the words "shall have paid or delivered any greater sum or value" mean such a delivery as passes title, and that a delivery of the possession of real estate under an agreement to transfer title is not such a delivery. *Howe v. Carpenter*, (Wis.) 6 N. W. Rep. 337.

The borrower who has voluntarily paid to the lender part of the principal or interest, but not exceeding 10 per cent. a year, cannot compel repayment. *Anderson v. Scandia Bank*, 53 Minn. 191, 54 N. W. Rep. 1062.

§ 2214. Usurious contracts invalid—Exceptions.

All bonds, bills, notes, assurances, conveyances, chattel mortgages, and all other contracts and securities whatsoever, and all deposits of goods, or anything whatever, 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 is above prescribed, shall be void, except as to *bona fide* purchasers of negotiable paper, as hereinafter provided, in good faith, for a valuable consideration, before maturity: *provided*, that no merely clerical error in the computation of interest, made with no intent to avoid the provisions of this act, shall constitute usury: *provided, further*, that interest at the rate of one-twelfth of ten per centum for every thirty days shall be construed to not exceed ten per centum per annum: *provided, further*, that the payment of interest in advance for one year, at a rate not to exceed ten per centum per annum, shall not be construed to constitute usury: *provided, further*, that nothing herein shall be construed to prevent the purchase of negotiable mercantile paper, usurious or otherwise, for a valuable consideration, by an innocent purchaser, free from all equities, at any price before the maturity of the same, when there has been no intent to evade the provisions of this act, or where said purchase has not been a part of the original usurious transaction. In any case, however, where the original holder of an usurious note sells the same to an innocent purchaser, the maker of said note, or his representatives, shall have the right to recover back from the said original holder the amount of principal and interest paid by him on said note.

(1879, c. 66, § 3; G. S. 1878, v. 2, c. 23, § 4.)

A loan of money is an essential element of a usurious transaction. *Case v. Fish*, (Wis.) 15 N. W. Rep. 808.

Usurious contracts, except as provided in the case of certain innocent purchasers, are absolutely void; and the effect of the statute is not avoided by the substitution of a new security for one infected with usury. *Jordan v. Humphrey*, 31 Minn. 495, 18 N. W. Rep. 450; *Allen v. Fogg*, (Iowa,) 23 N. W. Rep. 643.

See, also, *Lukeus v. Hazett*, 37 Minn. 441, 35 N. W. Rep. 265; *Exley v. Berryhill*, 37 Minn. 182, 33 N. W. Rep. 567; *Barrows v. Thomas*, 43 Minn. 270, 45 N. W. Rep. 443; *W. B. Clark Inv. Co. v. McNaughton*, 46 Minn. 87, 48 N. W. Rep. 412.

The exception of *bona fide* purchasers is not applicable to mortgages securing negotiable paper. *Scott v. Austin*, 36 Minn. 460, 32 N. W. Rep. 89, 864.

Where a contract for a usurious loan is evidenced by a note secured by bill of sale, the contract as well as the note and bill of sale is void, and there is no valid indebtedness. *Ormund v. Hobart*, 36 Minn. 306, 31 N. W. Rep. 213. As to usurious chattel mortgage, see *Wetherell v. Stewart*, 35 Minn. 496, 29 N. W. Rep. 196.

This section intends that the defense of usury may be interposed in an action on negotiable paper, only where any other defense, if it exist, might be interposed. *First Nat. Bank of Rochester v. Bentley*, 27 Minn. 87, 6 N. W. Rep. 422.

Payment as a bonus, or in compensation for services in negotiating the loan, when not usurious. See *Acheson v. Chase*, 28 Minn. 211, 214, 9 N. W. Rep. 734.

