1941 Supplement

To

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(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session 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 Law Review Articles and digest of all common law decisions.

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machine. Jaeger Mach. Co. v. M., 289NW51. See Dun. Dig. 152.

26. ——Notice to agent.

Court did not err in submitting to jury salesman's authority to accept notice of termination of lease and disposition of machine let. Jaeger Mach. Co. v. M., 289NW51. See Dun. Dig. 152.

27. ——Ratification and waiver.

Ratification is only effectual when unauthorized act was done by a person professedly acting as agent of person or body sought to be charged as principal. City of Minneapolis v. C., 288NW706. See Dun. Dig. 179(37).

In action for damages for fraud in sale of land, plaintiff is entitled to inquire on question of ratification whether defendant ever offered to return purchase price after learning agents made misrepresentations, but counsel should so phrase question that it will not convey that there was a legal duty save to avoid a ratification under the rule that a principal ratified by asserting a right to the fruits of the agents' act when the action was brought. Rother v. H., 294NW644. See Dun. Dig. 189.

28. ——Liability of agent.

Equity will impose a constructive trust on land acquired by defendant as result of information received at a time when he was, for all practical purposes, an agent for plaintiff and under an obligation, by reason of his employment, to report such information, even though tract was of a type only occasionally purchased by his employer and notwithstanding absence of a finding that plaintiff would have purchased land had he known of it. Whitten v. W., 289NW509. See Dun. Dig. 194, 9917.

Principal must establish by a fair preponderance of evidence that agent has actually received particular thing for which he is sought to be held. Raymond Farmers Elevator Co. v. A., 290NW231. See Dun. Dig. 206.

In action by elevator company against manager for an accounting, evidence held insufficient to sustain finding that manager converted certain items of grain, in view of defective scales. Id. See Dun. Dig. 206.

An agent cannot deal with his principal as an adverse party in a transaction connected with agency whether damage results or not, and manager of an elevator could not engage in purchasing grain from his principal and in trucking it to other places for sale, notwithstanding that principal did not engage in trucking grain to sell, and manager was liable for gross profit made and could not deduct expense of operating truck owned by him. Id. See Dun. Dig. 194.

28½. Payment.

When payment of money to a village is made under protest, with possibility of fine or imprisonment if it is not made and in order to protect payor's right to proceed with lawful business, he is not a volunteer in such sense as to prevent recovery. Moore v. V., 289NW837. See Dun. Dig. 7462.

Whether a transfer of money or thing will operate as payment of a debt is determined by intention of parties, and it must be received as well as paid in satisfaction of the debt. State v. Tri-State Tel. & Tel. Co., 295NW511. See Dun. Dig. 7438

30. Accord and satisfaction and compromise and settlement.

National Sur. Corp. v. Wunderlich, (CCA8), 111F(2d) 622, rev'g on other grounds 24FSupp640.

Giving of a note and its subsequent payment indicates a settlement of whatever claims there may have been between the parties. Sickmann's Estate, 289NW832. See Dun. Dig. 1525.

In action for damages for breach of contract to give certain sales rights wherein a specific contract was alleged and sought to be established it was prejudicial error to permit proof of a subsequent agreement which in nature closely parallels an offer to settle. Foster v. B., 291NW505.. See Dun. Dig. 3425.

Pledgee of a chose in action, under extreme circumstances indicating that loss to all concerned would have resulted if it had not accepted exchange of securities provided for by reorganization in bankruptcy of debtor, held properly to have accepted exchange as a compromise where procedure resulting in exchange was participated in by representatives of pledgor's estate without objection either to procedure or result. First & American Nat. Bank of Duluth v. W., 292NW770. See Dun. Dig. 1520.

An injured party who has accepted satisfaction, from whatever source it may come, cannot recover again for same injury. Driessen v. M., 294NW206. See Dun. Dig. 8371.

Compromise of a disputed claim is supported by valuable consideration. Connors v. U., 296NW21. See Dun. Dig. 1520.

