

1934 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1934)  
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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1934

A village requiring a justice of the peace, to be on hand one-half day each week to try traffic violations has no authority to compensate the justice for his services. Op. Atty. Gen., Dec. 17, 1931.

A justice of the peace is authorized to charge for the drawing of a complaint only when he himself performs the work of drawing the same. Op. Atty. Gen., Dec. 19, 1931.

A justice of the peace is entitled to a fee of 25 cents for issuing a search warrant where the same has been prepared by someone else. Op. Atty. Gen., Dec. 19, 1931.

Where accused is not bound over, it is not necessary that justice of the peace enter testimony in full in his docket, and he is not entitled to the per folio rate in case he does so. Op. Atty. Gen., Dec. 19, 1931.

Limit of indebtedness which may be contracted by county in anticipation of uncollected taxes pursuant to §1938-21, includes county charges under this section. Op. Atty. Gen., Apr. 28, 1932.

(1).

A justice of the peace is not entitled to fees for preparation of the copies of a garnishee summons. Op. Atty. Gen., Sept. 30, 1930.

(20).

A justice of the peace is not entitled to fees for preparation of the copies of a garnishee summons. Op. Atty. Gen., Sept. 30, 1930.

**7002. Fees of register of deeds—Certain counties.**

Fees for recording instruments written on uniform conveyancing blanks, see §§8204-4, 8204-5.

Provision for guaranteed minimum income or salary refers to gross income, not exclusive of clerk hire. Op. Atty. Gen., Aug. 30, 1929.

Register of deeds is not entitled to additional fee for indexing instruments filed for record. Op. Atty. Gen., May 3, 1930.

A register of deeds has no right to charge less than schedule of fees set forth in Laws 1931, c. 272. Op. Atty. Gen., Feb. 23, 1932.

Mortgages upon printed form approved by Uniform Conveyancing Blank Commission should be recorded for fees provided for in §8204-5, but if mortgage is not upon such approved form, fee is that specified by §7002 plus 25% or fee fixed by special act plus 25%. Op. Atty. Gen., Oct. 12, 1933.

**7005. Fees of appraisers, etc.**

A county board may legally pay for services of special deputies hired by a sheriff to assist in handling unusual crowds during county fair. Op. Atty. Gen., Nov. 10, 1931.

Matter of compensation for persons employed by sheriff to guard prisoner while confined in hospital is governed by this section. Op. Atty. Gen., Apr. 1, 1932.

Where sheriff has no salaried deputy except jailer, and, after a home is robbed, takes with him special deputy to watch premises for several nights because he suspects that robbers will return, but makes no arrest, deputy cannot put in bill to county for per diem salary of \$3.00 per day. Op. Atty. Gen., July 11, 1932.

Sheriff may not appoint special deputy to attend jury in criminal case before Justice of Peace so as to require county to pay deputy \$3.00 per day, when defendant is not found guilty. Op. Atty. Gen., July 11, 1932.

**7006. Fees of witnesses.**

Laws 1931, c. 331, does not affect mileage of jurors or witnesses. Op. Atty. Gen., Feb. 25, 1933.

**7008. Fees in criminal cases.**

Clerk of court may not give witnesses for defendant a certificate for fees and mileage with an order of the district court. Op. Atty. Gen., Oct. 5, 1931.

Witnesses actually in attendance called in good faith by county attorney in a criminal case are entitled to fees and mileage although not subpoenaed or placed on the stand. Op. Atty. Gen., Oct. 5, 1931.

**7009. Expert witnesses.**

This section does not apply to actions in the federal court in view of Mason's U. S. Code, Annotated Title 28, §600c. Henkel v. Chicago, St. P. M. & O. Ry. Co., 284 US444, 52SCR223. See Dun. Dig. 10361.

This section cannot be applied in the federal courts. Henkel v. Chicago, St. P. M. & O. Ry. Co., (CCA8), 58F (2d)159.

Fact that expert witness is employed in service of state does not disqualify him from receiving compensa-

tion as expert witness. Bekkemo v. E., 186M108, 242NW 617.