Usury cases, like other civil actions, are to be determined by a fair preponderance of

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55-M . 521
62-NW . 280
61-NW . 561
59-NW 1039

2214

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62-M - 62
62-M - 295
63-M - 459
64-NW 90
64-NW 898
65-NW 452

2214

72-M - 538
74-M - 335

evidence. The law will look behind any device to evade the statute in order to ascertain the real nature of the transaction. *Lukens v. Hazlett*, 37 Minn. 441, 35 N. W. Rep. 265; *Hass v. Camp*, 40 Minn. 329, 42 N. W. Rep. 20; *Lewis v. Willoughby*, 43 Minn. 307, 45 N. W. Rep. 439. See, also, *Chase v. New York Mortg. Loan Co.*, 49 Minn. 111, 51 N. W. Rep. 816; *Farker v. Maxwell*, 51 Minn. 523, 53 N. W. Rep. 754.

In what cases the payee is affected by illegal exactions made by his agent. *Lewis v. Willoughby*, 43 Minn. 307, 45 N. W. Rep. 439; *Kemmitt v. Adamson*, 44 Minn. 121, 46 N. W. Rep. 327; *Stein v. Swensen*, 44 Minn. 218, 46 N. W. Rep. 360; *Adamson v. Wiggins*, 45 Minn. 448, 48 N. W. Rep. 185; *Stein v. Swensen*, 46 Minn. 360, 49 N. W. Rep. 55; *Hawkins v. Sauby*, 48 Minn. 69, 50 N. W. Rep. 1015.

It is immaterial that the borrower had no intent to pay usury. *Lukens v. Hazlett*, *supra*.

To charge one with usury, he must be a party to the intent to evade the law. One who buys a note and mortgage from the payee and mortgagee, though at a discount greater than the lawful rate of interest, believing him to be the owner, though he is in fact acting for the mortgagor, is not chargeable with usury. *Jackson v. Travis*, 42 Minn. 438, 44 N. W. Rep. 316.

A contract for a loan is not made usurious by an agreement to give the borrower the option for an extension at a greater rate. *Stein v. Swensen*, 44 Minn. 218, 46 N. W. Rep. 360.

A mortgage may be assailed for usury by the mortgagor's assignee in insolvency, or by the sheriff holding the property under an attachment against the mortgagor. *Id.*

The exception of bona fide purchasers of negotiable paper does not extend to a mortgage to secure such paper. *Smith v. Parsons*, (Minn.) 57 N. W. Rep. 311.

See *Thomas v. Miller*, 39 Minn. 339, 40 N. W. Rep. 358; *Daley v. Minnesota Loan & Inv. Co.*, 43 Minn. 517, 45 N. W. Rep. 1100; *Simpson v. Evans*, 44 Minn. 419, 46 N. W. Rep. 908; *Holmen v. Rugland*, 46 Minn. 400, 49 N. W. Rep. 189; *Cowles v. Canfield*, 49 Minn. 496, 52 N. W. Rep. 135; *Swanstrom v. Balstad*, 51 Minn. 276, 53 N. W. Rep. 648; *Dade v. Spalding*, 52 Minn. 356, 54 N. W. Rep. 591.

§ 2215. Offenders must answer on oath.

Every person, company, or corporation offending against the provisions of this act shall be compelled to answer on oath any complaint that may be exhibited or filed against him in the district court for 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.

(1877, c. 15, § 4; G. S. 1878, c. 23, § 5; as re-enacted 1879, c. 66, § 4.)

§ 2216. Witnesses—Competency of parties—Interest after maturity.

Whenever, in any action in any court, the defendant shall plead or answer the defense of usury, either party to the action may be a witness in his own behalf on the trial, except in actions in which the opposite party sues or defends as administrator or personal representative of a deceased person; except, also, actions in which the opposite party claims as assignee, and the original assignor is deceased. In the case of all notes or other instruments bearing interest, when no rate of interest is specified after maturity, the said note or other instrument shall be construed to bear the same rate of interest after maturity as before, and until fully paid and satisfied.

(1877, c. 15, § 5; G. S. 1878, c. 23, § 6; as re-enacted 1879, c. 66, § 5.)

In an action by or against the representatives of a decedent on a contract made between the adverse party and another who had assigned it to the decedent, such adverse party is a competent witness in his own behalf to prove the contract usurious. *Parker v. Maxwell*, 45 Minn. 1, 47 N. W. Rep. 161. See *Id.*, 51 Minn. 523, 53 N. W. Rep. 754.

