

1938 Supplement
To
Mason's Minnesota Statutes
1927

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

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 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.



Edited by

WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR.
R. O. MASON
J. S. O'BRIEN
H. STANLEY HANSON
R. O. MASON, JR. } Assistant Editors

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1938

36. Estoppel.

Acceptance of benefits from contract with knowledge of facts and rights creates estoppel. *Bacich v. N.*, 185 M654, 242NW379. See Dun. Dig. 3204a.

Acceptance of reduced wages by employee did not estop him from claiming that he was working under original contract of employment at greater wage. *Dormady v. H.*, 188M121, 246NW521. See Dun. Dig. 3204a.

Mortgagee was not estopped to assert lien of mortgage by receipt of proceeds of sales of lots upon which mortgage was a lien. *Peterson v. C.*, 188M309, 247NW1. See Dun. Dig. 6270.

Knowledge of facts prevent assertion of estoppel. *Merchants' & Farmers' State Bank v. O.*, 189M528, 250NW366. See Dun. Dig. 3210.

Other necessary elements of an equitable estoppel being present, officer of corporation who negotiates and executes a contract for corporation, is estopped to deny truth or representations made, although he signs contract only in his official name. *Wiedemann v. B.*, 190M33, 250NW724. See Dun. Dig. 3187.

Holding on that point in *Kern v. Chalfant*, 7 Minn. 487 (Gil. 393), was, in effect, overruled in *North Star Land Co. v. Taylor*, 129Minn438, 152NW837. *Id.*

Two of elements necessary to an equitable estoppel, or an estoppel in pais, are that party to whom representations are made must have been without knowledge of true facts, and must have relied upon or acted upon such representations to his prejudice. *Id.* See Dun. Dig. 3189, 3191.

Without prejudice to it shown by bank after discovery by payee that his forged indorsement had been honored by it, payee is not estopped from recovery from it on

account of forgery. *Rosacker v. C.*, 191M553, 254NW824. See Dun. Dig. 3192.

A defense of estoppel was not sustained because the facts upon which it was predicated were equally known to both parties. *Leighton v. B.*, 192M223, 255NW848. See Dun. Dig. 3189.

Where the complaint tendered issue that blanks in conditional sale contract were not filled pursuant to agreement, and defendant did not by answer or proof attempt to establish that it was an innocent assignee of vendor, it is not in position to invoke estoppel against plaintiff. *Saunders v. C.*, 192M272, 256NW142. See Dun. Dig. 3210.

Where one sent money for deposit in bank instead purchased bonds and sent them to plaintiff with promise to take them over at any time if they were not wanted, there was no rescission or estoppel as to the guaranty because on request of guilty party plaintiff pledged them as security for a loan and later surrendered them to a bondholder's committee, and plaintiff could recover on the guaranty agreement. *Wigdale v. A.*, 193M384, 258 NW726. See Dun. Dig. 1807, 3210.

Farmer held not estopped from asserting claim for cost of service line under oral agreement with agent of power company by reason of fact that he was charged a reduced rate as service charge. *Bjornstad v. N.*, 195M 439, 263NW289. See Dun. Dig. 1730a.

Estoppel must be grounded on some conduct of party against whom it is invoked. *Town of Hagen v. T.*, 197 M507, 267NW484. See Dun. Dig. 3185.

To ratify is to give sanction and validity to something done without authority, while estoppel is inducement to another to act to his prejudice. *State Bank of Loretto v. L.*, 198M222, 269NW399. See Dun. Dig. 3185.

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. *Egekqvist 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, 215NW781.

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. 174M68, 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. F.*, 191M9, 252NW668. See Dun. Dig. 4884, 8019.

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, 9931.

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 \$3 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.*, 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.

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.

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 negatived 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.*, 188M277, 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.

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.

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. 177 M321, 225NW115.

Evidence held sufficient to sustain finding that mortgage was void for usury. *Clausen v. S.*, 187M534, 246 NW21. 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. *Wetsel v. G.*, 195 M509, 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.*, 197M 93, 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, its 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.

180M358, 230NW819.

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.

19. Extensions.

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

20. Who may assail.

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

22. Bona fide purchasers.

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

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. 9938.

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.

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.

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.

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

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.*, 188M87, 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.

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.

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.

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. 175M453, 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, 264NW786. 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.

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.

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, 260NW 364. See Dun. Dig. 1813a(51), 2848.

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.

7068. Consideration, what constitutes.

Finding that note was executed without consideration and through mistake sustained. 173M491, 496, 217NW 595.

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, 225NW 388.

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

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

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

To constitute a compromise and settlement sufficient to make consideration for a note given, there must be a bona fide mutual concession by each of the parties. *Goodhue Co. Nat. Bk. v. E.*, 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.*, 191M277, 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 re-

ceived; 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.

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, 245NW634. 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, 225NW891.

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

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

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.

7077. Special indorsement—Indorsement in blank.

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

7079. When indorsement restrictive.

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

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, 258NW588. See Dun. Dig. 969, 976.

7080. Effect of restricting indorsement—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 indorsement on the back of a 6 per cent note was surplusage and without legal significance between the endorsee and the maker, and was not of such character as to place the endorsee upon inquiry. 175M287, 221NW10.

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, 3368.

7091. Striking out indorsement.

Endorsee for collection of note could remove all intervening indorsements 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 indorsement 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. *Faine 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.

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

7095. What constitutes holder in due course.

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

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

Finding that plaintiff was not good faith purchaser of note for value and before maturity, held sustained by the evidence. 174M115, 218NW464.

Whether plaintiff was holder of promissory notes in due course held for jury. 174M258, 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. *Patzwald 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, 258NW588. See Dun. Dig. 969, 976.

Purchase of series of notes after maturity of one. 15 *MinnLawRev*585.

Notice of infirmity in instrument or defective title—negligence. 19 *MinnLawRev*795.

(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.

7098. When title defective.

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

One receiving stolen bonds as collateral security has burden of proving that he gave value. *Faine 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.

7101. When subject to original defenses.

One purchasing note after maturity is holder in due course where indorser 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.

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, 253NW 570. 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.*

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, 217NW381.
Where a person steals a certificate of deposit and forges the payee's indorsement thereon and cashes it at the bank which in turn delivers it to the issuing bank and receives the amount thereof, both banks are liable to the payee in an action for conversion. *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. 4093a(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.*

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**7152. Waiver of notice.**

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

7153. Whom affected by waiver.

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

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.

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, 223NW 458.

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, 216NW 249.

A check is not money within meaning of §§4439, 4440. Op. Atty. Gen. (349h), Jan. 5, 1935.

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 presentment of check as payment of debt. 16 MinnLawRev701.

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 as-

signment of the fund results, as between the drawer and the payee. Appointments of a receiver does not affect the rights of the parties where they dealt with each other in good faith before notice of the appointment. 172M24, 214NW750.

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

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

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

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

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

A check does not of itself operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder of the check, unless and until it accepts or certifies the check. *Lambrecht v. M.*, 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.

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.

Right of insolvent depository 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.

7237. Reasonable time, what constitutes.

Whether farmer living 7½ 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 affirmation by signer after knowledge of the precise character of the instrument. 172M126, 214NW924.

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

Finding that there was no fraud or misrepresentation by cashier of bank in transaction in which note was given held sustained by evidence. 174M261, 219NW93.

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