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To

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and

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Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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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, 206M85, 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, 206M149, 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., 209M86, 295NW511. See Dun. Dig. 2524, 4877.

Where cotenant demanding interest has been in possession of land asserting title in himself and receiving rents and profits, and a tender by his cotenants of amount due him for expenditures made by him on account of common property would be futile, he is entitled to interest on expenditures only from entry of judgment. Larkin v. McCabe, 211M11, 299NW649. See Dun. Dig. 4884.

Under a note due 18 months from date providing interest of four per cent per annum for first six months, five per cent second six months, and six per cent last six months, and after maturity highest rate per annum enforcible under statute, interest after due date would be at rate of six per cent, which was the rate when note fell due. Myhre v. Severson, 211M189, 300NW605. See Dun. Dig. 4881.

Where there is no dispute over correctness of principal sum of damages, allowance of interest is proper. Bang v. International Sisal Co., 212M135, 4NW(2d)113, 141 ALR657. See Dun. Dig. 2524, 4879.

Interest as damages was properly allowed from date of breach of employment contract. Id. See Dun. Dig. 2524, 4879, 5850.

Where plaintiff's intestate while being cared for by his daughter was in such failing physical condition as to lead to belief that his early demise was probable and no reasonable length of time could be anticipated for safe investment of funds left with his daughter's husband out of which to pay for decedent's nursing and care, such fund during decedent's lifetime was not subject to an interest charge against the husband, fund remaining under decedent's control during his lifetime. Droege v. Brockmeyer, 214M182, 7NW(2d)538. See Dun. Dig. 4879.

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., 206M550, 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., 209M403, 296NW473. See Dun. Dig. 9961.

There can be no usury without a contract. Midland Loan Finance Co. v. L., 209M278, 296NW911. See Dun. Dig. 9961.

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

Clause "or any increase therein after making and delivery" is not applicable to a note bearing interest at four per cent first six months, five per cent second six months, and six per cent third six months, since no part of agreement was made "after making and delivery". Myhre v. Severson, 211M187, 300NW605. See Dun. Dig. 4881.

A note due 18 months from date providing interest at four per cent first six months, five per cent second six months, and six per cent last six months "and after maturity until paid at the highest rate per annum enforcible under the statutes" does not stipulate for a higher rate of interest after maturity than before. Id. See Dun. Dig. 4881, 9961.

An agreement to pay a higher rate after maturity is in nature of a penalty and not enforcible. Id. See Dun. Dig. 4881.

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, 206M85, 287NW790. See Dun. Dig. 1540.

7037. Usurious interest—Recovery.

While testimony of bank officers was that loan was made by president personally and not by bank, inference which jury might reasonably draw from checks, notes, and accounts justified a finding that transaction claimed to be usurious was in fact with bank. Dege v. Produce Exchange Bank, 212M44, 2NW(2d)423. See Dun. Dig. 9996.

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., 209M278, 296NW911. See Dun. Dig. 9964.

"Corrupt intent" required in usury is intent to take or receive more for the forbearance of money than the law permits, which is true whether or not taker knows he is violating the usury law. Dege v. Produce Exchange Bank, 212M44, 2NW(2d)423. 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., 209M278, 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., 209M278, 296NW911. See Dun. Dig. 9965.

7. Degree of proof required.

Courts have never hesitated to pronounce a contract usurious whenever the circumstantial evidence, intrinsic or extrinsic, reasonably satisfied them that such was the fact. Dege v. Produce Exchange Bank, 212M44, 2NW(2d) 423. See Dun. Dig. 9996.

Degree of proof of usury, whether asserted defensively or as the basis for affirmative relief, shall be the same as the degree of proof in ordinary civil case, that is, proof by a fair preponderance of the evidence. Id.

Usury may be proved by a fair preponderance of the evidence. Id.

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., 206M550, 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., 209M278, 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, 206M85, 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., 209M278, 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 pay-

ments of $21.10. Bearl v. E., 206M479, 288NW844. See Dun. Dig. 9996.

7042. Salary loans and chattel mortgage loans. [Repealed.]

Acquiring right to trade name. Personal Loan Co. v. Personal Finance Co., 212M600, 5NW(2d)61. See Dun. Dig. 9667.