31. Gifts.

Legal elements of a gift are delivery, intention to make a gift on part of donor, and absolute disposition by him of thing which he intends to give another. Owens v. O., 292NW89. See Dun. Dig. 4020.

Where a chattel is delivered to a party for his gratuitous use with authority to consume a part of it by such use and party is to return part which is not consumed, there is a gift of part which is consumed and a bailment for gratuitous use of bailee of part which is to be returned. Ruth v. H., 296NW136. See Dun. Dig. 4020.

A donor of a chattel owes donee duty of warning him of only those defects of which donor is aware and which might imperil donee by intended use of chattel. Id.

32. Suretyship.

For cases respecting fidelity bonds, see §3710.

34. ——Discharge.

Fraud of principal in a bond inducing surety to execute it is not a defense in action by obligee against surety. Neefus v. N., 296NW579. See Dun. Dig. 9098.

35½. Guaranty.

Contention that written guaranty executed to trust company prior to its consolidation with plaintiff bank was not relied upon by plaintiff in making loans to defendant subsequent to consolidation, held frivolous, where guaranty was a continuing one and was in possession of plaintiff at all times subsequent to consolidation. Chase Nat. Bank v. B., (DC-Minn), 32FSupp230.

Damage caused by negligence of railroad to a pile driver of a sub-contractor working on its right of way held within terms of bond of general contractor indemnifying railroad against damage to property "arising in any manner out of or in any manner connected with the said work". Northern Pac. Ry. Co. v. T., 288NW226. See Dun. Dig. 4337.

35¾. Indemnity.

Absent attempted escape from absolute duty to public or third person, a party may, without violation of public policy, contract for indemnity against damage resulting from his own negligence. Northern Pac. Ry. Co. v. T., 288NW226. See Dun. Dig. 1872, 4334.

Indemnity contract should be construed fairly to accomplish its purpose, rather than being subjected to an arbitrary or strict interpretation. Id. See Dun. Dig. 4335.

36. Estoppel.

There can be no estoppel without a deceptive assurance upon faith of which one claiming estoppel has acted, to his detriment if estoppel is not allowed. First & American Nat. Bank of Duluth v. W., 292NW770. See Dun. Dig. 3187.

A promise relating to intended abandonment of an existing right which influences the promisee to act to his prejudice may be basis of an estoppel, where substantial injustice will result unless promise is enforced, although there is no consideration for the promise. Thom v. T., 294NW461. See Dun. Dig. 3188.

Where estoppel is based on a party's silence, there must be not only silence, but a duty to speak under circumstances of the case, and ordinarily mere silence will not work an estoppel where a party's right appears of record. Conner v. C., 294NW650. See Dun. Dig. 3209 (80).

A party cannot claim an estoppel unless truth was unknown to him at time he acted. Id. See Dun. Dig. 3185.

Estoppel is based on proposition that party estopped is at fault, and estoppel by conduct might more appropriately be called estoppel by misconduct. Id. See Dun. Dig. 3186.

37. Patents.

Royalty agreement held to give licensee right to terminate upon ten day notice, notwithstanding supplemental agreement including additional patent omitted any mention of cancellation clause contained in original contract. Markwood v. O., 289NW830. See Dun. Dig. 7422.

Patented part of machine may not be reproduced for use without consent of patentee, even by the state. Op. Atty. Gen. (980a-11), Aug. 8, 1940.

CHAPTER 51

Interest and Negotiable Instruments

INTEREST

7036. Rate of interest.

1. In general.

State law to be applied in determining validity of a chattel mortgage questioned on ground that note secured thereby is usurious is that intended by parties. State v. Rivers, 287NW790. See Dun. Dig. 1540.

The rule of American Surety Co. of New York v. J. N. Peyton, 186 Minn. 588, 244NW74, has no application to a case where all creditors stand, as against the insolvent debtor, on an equal footing. Farmers & Merchants State Bank, 288NW19. See Dun. Dig. 824e.

