

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
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1910

§ 2711 INTEREST AND NEGOTIABLE INSTRUMENTS. (Ch. 51)

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. 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

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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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)

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

See note under section [2746—] 1.

2741. Demand notes—Presentment and dishonor.—When a promissory note is payable on demand, presentment for payment must be made within five months after the date thereof, or the indorser will be discharged, and if made within said period the presentment and demand shall be deemed to have been made within a reasonable time. Any act, neglect, or other thing, occurring within such five months, which by the rules of law and the custom of merchants would excuse presentment of a note payable at a fixed time, shall be deemed a dishonor of such demand; and the several indorsers thereof, upon due notice of its dishonor, shall be liable in the same manner and to the same effect, and not otherwise, as upon the dishonor of a promissory note payable at a fixed time. (R. L. § 2741, as amended by Laws 1909, c. 436, § 1.)

Section 2 repeals inconsistent acts.

2746. No days of grace.

See section [2746—] 1.

[2746—]1. **Same.**—No promissory note, draft, check, acceptance, bill of exchange or other evidence of indebtedness, shall be entitled to days of grace, but the same shall be payable at the time fixed therein without grace. ('05 c. 345 § 1)

Historical.—Section 1 of an act entitled "An act to amend chapter 261 of the General Laws of Minnesota for 1903, entitled 'An act abolishing days of grace and fixing the maturity of negotiable instruments and other evidences of indebtedness,'" approved April 18, 1905 (Laws 1905, c. 345), enacts: "That chapter 261 of the General Laws of Minnesota for 1903, entitled 'An act abolishing days of grace and fixing the maturity of negotiable instruments and other evidences of indebtedness except drafts drawn at sight,' be and the same is hereby amended as follows: That section one of said chapter 261 be and the same is hereby amended to read as follows: Section 1. [As above set forth.] That section two of said chapter 261 be and the same is hereby amended so as to read as follows: Section 2. (As set forth in section [2739—]1)."

By section 2 of said act, all acts and parts of acts inconsistent therewith are repealed. By section 3, it is provided that the act shall take effect and be in force from and after June 30, 1905.

The above is the enrolled bill signed by the Governor, but it differs from that passed by the Legislature in this respect: In the bill passed by the Legislature the words "except drafts drawn at sight" followed immediately after the word "indebtedness" in section 1 as it purports to be amended by this act, instead of where it appears now, as part of the title of the amended act. The question as to whether this mistake of enrollment invalidated the act having been submitted to the Attorney General, he gave it as his opinion that the first amended section [section 2746—]1, only is invalid; that the first section of chapter 261, General Laws of 1903, remains in force; and that the second amended section [section 2739—]1 is a valid amendment of section 2 of said chapter 261, General Laws of 1903. See note under Laws 1905, c. 345 (official publication).

Section 1 of Laws 1903, c. 261, is as follows: "No promissory note, draft, 'not drawn at sight' check, acceptance, bill of exchange or other evidence of indebtedness, shall be entitled to days of grace, but the same shall be payable at the time fixed therein without grace."

Laws 1903, c. 261, was repealed by R. L. 5546, its provisions being incorporated in sections 2739, 2746. So far as the amended sections, designated as sections [2739—]1, [2746—] 1, differ from the Revised Laws, they are to be construed, by virtue of section 5504, as amendatory or supplementary.

§ 2747

UNCLAIMED PROPERTY.

(Ch. 54)

2747. Instrument obtained by fraud.

Questions for jury.—This section, requiring the question of negligence to be submitted to a jury, does not dispense with the rule that a verdict must be sustained by reasonable evidence. *Johnson County Savings Bank v. Hall*, 102 Minn. 414, 113 N. W. 1011.

Cited and applied in *Sibley County Bank v. Schaus*, 104 Minn. 438, 116 N. W. 928.

CHAPTER 53.
ESTRAYS AND BEASTS DOING DAMAGE.

MISCHIEVOUS DOGS.
2786. Injury by dogs.

Operation in general.—This section does not change the common-law rule that, where several dogs kill sheep and do other damage jointly, the owner of each is liable only for the damage done by his dog, and a joint action will not lie against the owners of the dogs. The statute merely relieves the plaintiff from the necessity of showing scienter. *Nohre v. Wright*, 98 Minn. 477, 108 N. W. 865.

CHAPTER 54.
UNCLAIMED PROPERTY.

[2804—]1. **Unclaimed money in court, how disposed of—Payment to state treasurer—Escheat.**—In every case where money heretofore has been paid or hereafter shall be paid into any court or to the officer of any court in the state of Minnesota under any statute or order of court for the benefit of or to be paid to any person or persons, and the same shall not have been paid over to the person entitled thereto within five years after the date on which such person is entitled to receive the same it shall be the duty of the clerk or other officer of the court having charge of such money immediately to pay the same into the state treasury. The person entitled thereto or his successor in the right may apply to the court in which such money was deposited at any time within twenty years from the time the money is so paid into the state treasury for an order for the payment of the money to him, and upon the court being satisfied that the party making such application is the person entitled to the money or successor to his right the court shall make an order for the payment of such money to the applicant; and the treasurer upon presentation of a duly certified copy of such order shall pay the same to the person named in said order as entitled to receive the same. In case any money so paid to the treasurer shall not so be claimed by the person entitled thereto within such twenty years it shall escheat to the state. ('09 c. 420 § 1)

Historical.—“An act relating to payment to the state treasurer of moneys heretofore paid or hereafter to be paid into court or to an officer of a court and for the escheat of certain of such moneys to the state of Minnesota.” Approved April 22, 1909.