Veterinary surgeons called as witnesses should receive only \$10.00 per day in absence of special circumstances. Bekkemo v. E., 186M108, 242NW617. See Dun. Dig. 10361.

**7010. Compensation of jurors.**—Each grand and petit juror shall receive three dollars per day, including Sundays, for attendance in district court, and ten cents for each mile traveled in going to and returning from court in counties having a population of less than two hundred twenty-five thousand, and two (\$2.00) dollars per day in counties having a population of more than two hundred and twenty-five thousand and less than three hundred and fifty thousand and three (\$3.00) dollars per day and mileage as above set forth, in counties having a population of over three hundred and fifty thousand, the distance to be computed by the usually traveled route, and paid out of the county treasury. The clerk of the district court shall deliver to each juror a certificate for the number of days' attendance and miles traveled for which he is entitled to compensation. Talesmen actually serving upon any petit jury shall receive the sum of \$3.00 per day. (R. L. '05, §2712; '09, c. 1929, §1; G. S. '13, §5778; '19, c. 73, §1; '21, c. 95, §1; Mar. 28, 1933, c. 123, §1.)

Sec. 2 of Act Mar. 28, 1933, cited, provides that the act shall take effect from its passage.

Juror serving for six days was only entitled to six days pay though on second and fourth days he deliberated on cases until after midnight. Op. Atty. Gen., June 11, 1929.

District court has inherent power to allow mileage to jurors in going to and from their homes when they are excused on Friday. Op. Atty. Gen., Jan. 20, 1932.

Limit of indebtedness which may be contracted by county in anticipation of uncollected taxes pursuant to §1938-21, includes county charges under this section. Op. Atty. Gen., Apr. 28, 1932.

Talesmen chosen as jurors on Friday and who are free until following Monday by reason of adjournment of jury cases are entitled to jury fees for Saturday and Sunday. Op. Atty. Gen., Feb. 15, 1933.

Laws 1931, c. 331, does not affect mileage of jurors or witnesses. Op. Atty. Gen., Feb. 25, 1933.

"Attendance in district court" means actual attendance at court, and not time while panel is excused for definite time or court is adjourned to fixed day. Op. Atty. Gen., May 16, 1933.

Juror is not entitled to compensation for Sunday where court adjourns over week-end. Id.

**7012. Fees of court commissioner.**

Court commissioner is not entitled to mileage when conducting insanity hearings away from county seat. Op. Atty. Gen., Aug. 14, 1933.

**7013. [Repealed].**

Repealed Feb. 21, 1931, c. 22.

**7014. Fees for services not rendered—Illegal fees.**

Op. Atty. Gen., Dec. 19, 1931; note under §6998.

**7018. Turning fees into county treasury.**

Fees collected by the clerk of the district court under §3208 are payable into the county treasury under this section in counties where a definite salary is provided for the clerk. Op. Atty. Gen., Jan. 18, 1930.

County auditor must turn into county all fees received, including fees for making of certified copies of official records. Op. Atty. Gen., Nov. 28, 1931.

Where county officials receive a stated salary, they are liable to the county for all fees to be charged by law for the performance of their official duties, whether such fees are actually collected by such officials or not. Op. Atty. Gen., Feb. 29, 1932.

County treasurer is not entitled to a fee for preparing tax lists for banks desiring to remit taxes for their customers. Op. Atty. Gen., May 19, 1933.

CHAPTER 49A

Trade and Commerce

**1. Contracts and written instruments in general.**

**2. —Mutual Assent.**

Karn v. A., (CCA8), 60F(2d)427, aff'g 51F(2d)521.

Offer made by director of national bank to settle liability arising from his acts as director, held to have been accepted by the receiver of the bank so as to constitute a binding contract. Karn v. Andresen, (DC-Minn.), 51F(2d)521.

It is not the subjective thing known as meeting of the minds, but an objective thing, manifestation of mutual

assent, which makes a contract. Benedict v. P., 183M 396, 237NW2. See Dun. Dig. 1742(57).

In the absence of conflicting legal requirement, mutual assent may be expressed by conduct rather than words. Benedict v. P., 183M396, 237NW2. See Dun. Dig. 1742.