TITLE I

NEGOTIABLE INSTRUMENTS IN GENERAL

ARTICLE I. FORM AND INTERPRETATION

7044. Form of negotiable instrument.

1. Unconditional promise or order.

Chattel mortgage agreement executed in favor of auto finance company contained promises to do acts in addition to the payment of money, and was not negotiable. Akron Auto Finance Co. v. Stonebroker, 66 OhioApp 507, 35NE(2d)585.

8. Guaranty of notes.

An agreement to guarantee a note may constitute a guaranty of "payment", though that word is not used. Holbert v. Wermerskirchen, 210M119, 297NW327. See Dun. Dig. 4076.

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.

7046. When promise is unconditional.

Notation "The obligation of the acceptor hereof arises out of the purchase of goods from the drawer, maturity being in conformity with the original terms of purchase" on a trade acceptance did not make it a conditional promise so as to destroy negotiability. State Trading Corp. v. Jordan, 146PaSuper166, 22Atl(2d)30.

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.

7050. When payable on demand.

Evidence that promissory note bearing no maturity date was to be paid only on payee's demand and was to be noncollectible after her death was barred by parol evidence rule. Skogberg v. Hjelm, 211M392, 1NW(2d)599. See Dun. Dig. 879, 1011.

7052. When payable to bearer.

Though a check drawn payable to a payee, who is an existing person, but who is not entitled to the check and is not to get it, payee is a fictitious payee, and knowledge of a claim agent approving false claims and having cashier draw checks therefor, and then forging the name of the payee would not constitute knowledge of drawer of check, the cashier or the employer and such check would not be payable to bearer, such claim agent having no authority to draw check and drawing none. Home Indemnity Co. v. S., 8NW(2d)(Iowa)757. See Dun. Dig. 876.

As affecting liability of bank receiving for deposit or cashing checks upon which names of payees have been forged, if an agent or employee who executed checks had authority to do so, and it was he that intended to defraud his employer by making the checks payable to fictitious persons, or to existing persons whom he did not intend should have the checks, then whatever he thus did was within the scope of his authority as agent of his principal and was binding upon the latter, and his knowledge, acts or intention being also those of his employer or principal. Id. See Dun. Dig. 997.

(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.

7054. Date, presumption as to.

Signature by payee of note some considerable distance below maker's signature would constitute a blank indorsement, if there was delivery. Fox v. Mitchell, 302 Mich201, 4NW(2d)518. See Dun. Dig. 933.

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., 206M213, 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., 207M477, 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.

Evidence that promissory note bearing no maturity date was to be paid only on payee's demand and was to be noncollectible after her death was barred by parol evidence rule. Skogberg v. Hjelm, 211M392, 1NW(2d)599. See Dun. Dig. 879, 1011.

Evidence must show a condition precedent (that legal liability never commenced), not a condition subsequent. Id. See Dun. Dig. 879.

In action against issuing bank by named payee on cashier's check issued for a special purpose and subject to a contract between payee and purchaser by which check was used as an earnest money deposit, and was to be returned to purchaser in event payee could not perform his contract, trial court was justified in interpleading purchaser of check and discharging bank as defendant. Deones v. Zeches, 212M260, 3NW(2d)432. See Dun. Dig. 879.

A cashier's check is merely a bill of exchange, and even though negotiable in form, is not equivalent of money, and drawer bank does in certain circumstances have a valid defense against holder, and payment of check can be stopped, and may be stopped by purchaser as against one not a holder in due course. Id. See Dun. Dig. 995a.

Where delivery of note was contrary to intent of endorser and payee had notice of conditions under which indorsement was executed, there was no "valid and intentional delivery", and there was a complete failure of consideration which would also be a defense where condition was not fulfilled. Peterson's Estate, 242Wis448, 8NW(2d)266. See Dun. Dig. 879.

7061. Liability of person signing in trade or assumed name.

When note is no longer in possession of party whose signature appears thereon, a valid and intentional delivery by him is presumed until contrary is proved. Fox v. Mitchell, 302Mich201, 4NW(2d)518. See Dun. Dig. 878.

7062. Signature by agent—Authority, etc.

Signature by payee of note some considerable distance below maker's signature would constitute a blank indorsement, if there was delivery. Fox v. Mitchell, 302 Mich201, 4NW(2d)518. See Dun. Dig. 933.