Where bank entered into an agreement with its depositors and creditors whereby former was to treat a specified amount of a certain judgment as an asset, amount remaining to be held in trust for latter, and that all recoveries made on such asset should be first applied toward liquidation of the bank's "share", judgment debtor being in process of liquidation, and extent of reorganized

bank's priority" being at issue, bank's right to first payment does not include interest on amount at which judgment was treated by it as an asset. Id.

Imposition of legal rate of interest upon money withheld is in lieu of all other damages, and this was true as to refund of parts of telephone charges under judgment of court, notwithstanding that some subscribers had been charged penalties for late payments. State v. Tri-State Tel. & Tel. Co., 295NW511. See Dun. Dig. 2524, 4877.

Town board can enter into written agreement that town order will bear interest at rate of four per cent, and orders may carry notation to that effect. Op. Atty. Gen., (442B-6), Sept. 28, 1939.

2. Usury.

Absent a contract to sell at cash price, vendor's increase of credit price over cash price of an article sold by a greater percentage than is permitted by the usury law does not make the transaction usurious. Dunn v. M., 289NW411. See Dun. Dig. 9981.

The sale of an existing conditional sales contract at a discount is not a loan and is not subject to the usury law. Id. See Dun. Dig. 9981.

State law that increase in interest after default is usurious and unlawful must give way before federal statute requiring Federal Farm Loan mortgages to bear increased rate of interest after default. McGovern v. F., 296NW473. See Dun. Dig. 9961.

There can be no usury without a contract. Midland Loan Finance Co. v. L., 296NW911. See Dun. Dig. 9961.

Question of usury is generally one of fact. Id. See Dun. Dig. 9994.

3. Burden of proof.

Absent evidence of express intent, it is presumed that parties intended to be applied either law of place of performance of note or law of that one of states having contacts vital to transaction which would make contract enforceable. State v. Rivers, 287NW790. See Dun. Dig. 1540.

7038. Usurious contracts invalid—Exceptions.

2. Intent—Presumptions.

Test whether there is usury is whether contract, if performed, will result in producing to lender interest at a greater rate than that permitted by law, and whether that result was intended by lender. Midland Loan Finance Co. v. L., 296NW911. See Dun. Dig. 9964.

3. *Usurious contracts* void.

A lender guilty of usury must lose not only interest on money risked, but also principal, including as well all security given to secure performance. Midland Loan Finance Co. v. L., 296NW911. See Dun. Dig. 9963.

4. Form not controlling.

Courts look to substance of transaction, and there is no shift or device on part of lender to evade law under or behind which court will not look to ascertain real nature and object of transaction. Midland Loan Finance Co. v. L., 296NW911. See Dun. Dig. 9965.

9. Sale of property as a cover for usury.

Indication by a finance company to an automobile dealer of terms on which it will buy a proposed conditional sales contract does not convert the conditional sales contract between the dealer and his customer and the subsequent sale of the contract to the finance company into a loan by it to the dealer's customer. Dunn v. M., 289NW411. See Dun. Dig. 9981.

20. Who may assail.

Right of junior mortgagee to set up usury in senior mortgage. 24MinnLawRev124.

22. *Bona fide purchasers.*

A loan by a finance company existed and not a conventional conditional sale of an automobile where forms of contract were provided by finance company to a dealer and dealer was in communication with finance company before contract with buyer was completed. Midland Loan Finance Co. v. L., 296NW911. See Dun. Dig. 9988.

Whether plaintiff's situation is that of an assignee or an original party is unimportant where instrument sued on is in form of a conditional sales contract, which is not within statutory exception relating to negotiable paper. Id.

25. Conflict of laws.

Where Minnesota resident attended auction sale of cattle in Wisconsin and borrowed money there to pay purchase price, executing there a note and mortgage, held that note and mortgage were governed by usury statute of Wisconsin and not Minnesota, though mortgagee knew that cattle were to be taken to Minnesota and mortgage was filed there. State v. Rivers, 287NW790. See Dun. Dig. 1540.