Agreement of second mortgagee to pay interest on first mortgage if foreclosure was withheld, held not invalid for want of mutuality. Bankers' Life Co. v. F., 247NW239. See Dun. Dig. 1758.

Whether defendants agreed to pay plaintiff's printing bill, held for jury. *Randall Co. v. B.*, 248NW752. See Dun. Dig. 1742.

Not a meeting of minds, but expression of mutual assent is operation that completes a contract. *New England Mut. Life Ins. Co v. M.*, 247NW803. See Dun. Dig. 1742.

Mutual insurance company is liable on a policy issued to school district, though district has no right to become member. *Op. Atty. Gen.*, Sept. 9, 1932.

### 3. —Execution and delivery.

Whether parties intended that contract should not bind unless signed by another person, held for jury. *Fitzke v. F.*, 186M346, 243NW139. See Dun. Dig. 1736.

Whether there was delivery of contract, held for jury. *Fitzke v. F.*, 186M346, 243NW139.

### 3½. —Parties to contracts.

An agreement by other corporate bondholders to extend time of payment of their bonds, not consented to by plaintiff, did not affect his rights. *Heider v. H.*, 186M494, 243NW699.

### 4. —Rights of third persons.

Near relationship between plaintiff and deceased niece, together with acknowledged consideration due for services rendered, established privity between plaintiff and niece as regarded action against estate of niece to enforce agreement between niece and nephew whereby nephew conveyed corporate stock to niece with remainder over to plaintiff. *Mowry v. T.*, 250NW52. See Dun. Dig. 3593g.

### 5. Quasi contracts.

One selling clay to a member of board of county commissioners who used it for improving a highway was entitled to recover in quasi contract an amount equal to the benefit that the county received, though the transaction was invalid but in good faith. *Wakely v. C.*, 185M93, 240NW103. See Dun. Dig. 4303.

If a school board expends money in the purchase of real estate without authority from the voters, an individual member of the board who participates therein is liable to the district for the money so expended. *Tritchler v. B.*, 185M414, 241NW578. See Dun. Dig. 7998, 8676.

An action for money had and received cannot be maintained where the rights of the litigants in the money or property are governed by a valid contract. *Renn v. W.*, 185M461, 241NW581. See Dun. Dig. 6127 (68).

That services rendered by attorney were rendered under contract for fixed compensation, held sustained, and plaintiff cannot recover under quantum meruit. *Melin v. F.*, 186M379, 243NW400. See Dun. Dig. 10366.

There is no cause of action, quasi ex contractu, against a defendant who is not shown to have been wrongfully enriched at expense of plaintiff. *Lamson v. T.*, 245NW627. See Dun. Dig. 1724.

Evidence held to warrant recovery under implied contract for reasonable value of goods delivered. *Krocak v. K.*, 249NW671. See Dun. Dig. 8645.

City purchasing fire engine under conditional sales contract is not bound thereby, but may be obligated to pay value of benefits from use of engine. *Op. Atty. Gen.*, June 3, 1932.

Civil engineer irregularly employed to ascertain and estimate cost of contemplated pavement would be entitled to compensation upon basis of value to city but not upon basis of any contract of employment. *Op. Atty. Gen.*, June 18, 1932.

### 6. Bailment.

Evidence held to sustain finding that there was a contract of storage from time defendant found his automobile in plaintiff's garage and allowed it to remain there, pending settlement. *Pratt v. M.*, 187M512, 246NW11. See Dun. Dig. 5673a.

Evidence held to show that bailor of chair for repairs was to call for it and was liable for storage. *Ridgway v. V.*, 187M552, 246NW115. See Dun. Dig. 731a.

### 7. Employment.

Under contract whereby plaintiff was employed as salesman to procure contracts for engineering service, held that plaintiff at the time of his resignation had earned compensation. *Geib v. H.*, 185M295, 240NW907. See Dun. Dig. 5812.

Whether plaintiff was entitled to commission for services in effecting a sale or merger of abstract and title insurance companies, held for jury. *Segerstrom v. W.*, 187M20, 244NW49. See Dun. Dig. 1125.