One signing note in a representative capacity without authority is personally liable. Johnson v. Graff, 5 N. W. (2d) (SD) 33. See Dun. Dig. 877.

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.

When endorsement of a check is forged it gives no right to enforce payment unless the party against whom it is sought to enforce payment is precluded from setting up the forgery. Washington Loan & Trust Co. v. U. S., 77USAppDC284, 134F(2d)59, aff'g (DC-DC), 47FSupp25. See Dun. Dig. 1014a.

An action for money had and received would not lie against a bank cashing a check upon which name of payee was forged and paying out entire proceeds of check by cash and credit and receiving from drawee bank only the amount it had disbursed, since it was not unjustly enriched. Soderlin v. Marquette Nat. Bank, 214M408, 8NW(2d)331. See Dun. Dig. 797. But see Home Indemnity Co. v. State Bank of Fort Dodge, 8NW(2d)(Iowa)757; Sidles Co. v. Pioneer Valley Sav. Bank, 8NW(2d)(Iowa)794.

Whether or not an endorsement on a check is sufficient if made by authority of payee, it was no defense to an action against bank cashing check, where evidence did not disclose any such authority from payee, and written endorsement of payee was also forged upon the check by employee of payee who received proceeds from bank. Soderlin v. Marquette Nat. Bank, 214M408, 8NW(2d)331. See Dun. Dig. 984a, 997.

Passage of uniform negotiable instruments act without a limitation provision did not impliedly repeal state statute requiring a bank depositor to report forgeries within 6 months. Brunswick Corp. v. Northwestern Nat. Bank & Trust Co., 214M370, 8NW(2d)333, 146ALR833. See Dun. Dig. 781.

Corporate depositor was bound by provision in passbook that discrepancies and errors be reported to bank within 10 days after receiving statement and cancelled check, though employee charged with duty of examining such statements was the person guilty of forging checks. Id. See Dun. Dig. 999.

An intermediate bank cashing or taking for deposit checks upon which names of payees have been forged and receiving money therefore from drawee bank, receiving such proceeds as its own property and wrongfully exercising dominion over the money so received to the deprivation and injury of the one rightfully entitled to its possession and ownerships, was guilty of converting the property. Home Indemnity Co. v. S., 8NW(2d)(Iowa)757. See Dun. Dig. 997, 999, 1014a.

Where employee of drawer of check forged names of payees thereon and insurer paid drawer the amount of such checks and took an assignment of all the rights, title and interest of the insured in and to the checks, such assignment included cause of action against an intermediate bank cashing and receiving such check for deposit. Id. See Dun. Dig. 999.

Where an employer took out insurance to indemnity itself and also bank in which it had its account against loss from forgery or alteration of any checks, and its claim agent approved claim of person having no claim against employer and forged names of payees of checks issued in payment of such false claims, and insurer paid indemnity to such employer and was subrogated to rights and causes of action of employer and drawee bank, such insurer had a cause of action for conversion against an intermediate bank which cashed or took in deposit the checks bearing the forged names of the payees, as against defense that there was no privity between insurer and such bank and that money received by defendant was money of drawee bank, and not the money of the drawer, and that plaintiff had ratified the action of the drawee in paying the check and therefore necessarily ratified their collection by the defendant. Id. See Dun Dig. 997, 999, 1014a.

Section is simply a statutory embodiment of a rule of the "law merchant" evidenced by judicial decisions from the early English courts down through the years, and a forged indorsement nullifies the instrument as to all parties against whom the forgery is committed, and the doctrine of bona fides does not apply to such a holder, and he acquires no interest in it, although he may be ignorant of the forgery, and the moment such a draft or check is paid by the drawee the holder becomes liable as for money had and received, and as a corollary to this rule the holder of a check payable to order must trace his title through genuine indorsements, including that of the payee. Id. See Dun. Dig. 1014a.

Drawer of check upon which name of payee is forged may sue intermediate collecting bank directly and recover its loss after having paid the debt for which the check was given. Sidles Co. v. P., 8NW(2d)(Iowa)794. See Dun. Dig. 997, 999.

