

REVISED LAWS OF
MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
FRANCIS B. TIFFANY

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[2692—]3. **Acknowledgments before officers of corporations, etc.—Curative.**—That all acknowledgments heretofore taken by a notary public who was also an officer, director or stockholder of a corporation organized under the laws of this state, which corporation was interested as a party to the instruments acknowledged, are hereby legalized and made as effectual as if the notary public had not been an officer, director or stockholder of the corporation interested. ('07 c. 89 § 1)

Historical.—"An act to legalize certain acknowledgments taken by officers, directors or stockholders of corporations, as notaries public, of instruments in which the corporation is interested." Approved April 4, 1907.

[2692—]4. **Pending actions.**—The provisions of this act shall not apply in any case where an action is now pending. ('07 c. 89 § 2)

CHAPTER 49.

FEES.

[2694—]1. **Fees to be retained in certain counties.**—In all counties containing a population of 26,000 inhabitants and over, where the salary of the clerk of the district court is arbitrarily fixed at eight hundred dollars or less, by special law, and where such clerk is required by special law to pay over to the county all fees collected as such clerk, such clerk shall hereafter receive and retain all fees collected and received by them as such clerks of court, in lieu of said eight hundred dollars annual salary. ('07 c. 268 § 1)

Historical.—"An act to provide compensation for clerks of the district court in certain cases." Approved April 20, 1907.

2699. Fees of coroners.— * * *

4. Physicians called by the coroner to make autopsies shall be allowed six dollars per day and mileage as above, and, when the county board shall be satisfied that the autopsy was attended by great and unusual difficulties, they may allow such further sum to the physicians as may be just compensation for the services. This act shall apply to all counties now having or hereafter having a population of less than 275,000, but shall not apply to any county where such fees are now fixed by special laws. (R. L. § 2699, subd. 4, as amended by Laws 1909, c. 271, § 1.)

Section 2 repeals inconsistent acts.

2700. Fees of constables.— * * *

20. A constable shall be allowed all reasonable and necessary expenses actually paid out for food and lodging furnished by him for any prisoner, at not to exceed one dollar per day while having such prisoner in custody pending trial and while conducting such prisoner to jail, together with the transportation charges for said prisoner paid to a common carrier. Provided, that where adjournment is for longer than three days, the prisoner shall be committed to the county jail. (R. L. § 2700, as amended by Laws 1907, c. 190.)

Historical.—This section was amended by adding a new subdivision, as above set forth.

2702. Fees of justices of the peace.

Right of recovery.—A justice, after he has rendered judgment, may recover his unpaid fees. *Conlon v. Holste*, 99 Minn. 493, 110 N. W. 2.

2706. **Fees of register of deeds.**—For the indexing and recording any deed or other instrument, 10 cents per folio, to be paid when left for record.

2. Every certificate, 10 cents.

3. Copies of any records or papers, 10 cents per folio.

4. Recording any deed or other papers in other than the English language, 25 cents per folio.

5. Entering discharge of mortgage in the margin of the record, 10 cents.

6. Filing every other paper, and entering same when necessary, 10 cents.

7. Searching for such paper on request, 5 cents for every paper examined.

8. Searching the record, 10 cents.

9. An abstract of title, 25 cents for every transfer, and 25 cents for certificate.

Provided, that in all counties where the compensation of the register of deeds is not fixed by special laws, having a population of over twenty thousand and not exceeding seventy-five thousand where the report of the register of deeds made pursuant to section 603, Revised Laws of 1905, shows that he received as fees in the preceding calendar year less than two thousand dollars, the county board of any such county shall thereupon pay to such register of deeds from the county revenue fund of the county enough money to make the compensation of such register of deeds two thousand for such preceding calendar year; and in all counties having a population of over 10,000 and not exceeding 20,000, where such report of the register of deeds shows that he received as fees in the preceding calendar year less than \$1,200, the county board of any such county shall thereupon pay to such register of deeds from the county fund of the county enough money to make the compensation of such register of deeds \$1,200 for such preceding calendar year; and in all counties having a population of 10,000 or less, where such report of the register of deeds shows he received as fees the preceding calendar year less than \$900, the county board of any such county shall thereupon pay to such register of deeds from the county fund of the county enough money to make the compensation of such register of deeds \$900 for such preceding calendar year. This section shall not apply to counties having a population of more than seventy-five thousand nor to any county where such fees are now fixed by special law. (R. L. § 2706, as amended by Laws 1907, c. 256, § 1.)

For fees for entering and recording instruments in certain counties, see section [545—]1.