§ 2217. Usurious contracts, etc., to be void, when.

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 act, the court shall declare the same to be void, and enjoin any proceeding thereon, and shall order the same to be cancelled and given up.

(1879, c. 66, § 6; G. S. 1878, v. 2, c. 23, § 7.)

See *Avery v. Creigh*, 35 Minn. 456, 29 N. W. Rep. 154; *Wetherell v. Stewart*, 35 Minn. 496, 29 N. W. Rep. 196; *Mackey v. Winkler*, 35 Minn. 513, 29 N. W. Rep. 337; *Scott v. Austin*, 36 Minn. 460, 32 N. W. Rep. 83, 864.

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69-M - 318
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60-M - 424

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77-M - 87
79-NW 609

§ 2218. Repeal—Exemption of building associations.

Section one of chapter 15 of the General Laws of one thousand eight hundred and seventy-seven, and section one of chapter twenty-three of the General Statutes of one thousand eight hundred and sixty-six, and all acts and parts of acts inconsistent with the provisions of this act, are hereby repealed. But none of the provisions of the act shall apply to mutual building associations.

(1879, c. 66, § 7; G. S. 1878, v. 2, c. 23, § 7a.)

§ 2219. Agreements to share profits not affected.

Nothing in this act shall be construed as in any way affecting any contract heretofore, or hereafter made, whereby one of the parties thereto has advanced, or may advance, money to be used in business, or other ventures, mutually determined upon, and whereby the other party thereto, the one receiving such money, has refunded, or agrees to refund the same, with interest thereon as stipulated (provided such interest does not exceed a lawful rate) and in addition thereto has shared, or agrees to share equally or otherwise, with the party so advancing the money, the profits, if any there were or may be, of the business or other ventures carried on, or undertaken, in whole or in part with such money.

(1889, c. 121, § 1.)

[TITLE 2.]

[BONDS.]*

§ 2220. Corporate bonds to be negotiable.

Bonds and other obligations under seal for payment of money, payable to the bearer, or some person designated or bearer, or payable 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.

(G. S. 1866, c. 23, § 2; G. S. 1878, c. 23, § 9.)

Where a private corporation has authority to issue negotiable securities, such instruments, when issued, possess the legal character ordinarily attaching to negotiable

* See, also:

- Sections
- 509-518. "Minnesota State Railroad Adjustment Bonds" and "Minnesota State Funding Bonds."
 - 522-524. "Minnesota Revenue Bonds" and "Minnesota State Building Bonds."
 - 635. Payment of county bonds upon creation of new county.
 - 1031. Bonds of organized townships.
 - 1090-1097. Bonds of cities.
 - 1.32-1238. Bonds of villages.
 - 1321. Bonds of villages of over 3,000 inhabitants.
 - 1344. Improvement bonds of villages of over 3,000 inhabitants.
 - 1435-1440. Municipal bonds for public buildings.
 - 1441-1452. Municipal bonds in aid of construction of canals and improved waterways.
 - 1639. Debts of municipal corporations in certain cases void.
 - 1692-1693. Registration of municipal bonds issued in aid of the construction of railroads.
 - 1694. Annual tax for payment of interest upon registered bonds.
 - 1696. Payment and cancellation of coupons of municipal bonds.
 - 1941-1943. County bonds for construction of roads for steam traction motors.
 - 1987. County bonds for purchase of poor farm.
 - 2562. In what bonds savings banks may invest.
 - 2715. Issue of railroad bonds for purpose of purchase of another road.
 - 2722-2727. Railroad bonds.
 - 2734. Income certificates of railroads.
 - 2735-2736. Rights of holders of railroad bonds, etc.
 - 2757. Action against railroad company to recover bonds, etc., issued in aid of abandoned line of road.
 - 2771-2784. Municipal bonds in aid of railroads.
 - 2845. Character of bonds which trust companies may deposit with state auditor.
 - 2849. Trust company may act as agent to register, countersign, issue or transfer bonds.
 - 3688-3692. Bonds of any school district, whether organized under special act or otherwise.
 - 3774. "Minnesota School Fund Bond."
 - 3815. Certain bonds of independent school districts issued since October 1, 1882, legalized.
 - 3816. Bonds of independent school districts.

paper, and the holder in good faith, before maturity, and for value, may recover, even though in the particular case the power of the corporation was irregularly exercised, or was exceeded. *Auerbach v. Le Sueur Mill Co.*, 28 Minn. 291, 296, 9 N. W. Rep. 799.