Intermediate bank was not liable to drawer for expenses and attorney fees arising out of action by payee of check against drawer on original obligation for which check had been issued, notwithstanding that drawer gave notice to bank to defend such action and attempted to vouch it in. Id.

Negligence of a drawer in delivering checks to a third person rather than to payee cannot be said to have been proximate cause of forgery, nor of act of intermediate bank in accepting and collecting from drawee. Id.

Payee of check, and the rightful owner of it, was entitled to bring an action against the intermediate bank for wrongfully appropriating his property under the board's indorsement, but was not required to do so. 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.

In action to remove cloud from title, where a mortgage was being attacked as fraudulent conveyance because allegedly given by mortgagor when insolvent for less than fair consideration, it was prejudicial for trial judge to reject proof that notes which mortgage secured were executed for fair consideration, particularly where his own remarks had induced mortgagee to believe that such proof was unnecessary until notes were attacked. McIntyre v. Peterson, 210M419, 298NW713. See Dun. Dig. 869.

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, 295NW(1a)848. 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.

7068. Consideration, what constitutes.

Where in distribution of estate of a deceased partner and before estate was closed, partnership assets were turned over to and trusteed, and later a creditor permitted estate of deceased partner and other partners to divide indebtedness and accepted separate notes from trustees of estate of deceased partner and other partners, equity will not allow estate to escape liability for its proportionate share of indebtedness of partnership on mere claim that there was no consideration for renewal notes given by trustees of deceased partner because a claim had not been filed against his estate. Traverse City Depositors' Corp. v. Case, 297Mich304, 297NW501.

Authorized persons signing a note as trustees of an estate of a deceased person were not personally liable. Id.

Where delivery of note contrary to intent of endorser and payee had notice of conditions under which indorsement was executed, there was no "valid and intentional delivery", and there was a complete failure of consideration which would also be a defense where condition was not fulfilled. Peterson's Estate, 242Wis448, 8NW(2d)266. See Dun. Dig. 869, 1016.

7072. Liability of accommodation party.

In action by bank to recover on a promissory note, fact that note was made without consideration for the accommodation of the bank and to lend the name of the maker to another debtor of the bank did not constitute a valid defense. Federal Deposit Ins. Corp. v. Lynch, (DC-NY), 46FSupp466. See Dun. Dig. 979.

An accommodation maker is primarily liable. First State Bank of Kensington v. B., 207M477, 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.

A bond payable to bearer is a negotiable instrument, title to which can be transmitted only by endorsement or delivery. Larkin v. McCabe, 211M11, 299NW649. See Dun. Dig. 886.

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., 14At1(2d)(NJ)765.

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

7076. Kinds of indorsement.

Signature by payee of note some considerable distance below maker's signature would constitute a blank indorsement, if there was delivery. Fox v. Mitchell, 302 Mich201, 4NW(2d)518. See Dun. Dig. 933.

7079. When indorsement restrictive.

Signature by payee of note some considerable distance below maker's signature would constitute a blank indorsement, if there was delivery. Fox v. Mitchell, 302 Mich201, 4NW(2d)518. See Dun. Dig. 933.

7092. Transfer without indorsement—Effect of.

One to whom a promissory note was transferred, for value, without endorsement, could bring an action on the note in his own name. Lunceford v. Nunnally, 65Ga App234, 15SE(2d)620.

ARTICLE IV. RIGHTS OF THE HOLDER

7095. What constitutes holder in due course.

In a suit under an act of Congress by a federal corporation on a note jurisdiction of the federal court is not based on diversity of citizenship and hence the conflict of laws rules was not binding upon the federal court where of state of forum defendant's liability involved a decision of a federal question. D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp., 315US447, 62SCR676, aff'g (CCA8), 117F(2d)491. Reh. den. 315US830, 62SCR910.

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., 207M330, 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.

If a negotiable instrument, in fact executed on Sunday, but bearing a secular date, reaches the hands of a holder in due course, the maker of such note is estopped to repudiate the apparent date, and the note is a valid and enforceable obligation to the same extent as if it had been executed on a secular date. U. S. v. O'Hara, (DC-Mich), 46FSupp780. See Dun. Dig. 955.

