

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

36

IN FORCE

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VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

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SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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bushel of either or any of the articles hereinbefore mentioned shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than five dollars, nor more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment. (*As amended* 1887, c. 22.)

CHAPTER 23.

OF MONEY, BONDS, BILLS OF EXCHANGE, AND PROMISSORY NOTES.

*§ 1. Rate of interest.

That interest for any legal indebtedness shall be at the rate of seven dollars upon one hundred dollars for a year, unless a different rate is contracted for in writing; and no person, company, or corporation shall, directly or indirectly, take or receive in money, goods, or things in action, or in any other way, any greater sum, or any greater value, for the loan or forbearance of money, goods, or things in action, than ten dollars on one hundred dollars for one year; and in the computation of interest upon any bond, note, or other instrument or agreement, interest shall not be compounded. But any contract to pay interest not usurious upon interest overdue shall not be construed to be usury: *provided*, that all contracts hereafter made shall bear the same rate of interest after they become due as before, and that any provision in any contract, note, or instrument providing for an increase of the rate of interest upon maturity, or any increase therein after the making and delivery thereof, shall work a forfeiture of the entire interest thereon: *provided, further*, that the foregoing proviso shall not apply to notes or contracts which bear no interest before maturity. (1879, c. 66, § 1, * *as amended* 1887, c. 66.)

When a note draws interest from date at 5 per cent., but contains no stipulation as to interest after maturity, it is proper to allow interest by way of damages at the rate of 7 per cent. after maturity. *Moreland v. Lawrence*, 23 Minn. 84.

It is not competent for parties to a contract to stipulate for a rate of interest, after due different from that which the contract bears before due. *Newell v. Houlton*, 22 Minn. 19, reviewing the earlier cases. For the early cases on this subject, see *Brewster v. Wakefield*, 1 Minn. 352, (Gil. 260,) reversed in U. S. supreme court, 22 How. 118; *Mason v. Callender*, 2 Minn. 350, (Gil. 302;) *Talcott v. Marston*, 3 Minn. 339, (Gil. 238;); *Kent v. Bown*, 3 Minn. 347, (Gil. 246.)

See, also, *McCutchen v. Town of Freedom*, 15 Minn. 217, 220, (Gil. 169, 171;); *Owsley v. Greenwood*, 18 Minn. 429, 431, (Gil. 386, 388;); *Daniels v. Wilson*, 21 Minn. 532.

See, generally, *Mackey v. Winkler*, 35 Minn. 513, 29 N. W. Rep. 337; *Avery v. Creigh*, 35 Minn. 456, 29 N. W. Rep. 154; *Egbert v. Peters*, 35 Minn. 312, 29 N. W. Rep. 134; *Elston v. Kelly*, 34 Minn. 409, 26 N. W. Rep. 229.

*§ 2. Interest limited to 12 per cent.

[Repealed 1879, c. 66, § 7, *post*, *§ 7a.]

*§ 3. Usurious interest—Recovery.

Every person who, for any such loan or forbearance, shall have paid or delivered any greater sum or value than is above allowed to be received, may, by himself or his personal representatives, recover in an action against the person who shall have taken or received the same, or his personal representa-

*"An act relating to interest on money and usury." Approved March 5, 1879. Went into effect July 1, 1879.

tives, the full amount of interest or premium so paid, with costs, if such action shall be brought within two years after such payment or delivery: *provided*, that one half of the amount so recovered shall be paid by the officer collecting the same into the county treasury of the county where such penalty is collected for the use of the common schools. (1877, c. 15, § 2, *as re-enacted* 1879, c. 66, § 2.)

Prior to the passage of this section, it was held that one who voluntarily paid a rate of interest greater than that which the statute enabled parties to stipulate for could recover the excess. *Woolfolk v. Bird*, 22 Minn. 341, followed afterwards in *Cornell v. Smith*, 27 Minn. 132, 6 N. W. Rep. 460; *Taylor v. Burgess*, 26 Minn. 547, 550, 6 N. W. Rep. 350.

It has been held that the words "shall have paid or delivered any greater sum or value" mean such a delivery as passes title, and that a delivery of the possession of real estate under an agreement to transfer title is not such a delivery. *Howe v. Carpenter*, (Wis.) 6 N. W. Rep. 357.

*§ 4. Usurious contracts invalid—Exceptions.

All bonds, bills, notes, assurances, conveyances, chattel mortgages, and all other contracts and securities whatsoever, and all deposits of goods, or anything whatever, whereupon or whereby there shall be reserved, secured, or taken any greater sum or value for the loan or forbearance of any money, goods, or things in action, than is above prescribed, shall be void, except as to *bona fide* purchasers of negotiable paper, as hereinafter provided, in good faith, for a valuable consideration, before maturity: *provided*, that no merely clerical error in the computation of interest, made with no intent to avoid the provisions of this act, shall constitute usury: *provided, further*, that interest at the rate of one-twelfth of ten per centum for every thirty days shall be construed to not exceed ten per centum per annum: *provided, further*, that the payment of interest in advance for one year, at a rate not to exceed ten per centum per annum, shall not be construed to constitute usury: *provided, further*, that nothing herein shall be construed to prevent the purchase of negotiable mercantile paper, usurious or otherwise, for a valuable consideration, by an innocent purchaser, free from all equities, at any price before the maturity of the same, when there has been no intent to evade the provisions of this act, or where said purchase has not been a part of the original usurious transaction. In any case, however, where the original holder of an usurious note sells the same to an innocent purchaser, the maker of said note, or his representatives, shall have the right to recover back from the said original holder the amount of principal and interest paid by him on said note. (1879, c. 66, § 3.)