§ 2221. Old bounty bonds may be replaced by new ones.

That all town, village, city, and county authorities are hereby authorized and empowered to take up and cancel, by the issue of new bonds, any old matured and unpaid bonds which have been heretofore issued by such authorities for the purpose of raising the quota of volunteers in said town, village, city or county under the several calls of the president of the United States for the suppression of the late rebellion: provided, such new bonds shall not bear a greater interest than twelve per cent. per annum, and shall run for such period as may be agreed upon by said authorities and the holders of the bonds above referred to.

(1868, c. 51, § 1; G. S. 1878, c. 124, § 83.)

§ 2222. Public corporations may refund bonds, when.

Any county, town, city,* school district or village in this state that has heretofore issued bonds for any lawful purpose, may at any time while said bonds are a valid and existing indebtedness against said county, town, city or village, or school district refund the same and issue and negotiate new bonds for the amount of such indebtedness, provided that bonds issued to refund any existing bonded indebtedness shall not be made payable more than ten years from the date the same are issued, and shall not draw a higher rate of interest than the bonds refunded.

(1893, c. 148, § 1.3)

* For an act to provide additional means for completing and furnishing the courthouse and city-hall building now in process of erection in the city of Minneapolis, and to authorize the issue and sale of bonds therefor, see Laws 1893, c. 243.

Laws 1893, c. 243, though special in form, is general in fact. *State v. Cooley*, (Minn.) 58 N. W. Rep. 150.

§ 2223. Same—Necessity of issue determined, by whom.

The necessity of issuing and negotiating bonds under the provisions of this act shall be determined as follows: In case of counties, by the board of county commissioners. In case of towns, by board of supervisors. In case of cities, by the city council. In case of villages, by the board of trustees. In case of school districts, by the board of trustees. Bonds issued under this act shall be attested the same as the bonds refunded, and nothing herein shall be construed to compel the holder of any bonds to accept payment thereof before maturity.

(1893, c. 148, § 2.)

§ 2224. Same—Not to affect city acting under charter.

Nothing herein contained shall be held to abridge the powers or extend or remove any restrictions as to limit of public indebtedness or relating to sink-

See, also:

Sections

- 3830-3832. Collection and payment of bonds of school districts when the offices of the trustees of such school districts have become vacant.
- 4005. Investment of proceeds of sales of state school lands in bonds of the United States and certain states.
- 4022-4025. Investment of proceeds of sales of State Agricultural College lands.
- 4026. Investment of proceeds of sales of state university lands in bonds of the United States.
- 4030. Investment of proceeds of sales of state swamp lands in bonds of the United States.
- 7632-7633. Legalizing municipal bonds.
- 7780-7781. Bonds of drainage districts.
- 7809. County bonds for ditches.

³ An act authorizing public corporations created and existing under the laws of this state, to refund their bonded indebtedness. Approved April 1, 1893.

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ing fund affecting any city of this state now governed by the provisions of any special act heretofore passed.

(Id. § 3.)

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§ 2225. Mutilated or lost bonds—Issue of duplicates.

That whenever any bond, order, or warrant of the state of Minnesota, or any county, city, township, or school-district in the state of Minnesota, shall become so far mutilated as to become unfit for circulation, or shall be lost or destroyed, a duplicate thereof may be issued by the officers authorized by law to issue such bonds, orders, or warrants, under the regulations and restrictions hereinafter prescribed.

(1883, c. 76, § 1; G. S. 1878, v. 2, c. 124, § 130.)

§ 2226. Same—Duplicate—Form—Indorsement.