Where a bank purchased a negotiable instrument from a contractor without notice of the defense that the contract on which the note was based had not been completed, Federal Housing Authority which took the note upon payment of its amount to the bank, could recover from the maker. Id. See Dun. Dig. 957.

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

7101. When subject to original defenses.

Court takes judicial notice of fact that from very early days, while municipal warrants have never been negotiable, they have been transferable by endorsement and delivery and have been treated by banks and dealers in commercial paper as having all the attributes of negotiability, except that of freedom from original defenses. State Bank of Mora v. Billstrom, 210M497, 299NW 199. See Dun. Dig. 2284a.

7102. Who deemed holder in due course.

A bank which took a note from a contractor for a valid consideration and without notice of maker's defense that the contract on which the note was based had not been completed was a holder in due course. U. S. v. O'Hara, (DC-Mich), 46FSupp780. See Dun. Dig. 951.

Production by plaintiff of bearer bonds issued by a city was prima facie proof of ownership. Batchelder v. City of Faribault, 212M251, 3NW(2d)778. See Dun. Dig. 1040.

ARTICLE V.—LIABILITIES OF PARTIES

7103. Liability of maker.

Where an instrument containing words "I promise to pay" is signed by two or more persons they are deemed to be jointly and severally liable thereon. Federal Farm Mortgage Corp. v. Adams, 5 N. W. (2d) (Neb) 384. See Dun. Dig. 874.

7108. Warranty where negotiation by delivery, etc.

Signature by payee of note some considerable distance below maker's signature would constitute a blank indorsement, if there was delivery. Fox v. Mitchell, 302 Mich201, 4NW(2d)518. See Dun. Dig. 933.

7109. Liability of general indorser.

While payee relies on promised guaranty as ground of recovery, fact that defendant agreed to endorse note shows an intention to assume a liability for payment rather than collection, since an agreement to endorse a note binds promisor to execute an unqualified endorsement with recourse, and with liability not conditioned on endorsee's exhausting his legal remedies against the maker. Holbert v. Wermerskirchen, 210M119, 297NW327. See Dun. Dig. 4076, 4077.

Payee of a promissory note who endorses it with an unconditional guaranty of payment becomes absolutely liable to transferee upon default of maker without any obligation on transferee's part to exhaust available legal remedies to collect note against maker. Id. See Dun. Dig. 4076.

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.

ARTICLE VI.—PRESENTMENT FOR PAYMENT

7113. Effect of want of demand on principal debtor.

One taking note by transfer after maturity need not make demand on maker before brnging action. Lunceford v. Nunnally, 65GaApp234, 15SE(2d)620.

7128. Payment of negotiable instruments; 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. Checker Service Corporation, (DC-Mich), 35FSupp531.

ARTICLE VIII. DISCHARGE OF NEGOTIABLE INSTRUMENTS

7162. Instrument—How discharged.

Absent a provision in note or mortgage for application thereof, proceeds of a foreclosure sale are treated as an involuntary payment subject to application by court according to principles of equity and justice, and in absence of controlling equity compelling a different application, such proceeds should be applied first on indebtedness for which personal liability is barred by statute of limitations and then to the balance. Massachusetts Mut. Life Ins. Co. v. Paust, 212M56, 2NW(2d)410, 139ALR473. See Dun. Dig. 912.

The legal effect of endorsement of a mortgage note by mortgagee, assignment of the mortgae, and delivery of all three to mortagor would be a discharge of the note and mortgage, and not consummation of a gift. Bagley v. Kerr, 166Ore368, 112Pac(2d)459.

7165. Renunciation by holder.

Obligation of a mortgage note could be renounced by a marginal satisfaction of the mortgage by mortgagee. Bagley v. Kerr, 166Ore368, 112Pac(2d)459.

Renunciation of a mortgage obligation by mortgagee does not require consideration. Id.

7168. What constitutes a material alteration.

In suit by administrator to foreclose mortgage securing a note carrying a notation signed by payee that the note had been paid in full, burden of proof was upon plaintiff to show that cancellation was made unintentionally, under a mistake or without authority of the holder. Fox v. Mitchell, 302Mich201, 4NW(2d)518. See Dun. Dig. 910.