Where broker procures a purchaser ready, able, and willing to purchase on terms proposed, or when principal closes with purchaser procured on different terms, broker has earned his commission. *Segerstrom v. W.*, 187M20, 244NW49. See Dun. Dig. 1149, 1152.

Evidence held insufficient to show that plaintiff was procuring cause of merger or sale of abstract and title companies. *Segerstrom v. W.*, 187M20, 244NW49. See Dun. Dig. 1149.

Two letters held a contract of employment at will, terminable by either party at any time without cause. *Steward v. N.*, 186M608, 244NW813. See Dun. Dig. 5808.

Acceptance of reduced wages did not conclusively refute employee's claim that he refused to acquiesce in modification of original contract of employment. *Dormady v. H.*, 246NW521. See Dun. Dig. 3204a.

In action for commissions on sale of merchandise, whether reduction in price made by defendant was special price to few or regularly quoted catalog price, held

question of fact. *Mienes v. L.*, 246NW667. See Dun. Dig. 203.

Whether salesman's commissions were to be computed with or without discount allowed by employer to induce prompt payment, held settled by practical construction of contract by parties. *Mienes v. L.*, 246NW667. See Dun. Dig. 203.

Provision in salesman's commission contract that any credits allowed or service charges made should be deducted before computing salesman's commissions, held not to include general credit given customers by employer on account of advertising by them. *Mienes v. L.*, 246NW667. See Dun. Dig. 203.

Evidence held to sustain verdict that plaintiff's deceased was entitled to 10% of insurance received by defendant insured under adjustment negotiated by deceased. *Cohoon v. L.*, 247NW520.

### 8. Consideration.

Compromise of disputes and dismissal of pending actions on merits furnish consideration for contract. *Fitzke v. F.*, 186M346, 243NW139. See Dun. Dig. 1760.

Divorce settlement agreement held supported by sufficient consideration. *McCormick v. H.*, 186M380, 243NW392.

Writing surrendering right of lessor to cancel lease without cause held supported by a sufficient consideration. *Oakland Motor Car Co. v. K.*, 186M455, 243NW673. See Dun. Dig. 1772.

An increase in rate of interest was legal consideration for extension of time for payment of note and mortgage. *Jefferson County Bank v. E.*, 247NW245. See Dun. Dig. 1772, 9096.

Liquidation of a substantial and honest controversy by accord and payment of agreed sum in satisfaction constitutes consideration furnished by debtor as promisee for promise of releasor as promisor. *Addison Miller v. A.*, 249NW795. See Dun. Dig. 37, 40, 1520.

### 9. Fraud.

When the defrauded party has done nothing inconsistent, fraud inducing the contract is always a defense to an action to enforce it. *Proper v. P.*, 183M481, 237NW178. See Dun. Dig. 1814.

Presentation of written contract following verbal agreement is representation that it is same in effect as verbal agreement. *Phillips Petroleum Co. v. R.*, 186M173, 242NW629. See Dun. Dig. 1813a.

Where there is one oral agreement, and two written contracts are presented as embodying oral agreement, fraud vitiates both of written contracts if signatures were obtained thereby. *Phillips Petroleum Co. v. R.*, 186M173, 242NW629. See Dun. Dig. 1814.

Fraud may be based upon a promise to do something in the future but the promise must be made with intention of not keeping it. *Phelps v. A.*, 186M479, 243NW682. See Dun. Dig. 3827.

Evidence held not to show that promise made by mortgagee to second mortgagee that rents would be applied in payment of first mortgage debt was made with fraudulent intention of not keeping it. *Phelps v. A.*, 186M479, 243NW682.

False statements promissory in character, made with intent that they would not be kept, constituted fraud in sale of lot. *McDermott v. R.*, 247NW683. See Dun. Dig. 3827.

Injured railroad employe held not to have relied on statements of railroad's physician as to extent of his injuries so as to warrant avoidance of release for fraud. *Yocum v. C.*, 249NW672. See Dun. Dig. 8374.