Such duplicate shall correspond in number, date, amount, and coupons with the original bond, order, or warrant, and shall have indorsed on its face, and on the face of each coupon, by the officer issuing the same, the word, "duplicate," together with the date of its issuance.

(1883, c. 76, § 2; G. S. 1878, v. 2, c. 124, § 131.)

§ 2227. Same—Issue of duplicate.

On the delivery to the proper officer of any mutilated bond, order, or warrant, a duplicate of such bond, order, or warrant shall be issued, as herein provided.

(1883, c. 76, § 3; G. S. 1878, v. 2, c. 124, § 132.)

§ 2228. Same—Filing affidavit and indemnity bond.

A duplicate for a lost or destroyed bond, order, or warrant shall not issue until there shall have been filed with the proper officer an affidavit of the owner thereof, setting forth the ownership of such bond, order, or warrant, the description thereof, the number of coupons thereto attached, and the manner of its loss and destruction, and until there shall have been executed and filed with the same officer an indemnifying bond, with sureties to be approved by such officer, in a sum equal to double the amount of such warrant, order, or bond, and the coupons attached, conditioned that the parties thereto shall pay all damages which the state, county, city, township, or school-district, as the case may be, may sustain, if compelled to pay such lost or destroyed bonds, orders, or warrants.

(1883, c. 76, § 4; G. S. 1878, v. 2, c. 124, § 133.)

§ 2229. Same—Record of duplicates.

Any officer issuing duplicates under this act shall keep a record showing the number, dates, and amounts of such mutilated, lost, or destroyed bonds, orders, or warrants, and the number of coupons thereto attached, together with the date of issuance of the duplicates therefor, and the names of the persons to whom issued.

(1883, c. 76, § 5; G. S. 1878, v. 2, c. 124, § 134.)

[TITLE 3.]

[BILLS OF EXCHANGE AND PROMISSORY NOTES.]⁶

2230

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§ 2230. Bills and notes, when falling due in certain cases.

Bills of exchange, drafts, promissory notes, and contracts, due or payable, or to be executed on Sunday, Thanksgiving Day, Good Friday, Christmas-Day, New Year's Day, the twenty-second day of February, the fourth day of July, or on the following day when either of the four days last mentioned occurs on Sunday, shall be payable or performable upon the business day next preceding said days; and in case of non-payment or non-fulfilment,

⁴An act concerning mutilated, lost, and destroyed bonds, orders and warrants. Approved March 5, 1883.

⁵For promissory notes, the consideration of which is a patent right, see § 8048.

For promissory notes obtained in consideration of sale of grain at fictitious price, see § 7639.

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shall be noted and protested upon such preceding day; but notice of the dishonor, non-payment or non-fulfilment need not be given until the business day next following the days above specified.

(G. S. 1866, c. 23, § 3, as amended 1871, c. 46, § 1; G. S. 1878, c. 23, § 10.)

§ 2231. Demand notes, when dishonored.

Upon a promissory note payable on demand, a demand made at the expiration of sixty days from the date thereof without grace, or at any time within that term, shall be deemed to be made within a reasonable time; and any act, neglect or other thing, which, by the rules of law and the customs of merchants, is deemed equivalent to a presentment and demand on a note payable at a fixed time, or which would dispense with such presentment and demand, if it occurs at or within said term of sixty days, shall be deemed a dishonor thereof, and shall authorize the holder of such note to give notice of the dishonor to the endorser as upon a presentment to the promisor, and his refusal or neglect to pay the same. No presentment of such note to the promisor and demand of payment shall charge the endorser, unless made on or before the last day of said term of sixty days.

(G. S. 1866, c. 23, § 4; G. S. 1878, c. 23, § 11.)

Where a demand note is indorsed four years after its date, the note is dishonored at the time of indorsement. *Lina v. Rugg*, 19 Minn. 181, (Gil. 149.)

See *Mitchell v. Easton*, 37 Minn. 335, 33 N. W. Rep. 910.

A certificate of deposit payable on demand falls within this section. *Mitchell v. Easton*, 37 Minn. 335, 33 N. W. Rep. 910.