A loan of money is an essential element of a usurious transaction. *Case v. Fish*, (Wis.) 15 N. W. Rep. 808.

Usurious contracts, except as provided in the case of certain innocent purchasers, are absolutely void; and the effect of the statute is not avoided by the substitution of a new security for one infected with usury. *Jordan v. Humphrey*, 31 Minn. 495, 18 N. W. Rep. 450; *Allen v. Fogg*, (Iowa,) 23 N. W. Rep. 643.

The exception of *bona fide* purchasers is not applicable to mortgages securing negotiable paper. *Scott v. Austin*, 36 Minn. 460, 32 N. W. Rep. 89, 864.

Where a contract for a usurious loan is evidenced by a note secured by bill of sale, the contract as well as the note and bill of sale is void, and there is no valid indebtedness. *Ormund v. Hobart*, 36 Minn. 306, 31 N. W. Rep. 213. As to usurious chattel mortgage, see *Wetherell v. Stewart*, 35 Minn. 496, 29 N. W. Rep. 196.

This section intends that the defense of usury may be interposed in an action on negotiable paper, only where any other defense, if it exist, might be interposed. *First Nat. Bank of Rochester v. Bentley*, 27 Minn. 87, 6 N. W. Rep. 422.

Payment as a bonus, or in compensation for services in negotiating the loan, when not usurious. See *Acheson v. Chase*, 28 Minn. 211, 214, 9 N. W. Rep. 734.

*§ 5. Usurers—Answer under oath.

Every person, company, or corporation offending against the provisions of this act shall be compelled to answer on oath any complaint that may be exhibited or filed against him in the district court for the proper county for the

discovery of any sum of money, goods, or things in action so taken, accepted, or received in violation of any of the foregoing provisions. (1877, c. 15, § 4, as re-enacted 1879, c. 66, § 4.)

***§ 6. Witnesses — Competency of parties — Interest after maturity.**

Whenever, in any action in any court, the defendant shall plead or answer the defense of usury, either party to the action may be a witness in his own behalf on the trial, except in actions in which the opposite party sues or defends as administrator or personal representative of a deceased person; except, also, actions in which the opposite party claims as assignee, and the original assignor is deceased. In the case of all notes or other instruments bearing interest, when no rate of interest is specified after maturity, the said note or other instrument shall be construed to bear the same rate of interest after maturity as before, and until fully paid and satisfied. (1877, c. 15, § 5, as re-enacted 1879, c. 66, § 5.)

***§ 7. Judgment upon usurious contracts.**

Whenever it satisfactorily appears to a court that any bond, bill, note, assurance, pledge, conveyance, contract, security, or evidence of debt, has been taken or received in violation of the provisions of this act, the court shall declare the same to be void, and enjoin any proceeding thereon, and shall order the same to be canceled and given up. (1879, c. 66, § 6.)

See *Avery v. Creigh*, 35 Minn. 456, 29 N. W. Rep. 154; *Wetherell v. Stewart*, Id. 496; *Mackey v. Winkler*, 35 Minn. 513, 29 N. W. Rep. 196; *Scott v. Austin*, 36 Minn. 460, 32 N. W. Rep. 89, 864.

***§ 7a. Repeal—Exemption of building societies.**

Section one of chapter 15 of the General Laws of one thousand eight hundred and seventy-seven, and section one of chapter twenty-three of the General Statutes of one thousand eight hundred and sixty-six, and all acts and parts of acts inconsistent with the provisions of this act, are hereby repealed. But none of the provisions of the act shall apply to mutual building associations. (*Id.* § 7.)

BONDS.

§ 9. (Sec. 2.) Corporate bonds—Negotiability.

Where a private corporation has authority to issue negotiable securities, such instruments, when issued, possess the legal character ordinarily attaching to negotiable paper, and the holder in good faith, before maturity, and for value, may recover, even though in the particular case the power of the corporation was irregularly exercised, or was exceeded. *Auerbach v. Le Sueur Mill Co.*, 28 Minn. 291, 296, 9 N. W. Rep. 799.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

§ 11. (Sec. 4.) Demand notes—When dishonored.

Where a demand note is indorsed four years after its date, the note is dishonored at the time of indorsement. *Linn v. Rugg*, 19 Minn. 181, (Gil. 149.)

See *Mitchell v. Wilkins*, 33 N. W. Rep. 910.

§ 13. (Sec. 6.) Acceptance.

An acceptance by a partner, in his own name, of a bill drawn on the firm, will bind neither the firm nor the acceptor. *Heenan v. Nash*, 8 Minn. 407, (Gil. 363.)

***§ 19. Instruments obtained by fraud—Validity—Action.**

No person, nor the heirs or personal representatives of any person, whose signature is obtained to any bill of exchange, promissory note, or other paper negotiable under the law-merchant, shall be held on any such bill, note, or