Injured railroad employe held not warranted in claiming that he thought release of damages was merely receipt, in view of large type "general Release." *Id.*

### 10. —Action for damages.

Evidence of positive oral representations as to the condition and quality of real property, made to induce a purchaser to enter into a contract of purchase, when untrue, and relied on by the purchaser with a reasonable belief in their truth, and with resulting damage, makes out a prima facie case of damages for fraud or deceit. *Osborn v. W.*, 183M205, 236NW197. See Dun. Dig. 10062.

It is not necessary in deceit case that plaintiff prove that the representations were known by defendant to be untrue, or were made in bad faith. *Osborn v. W.*, 183M205, 236NW197. See Dun. Dig. 3286(49).

In action for fraud in sale of corporate stock, evidence of an execution sale, later vacated, and of an agreement, not carried out by any payment, to apply the proceeds from such sale upon notes given by plaintiff held properly excluded. *Watson v. G.*, 183M233, 236NW213. See Dun. Dig. 8612.

In action for fraud in sale of corporate stock, direct evidence by plaintiff that she relied on the representations charged held not necessary under the facts shown. *Watson v. G.*, 183M233, 236NW213. See Dun. Dig. 8612.

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. 3839.

Giving renewal note, with knowledge of fraud, is waiver of cause of action for damages. *Wiebke v. E.*, 248NW702. See Dun. Dig. 8593a, 3833b.

### 11. —Estoppel and waiver.

Answer in action for rent that defendants took assignment of lease through lessor's false representation stated no defense where it contained admission that

defendants remained in possession for three years and paid rent after discovering fraud. *Central Hanover Bank & Trust Co. v. P.*, 248NW287. See Dun. Dig. 5477 n4.

#### 12. —Evidence.

Fraud affording an action for damages may be proved by circumstantial evidence. *Philadelphia S. B. Co. v. K.*, (CCA8), 64F(2d)834. *Certiorari denied* 54SCR 68. See Dun. Dig. 3839.

Instructions, held not erroneous in failing to require proof of fraud by clear and convincing evidence. *Id.*

Evidence held to sustain finding that lease of oil station was obtained by fraud and deceit. *Phillips Petroleum Co. v. R.*, 186M173, 242NW629. See Dun. Dig. 5385.

A release of damages cannot be avoided for fraud or mistake unless evidence is clear and convincing. *Yocum v. C.*, 249NW672. See Dun. Dig. 8374.

#### 13. —Questions for jury.

Whether radio manufacturer was guilty of actionable fraud in inducing plaintiff to enter upon an advertising and sales promotion program, and in terminating contract to plaintiff's damage, held for jury. *Philadelphia S. B. Co. v. K.*, (CCA8), 64F(2d)834. *Certiorari denied* 54SCR68. See Dun. Dig. 3840.

Whether releases obtained from buyer of goods were obtained by deceit, held for jury in action on notes given for purchase price. *Wiebke v. E.*, 248NW702. See Dun. Dig. 8374(49).

In action on notes given for goods, whether defendant had knowledge of false representations at time of executing renewal note, held for jury. *Wiebke v. M.*, 248NW704. See Dun. Dig. 8593a.

#### 14. —Duress.

To constitute duress, one asserting it must have been subjected to pressure which overcame his will and coerced him to comply with demand to which he would not have yielded if he had been acting as a free agent. *General Motors Acceptance Corp. v. J.*, 248NW213. See Dun. Dig. 2848.

#### 15. —Legality.

Contract between attorneys for throwing corporations into hands of receivers and splitting fees is against public policy. *Anderson v. G.*, 183M472, 237NW9. See Dun. Dig. 1870.

Transaction whereby husband and wife executed a trust deed and put it in escrow to be delivered upon condition that wife be granted an absolute divorce did not violate the law. *First Minneapolis Trust Co. v. L.*, 185M121, 240NW459. See Dun. Dig. 1871(28).

When the illegality of a contract appears, the court, even on its own motion and without the illegality having been pleaded, may make it the basis of a decision for defendant. *Hackett v. H.*, 185M387, 241NW68. See Dun. Dig. 1891.

Parties cannot by stipulation decide validity or legal effect of a trust deed. *Kobler v. H.*, 248NW698. See Dun. Dig. 9004.