§ 2232. Liability of indorsers of demand notes.

The several indorsers of promissory notes payable on demand, upon due and reasonable notice of the dishonor of such notes, shall be liable in the same manner and to the same effect as upon the dishonor of promissory notes payable at a fixed time, and not otherwise.

(G. S. 1866, c. 23, § 5; G. S. 1878, c. 23, § 12.)

§ 2233. Acceptance to be in writing.

No person within this state shall be charged as an acceptor on a bill of exchange, unless his acceptance is in writing, signed by himself or his duly authorized agent.

(G. S. 1866, c. 23, § 6; G. S. 1878, c. 23, § 13.)

An acceptance by a partner, in his own name, of a bill drawn on the firm, will bind neither the firm nor the acceptor. *Heenan v. Nash*, 8 Minn. 407, (Gil. 363.)

§ 2234. Rate of damages on foreign bills.

Whenever any bill of exchange, drawn or endorsed within this state, and payable without the limits of the United States, is duly protested for non-acceptance or non-payment, the party liable for the contents of such bill, shall, on due notice and demand thereof, 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 thereof, together with interest on the said contents, to be computed from the date of the protest; and said amount of contents, damages and interest shall be in full of all damages, charges and expenses.

(G. S. 1866, c. 23, § 7; G. S. 1878, c. 23, § 14.)

§ 2235. Rate of damages on inland bills.

If any bill of exchange, drawn upon any person, or body politic or corporate, out of this state, but within the United States, for the payment of money, is duly presented for acceptance, or payment, and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest, according to its tenor, and five per cent. damages, together with costs and charges of protest.

(G. S. 1866, c. 23, § 8; G. S. 1878, c. 23, § 15.)

§ 2236. Promissory notes payable to maker, etc.

Promissory notes made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same

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61-NW . 457
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59-NW . 544
59-NW . 987

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71-NW 822

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effect, and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to bearer.

(G. S. 1866, c. 23, § 9; G. S. 1878, c. 23, § 16.)

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§ 2237. Days of grace.

On all bills of exchange payable at sight, or at a future day certain, within this state, and on all negotiable promissory notes, orders and drafts, payable at a future day certain, within this state, in which there is not an express stipulation to the contrary, grace shall be allowed in like manner as it is allowed by the custom of merchants on foreign bills of exchange, payable at the expiration of a certain period after date or sight.

(G. S. 1866, c. 23, § 10; G. S. 1878, c. 23, § 17.)

§ 2238. Same—Demand notes, etc.

The provisions of the preceding section shall not extend to any bill of exchange, note or draft, payable on demand.

(G. S. 1866, c. 23, § 11; G. S. 1878, c. 23, § 18.)

§ 2239. Instruments obtained by fraud—Validity—Action.

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 on any such bill, note, or contract, nor liable in any manner on account of such signature, if it shall be made to appear as a matter of fact that the signature to such bill, note, or contract is obtained by fraudulent representation, trick, or artifice as to the nature and terms of the contract so signed, and that the person whose signature is so obtained does not at the time of affixing such signature believe that the contract so signed is a bill of exchange, promissory note, or other paper negotiable under the law-merchant, and that the person whose signature is so obtained was not guilty of negligence in signing such paper without knowledge of its terms; that the question of negligence, in any suit on such contract, shall in all cases be one of fact for the jury, or, if the suit be tried by the court without a jury, for the court; that in all such cases the person sought to be charged on such bill, note, or contract shall be entitled to a jury trial on such question of negligence.

(1883, c. 114, § 1; G. S. 1878, v. 2, c. 23, § 19.)

The evidence held to justify a finding of negligence. *Ward v. Johnson*, 51 Minn. 480, 53 N. W. Rep. 766.

Where the maker of a negotiable note is induced to sign it by fraudulent representations as to its nature and effect, but in the belief that he is signing some other negotiable instrument, this section does not apply. *Yellow Medicine County Bank v. Tagley* (Minn.) 59 N. W. Rep. 486.

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61-NW . 452

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59-M - 389

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