27. Evidence.

Rule that oral testimony may not be received to vary or contradict a written instrument evidencing transaction is inapplicable where, in order to evade usury law, a certain printed form of contract is filled in by obligee in such fashion as to show no usury on its face. Midland Loan Finance Co. v. L., 296NW911. See Dun. Dig. 9995.

28. Chattel mortgages held usurious.

In action to cancel note and chattel mortgage for usury, evidence held to sustain finding that plaintiff borrowed $200 and agreed to repay it by 12 monthly payments of $21.10. Bearl v. E., 288NW844. See Dun. Dig. 9996.

TITLE I
NEGOTIABLE INSTRUMENTS IN GENERAL

ARTICLE I. FORM AND INTERPRETATION

7044. Form of negotiable instrument.

12. Payee.

Where a promissory note was not negotiable because of the omission of the name of the payee, a mere endorsement in blank would not make the instrument negotiable. Nicholaras v. S., 25NYS(2d)157.

One who took a promissory note in which the name of the payee was omitted, was not a holder in due course. Id.

Where the holder of a promissory note took note before the name of the payee was filled in, and no name was ever filled in, the law relating to the circumstances under which blank negotiable instruments may be filled in by the person in possession thereof was of no avail to such holder. Id.

13. Money orders.

Postal money orders are not negotiable. U. S. v. Northwestern Bank & Trust Co., (DC-Minn), 35FSupp484.

7047. Determinable future time—What constitutes.

Promissory notes payable at death of maker have long been countenanced in the law. Commissioner of Int. Rev. v. Keller's Estate, (CCA3), 113F(2d)833, rev'g 39 BTA1047. Cert. gr., 61SCR50. Aff'd 61SCR651.

Acceleration clause in a note, "shall forthwith be due", is for benefit of creditor, and given him option of proceeding against debtor upon happening of contingencies comprehended in acceleration clause, and prior to due date set out in notes, if he so desires, but if creditor fails to take any action upon happening of such contingencies prior to due date of note, limitations does not commence to run until due date. Chase Nat. Bank v. B., (DC-Minn), 32FSupp230.

7052. When payable to bearer.

(3).

Where insurance adjuster drew a draft on his company payable to one injured in automobile accident, and forged name of payee, and deposited proceeds in his personal account draft was payable to bearer. Hartford A. & I. Co. v. F., (CCA6), 111F(2d)762, aff'g 23FSupp53.

7055. Ante-dated and post-dated.

Act Apr. 19, 1941, c. 315, authorizes renewal of corporate existence of certain social and charitable corporations, and validates certain corporate acts of such corporations.

7059. Delivery—When effectual—When presumed.

Since a certified check is in effect an accepted bill of exchange, it may be delivered for a special purpose. Gilbert v. P., 288NW153. See Dun. Dig. 879.

As between immediate parties, and as regards a remote party other than a holder in due course, delivery of a negotiable instrument may be for a special purpose only and not for purpose of transferring property in instrument. Id.

Where delivery of negotiable instrument is for a special purpose only, taking of security by a party liable on instrument does not change nature or effect of transaction. Id.

Evidence by accommodation maker of a note, which was last of many renewals which had been signed as well by accommodated maker, that he signed upon faith of payee's promise to secure signature of accommodated maker held to sustain a reasonable inference that intention of both accommodation maker and payee was that note should not take effect until accommodated maker signed. First State Bank of Kensington v. B., 292NW20. See Dun. Dig. 879.

To show conditional delivery of a promissory note it is not enough that the maker signed upon the mere agreement of the payee to procure the signature of another. There must be a showing that the understanding was that the note was not to take effect as a contract until the additional signature was procured. Id. See Dun. Dig. 879.

7063. Liability of person signing as agent; etc.

Under Arkansas Uniform Negotiable Instruments Law trustees executing mortgage notes on behalf of a church were not personally liable thereon. Mercantile-Commerce Bank & Tr. Co. v. H., (CCA8), 113F(2d)893.