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

7228. Clerk defined.

A cashier's check is merely a bill of exchange, and even though negotiable in form, is not equivalent of money, and drawer bank does in certain circumstances have a valid defense against holder, and payment of

check can be stopped, and may be stopped by purchaser as against one not a holder in due course. Deones v. Zeches, 212M260, 3NW(2d)432. See Dun. Dig. 995a.

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., 206M213, 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.

A gift by check is not an assignment of any part of fund in bank as between the parties and was an incompleted gift where not presented to bank before drawer was adjudged incompetent and court in guardianship properly disallowed claim. Thornton's Guardianship, 243Wis397, 10NW(2d)193. See Dun. Dig. 982.

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., 207M239, 290NW790. See Dun. Dig. 787.

Whether or not an endorsement on a check is sufficient if made by authority of payee, it was no defense to an action against bank cashing check, where evidence did not disclose any such authority from payee, and written endorsement of payee was also forged upon the check by employee of payee who received proceeds from bank. Soderlin v. Marquette Nat. Bank, 214M408, 8NW(2d)331. See Dun. Dig. 984a, 997.

TITLE IV

GENERAL PROVISIONS

ARTICLE I

7235. Definitions and meaning of terms.

Passage of uniform negotiable instruments act without a limitation provision did not impliedly repeal state statute requiring a bank depositor to report forgeries within 6 months. Brunswick Corp. v. Northwestern Nat. Bank & Trust Co., 214M370, 8NW(2d)333, 146ALR833. See Dun. Dig. 781.

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.

7247. Instrument obtained by fraud.

Passage of uniform negotiable instruments act without a limitation provision did not impliedly repeal state statute requiring a bank depositor to report forgeries within 6 months. Brunswick Corp. v. Northwestern Nat. Bank & Trust Co., 214M370, 8NW(2d)333, 146ALR833. See Dun. Dig. 1019.

CHAPTER 52

Partition Fences

7248. Fence viewers.

Members who are related to parties are not disqualified. Op. Atty. Gen. (631n), Sept. 14, 1943.

7249. One barbed wire permitted with woven wire as a legal fence.

Latter part of section refers only to woven wire fences, but several definitions of a legal fence contained in first part of section do not limit obligation of sharing expense only in case of woven wire fences. Op. Atty. Gen. (631f), Sept. 27, 1940.

Owner of property bounded on one side by a lake, 2 sides by a woven wire fence, can force adjoining landowner to erect a woven wire fence on his half of common boundary without fencing along lake. Op. Atty. Gen. (631J), Feb. 24, 1941.

Where owner of sheep has his land enclosed by a woven wire fence on three sides and half of common boundary, he cannot be prosecuted by adjoining owner for permitting his sheep to run at large by crawling under five-wire fence maintained by complaining party, since he may be compelled to construct and maintain a woven wire fence. Op. Atty. Gen. (631h), Apr. 20, 1942.

An owner who has built a woven wire fence enclosing only 25 acres of his tract, with exception of half of line fence between him and adjoining owner, the latter is obliged to build half of the fence on the common boundary. Op. Atty. Gen. (631h), May 4, 1943.

7250. Occupants to maintain.

Land owner fencing farm on 3 sides with a 2-wire barb wire fence may compel adjoining owner to share in construction of a 3-wire barb wire fence on adjoining side. Op. Atty. Gen. (631f), Sept. 27, 1940.

School district owning a school house site and adjoining farmer come within general provisions of law, and department advises against barbed wire around school grounds. Op. Atty. Gen. (631L), Oct. 23, 1940.

CHAPTER 53

Estrays and Beasts Doing Damage

MISCHIEVOUS DOGS

7284. Owners or keepers of dogs liable for damage done.

Owner of a dog was not liable where it voluntarily went upon property of another and jumped upon possessor, causing her to fall and to sustain person injuries, unless dog was vicious or had a propensity to cause such harm to owner's knowledge or notice. Olson v. P., 206M 415, 288NW856. See Dun. Dig. 275.

One cannot obtain damages for injury to his own stock done by his own dog and a neighbor's dog, both of which he identified. Op. Atty. Gen. (146f), May 12, 1942.

There is no statutory liability imposed upon owner of a dog which kills a chicken, but this does not mean that owner may not be liable under rules of common law. Op. Atty. Gen. (146f), Aug. 29, 1942.