2708. Fees of appraisers, commissioners, etc.—Per diem—Mileage.—Appraisers of estates of decedents and of property taken on writ of attachment or replevin, persons appointed under the legal process or order for making partition of real estate, sheriff's aids in criminal cases, and all other private persons performing like services required by law or in the execution of legal process, where no express provision is made for compensation, shall be entitled to three dollars per day and five cents a mile for going and returning. (R. L. § 2708, as amended by Laws 1909, c. 17, § 1.)

[2709—]1. Witness fees of officers of municipalities.—No officer or employé of any city, village or county in this state shall hereafter receive or be paid any sum as witness fees in any case in which the State of Minnesota, the county, the city or the village, of which he is an officer or employé is a party, if the case be tried in the city or village of which he is a resident. (Laws 1895, c. 241, as amended by Laws 1905, c. 141, § 1.)

Historical.—“An act to amend chapter 241 of the General Laws of 1895, relating to prohibiting officers and employés of cities or villages in this state from receiving fees as witnesses in any case in which the state of Minnesota, or any city, village or county in said state is a party.” Approved April 11, 1905.

Laws 1895, c. 241, was repealed by R. L. § 5541; its provisions being incorporated in section 2709. So far as the amended section above set forth differs

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from said section 2709, it is to be construed, by virtue of section 5504, as amendatory or supplementary.

2711. Expert witnesses.

Physicians.—Physicians and surgeons who testify as witnesses concerning facts coming under their observation while professionally attending a patient, and express opinions with reference thereto, are not necessarily entitled to compensation as expert witnesses. But, where they are engaged to treat and examine an injured person for the purpose of acquiring the knowledge necessary to qualify them as expert witnesses, they are not necessarily disqualified as such by the fact that they also treated the patient professionally. *Le Mere v. McHale*, 30 Minn. 410, 15 N. W. 682, distinguished; *Anderson v. Minneapolis, St. P. & S. M. R. Co.*, 103 Minn. 184, 114 N. W. 744.

2712. Fees of jurors.—Each grand and petit juror shall receive three dollars per day, including Sundays for attendance in district court, and ten cents for each mile traveled in going to and returning from court, in counties having a population of less than 200,000 and two dollars per day in counties having more than 200,000 population, the distance to be computed by the usually traveled route, and paid out of the county treasury. The clerk of the district court shall deliver to each juror a certificate for the number of days' attendance and miles traveled for which he is entitled to compensation. Talesmen actually serving upon any petit jury shall receive the sum of \$2.00 per day. (R. L. § 2712, as amended by Laws 1909, c. 129, § 1.)

CHAPTER 51.

INTEREST AND NEGOTIABLE INSTRUMENTS.

INTEREST.

2735. Usurious contracts invalid—Exceptions.

Form not controlling.—Where a person to whom an application for a loan of money is made, in lieu of money, sells to the borrower personal property at a price largely in excess of its value, which the borrower purchases, not because he desires the property for his own use, but to enable him, by selling the same, to obtain the money, if the transaction be entered into in good faith, with no intent to evade the laws against usury, it will be sustained; but if it appears to have taken the form of a sale, as a cover for usury, it will be held usurious. *Barry v. Paranto*, 97 Minn. 265, 106 N. W. 911.

An agreement, although involving an alleged device to evade the usury law as by way of a sale, which is entered into in good faith and with no purpose to avoid the usury law, may be upheld. *Gould v. St. Anthony Falls Bank*, 98 Minn. 420, 108 N. W. 951.

A contract for the sale of real estate, with a covenant to guaranty certain profits within one year, construed to be for the sale, and not a device to evade the usury laws. *Heinrich v. Jenkins*, 98 Minn. 489, 108 N. W. 877.

In an action to recover the possession of certain merchandise, which plaintiff claimed defendant was holding for a usurious debt, the evidence justified the court in submitting the question of usury to the jury, and was sufficient to sustain the verdict in favor of plaintiff. *Elwell v. Lund*, 102 Minn. 166, 112 N. W. 1009, 1067.

See, also, *Widell v. National Citizens' Bank of Mankato*, 104 Minn. 510, 116 N. W. 919.

Questions of fact.—Good faith, purpose, and intent are ordinarily questions of fact. *Barry v. Paranto*, 97 Minn. 265, 106 N. W. 911.

NEGOTIABLE INSTRUMENTS.

2739. Contracts due on holidays, etc.

See section [2739—] 1.

[2739—] 1. **Same—Following day deemed holiday, when.**—All promissory notes, drafts, checks, acceptances, bills of exchange, or