7066. Forged signature—Effect of.

Each endorser of a check bearing a prior forged endorsement is liable to subsequent endorsers under his warranties and engagements. Borserine v. M., (CCA8), 112F(2d)409.

Where bank which paid check upon payee's forged endorsement was sued by payee and drawer for amount of check, the bank could set off its claim against drawer's account arising from payment of the check, though the drawer was payee's agent in selling real estate and payee was the equitable owner of certain deposits in drawer's account which arose from agency transaction, the bank having no notice as to what part of deposits in drawer's account were agency receipts and belonged to the payee. Corbett v. K., (CCA6), 112F(2d)511.

Rule that payee may recover from drawee when payment of check has been made upon a forged endorsement of the payee if the drawee has been put upon notice that the proceeds are being misapprporiated does not apply where the act of drawee's teller relied upon as grounds for charging drawee was performed in good faith, and where she was justified in believing that the proceeds of the checks were being used in payee's business. Id.

The equitable doctrine of permitting recovery where there has been an unjust enrichment should have greater weight in determining rights of parties where postal money orders are issued than the doctrine of Price v. Neal, namely, that when the drawee of a bill of exchange, not knowing that the bill is forged, pays the same to an innocent holder, the drawee cannot recover the payments made. U. S. v. Northwestern Bank & Trust Co., (DC-Minn), 35FSupp484.

Where bank cashed 4 postal money orders and in turn received payment from post office, government was entitled to recover from bank amount paid. Id.

Favorable assurance of clerk in post office as to genuineness of postal orders, in response to bank's inquiry when orders were presented to it for payment, did not prejudice government's rights. Id.

Check to father indorsed by daughter without authority confers no title on indorsee. Lindsey v. P., 140 SW(2d)(Tenn) 803.

ARTICLE II. CONSIDERATION

7067. Presumption of consideration.

Claimants against estate of a decedent made out a prima facie case by offering notes and resting, but when executor introduced evidence tending to show that neither note was executed for a legal consideration, this placed upon claimant burden of introducing further evidence because burden of proof on question of consideration rests upon claimants. Custer's Estate, 295NW848. See Dun. Dig. 1040.

Law abolishes presumption of consideration for a sealed instrument and substitutes rebuttable presumption that all negotiable instruments, sealed or unsealed, have been issued for a valuable consideration, and defense of want of consideration may be asserted against any person not a holder in due course. Italo-Petroleum Corp. v. H., 14Atl(2d)(Del)401.

7072. Liability of accommodation party.

An accommodation maker is primarily liable. First State Bank of Kensington v. B., 292NW20. See Dun. Dig. 973a.

ARTICLE III. NEGOTIATION

7073. What constitutes negotiation.

Postal money orders are not negotiable. U. S. v. Northwestern Bank & Trust Co., (DC-Minn), 35FSupp484.

Under uniform bank collection code, indorsement "pay to order of any bank, banker or trust company all prior endorsements guaranteed" is an express guaranty to all subsequent holders and to drawee or payor of genuineness of and authority to make prior indorsements. First Nat. Bank v. N., 14Atl(2d)(NJ)765.

Action of conversion does not lie in favor of drawer of check against collecting bank. Id.

ARTICLE IV. RIGHTS OF THE HOLDER

7095. What constitutes holder in due course.

Decisions of state courts held binding upon federal courts in determining question whether holder of accommodation paper was a holder in due course. D'Oench, Dohme & Co. v. F., (CCA8), 117F(2d)491.

Where declaration alleged endorsement and delivery of note sued on, failure to deny pleas admitted that plaintiff was holder in due course. Knabb v. R., 197So (Fla)707.

7096. When person not deemed holder in due course.

Where vendor assigned land contract and notes of vendee to a bank as security for a loan, one purchasing land contract and note from bank receiver long after maturity took them subject to any defense between vendor and bank, and took them subject to pledge. Bishop v. L., 291NW297. See Dun. Dig. 967.

7099. What constitutes notice of defect.

Notice of infirmity, to agent of bank for collection of particular notes, in a note not included in his list, held not imputable to the bank rendering it incapable of claiming as a holder in due course. Nat'l Bank of Burlington v. M., 9SE(2d)(NC)372.

Holder was not holder in due course where she took note more than year after issuance from payee, who was her agent, where agent had knowledge that there had been no consideration, and that note had been paid. Wright v. K., 108Pac(2d)(Wyo)262.

Where holder of note was not holder in due course, the court erred in refusing to admit evidence that there was no consideration for note or that it had been paid. Id.

7100. Rights of holder in due course.

Usury in Georgia results in forfeiture of entire interest as against holder in due course. Newcomb v. N., 10SE (2d)(Ga)51.

ARTICLE V.—LIABILITIES OF PARTIES

7109. Liability of general indorser.

Indorser of negotiable paper does not warrant to drawee genuineness of maker's signature, but such warranty extends only to subsequent holders in due course. Security State Bank & Tr. Co. v. F., 199So(LaApp)472.

TITLE II

BILLS OF EXCHANGE

ARTICLE I. FORM AND INTERPRETATION

7173. When bill may be treated as promissory note.

Order bill of lading with draft attached, payable 20 days after sight, may be treated as a bill of exchange or promissory note. Penn. R. Co. v. B., (CCA6), 111F(2d)983.

TITLE III

PROMISSORY NOTES AND CHECKS

ARTICLE I

7230. Certification of check—Effect of.

Since a certified check is in effect an accepted bill of exchange, it may be delivered for a special purpose. Gilbert v. P., 288NW153. See Dun. Dig. 879.

If drawer delivers check already certified the relations then between him and the payee or holder are the same as if check had not been certified, but it is otherwise where check is delivered without certification and holder has it certified. Missouri-Kansas Pipe Line Co. v. S., 14Atl(2d)(Del)414.

7232. When check operates as an assignment.

A drawee bank is not contractually liable to the payee of a check in the absence of certification because there is no privity of contract. Corbett v. K., (CCA6), 112F(2d) 511.

7233-1. Banks receiving items for deposit or collection—Liability.

Payment of money by drawee bank to holder of check bearing false endorsement is not a payment of the check, and in law that check remains unpaid. Borserine v. M., (CCA8), 112F(2d)409.

Drawee of checks paying same upon payee's forged indorsement was not liable to payee on ground that it knew through one of its tellers that payee had not personally endorsed the checks and hence knew or should have known that payee's secretary who collected the money on such checks, was misappropriating the funds, where payee had frequently and ostentatiously expressed his confidence in such secretary and made known his extensive reliance upon her conduct of his business. Corbett v. K., (CCA6), 112F(2d)511.

Agreement between bank and depositor as to signatures to be recognized upon checks upon certain accounts held not to render bank liable for recognizing a different signature upon another account of depositor. Id.

Where check was drawn on bank containing deposit of both drawer and payee and was deposited and credited to payee, but before it was charged against drawer's account, payment was stopped, bank could not avoid obligation to payee by charging bank amount of check. W. A. White Brokerage Co. v. C., 290NW790. See Dun. Dig. 787.

TITLE IV

GENERAL PROVISIONS

ARTICLE I

7239. Application of act.

Plaintiff, a resident of Texas, cannot sue defendant, a resident of Texas, in Louisiana on a promissory note made in Texas, and lower court did not abuse its discretion in not giving reasons for declining jurisdiction though the law of Louisiana and Texas is the same on the subject, both states having adopted a Uniform Negotiable Instruments Act. Union City Transfer v. F., 199 So(LaApp)206.

It was not intention of legislature in passing this act to supersede, amend or alter code of practice relative to procedure in enforcement of obligations. Brock v. M., 200So(La)511.

MISCELLANEOUS PROVISIONS

7242. Contracts due on holidays, etc.

Under Michigan statutes, note falling due on Saturday was payable on next succeeding business day, which was Monday, and limitations began to run from then. Schram v. C., (DC-Mich)35FSupp531.