#### 16. —Penalty or liquidated damages.

An investment installment contract providing for forfeiture on failure to pay installments held to provide a penalty and not liquidated damages. *Goodell v. A.*, 185M213, 240NW534. See Dun. Dig. 2537(13).

Deposit by sublessee held penalty and recoverable in full, less rent due, though lessee had also made deposit with lessor which was also penalty. *Palace Theatre v. N.*, 186M548, 243NW849. See Dun. Dig. 2536.

#### 17. —Champerty and maintenance.

An agreement compromising claim for money advanced under champertous agreement is also void. *Hackett v. H.*, 185M387, 241NW68. See Dun. Dig. 1522.

An agreement under which one not interested otherwise in the subject-matter of litigation advances money to one of the litigants, and is to be repaid tenfold in case of victory, but nothing in defeat, is champertous and void. *Hackett v. H.*, 185M387, 241NW68. See Dun. Dig. 1416.

#### 18. —Construction.

When a contract is embodied in a writing ambiguous or uncertain in language and arrangement, it will be construed most strongly against the one whose language and arrangement are used. *Geib v. H.*, 185M295, 240NW907. See Dun. Dig. 1832.

Contract should be so construed as to square its terms with fairness and reasonableness rather than to apply a construction which will result in an unjust loss to a party thereto. *Burnett v. H.*, 187M7, 244NW254. See Dun. Dig. 1824.

Where annual fee by holder of gas franchise was dependent upon ambiguous proviso in ordinance, court rightly adopted practical construction placed by parties upon contract for more than 20 years. *City of South St. Paul v. N.*, 248NW288. See Dun. Dig. 1820.

#### 19. —Rescission and cancellation.

Not every breach of contract justifies rescission. *United Cigar Stores Co. v. H.*, 185M534, 242NW3. See Dun. Dig. 1808.

Whether seller of stock repudiates his contract so as to give purchaser right of rescission and right to recover payments made, held for jury. *Bradford v. D.* 186M18, 242NW339. See Dun. Dig. 1808.

#### 20. —Placing in status quo.

If a contractor, induced by the fraud of the other party to enter into the contract, makes prompt demand for a rescission and tenders a restoration of the status quo when such restoration can be had, but is prevented only by the refusal of the perpetrator of the fraud to

permit it, the latter cannot thereafter object to a rescission because through mere lapse of time restoration of the status quo has become impossible. *Proper v. P.*, 183M481, 237NW178. See Dun. Dig. 1810.

#### 21. —Performance or breach.

Performance of agreements of second mortgagee to pay interest on first mortgage if foreclosure was withheld, held not excused by reason of contract of first mortgagee with third person concerning possession of premises. *Bankers' Life Co. v. F.*, 247NW239. See Dun. Dig. 6260.

#### 22. —Damages.

Damages for breach of contract are such as arise naturally from the breach itself, or such as may reasonably be supposed to have been within the contemplation of the parties at the time of making the contract, as a probable result of a breach. *Kaercher v. Citizens' Nat. Bank*, (CCA8), 57F(2d)58. See Dun. Dig. 2559, 2560.

The damages contemplated by the parties for the breach of a contract to indemnify on who had signed an accommodation note would be the cost of defending a suit, including attorney's fees. *Kaercher v. Citizens' Nat. Bank*, (CCA8), 57(2d)58. See Dun. Dig. 4336.

#### 23. —Agency.

Evidence held to sustain finding that bank held stock certificates as agent for purchaser of real estate, stock being part of consideration for the land. *Small v. F.*, 246NW252. See Dun. Dig. 145.

#### 24. —Evidence.

Agency may be proved circumstantially, or by evidence which justifies a fair inference of relationship. *McDermott v. R.*, 247NW683. See Dun. Dig. 149.

#### 25. —Scope and extent of authority.

Agent authorized to sell personal property in principal's name was guilty of conversion in selling it in its own name. *Nygaard v. M.*, 183M388, 237NW7. See Dun. Dig. 201(98), 1935(26).

Evidence held to sustain finding that sales manager of a corporation acted within the scope of his authority in selling a refrigerator. *Frigidaire Sales Corp. v. F.*, 185M161, 240NW119. See Dun. Dig. 158.

#### 26. —Notice to agent.

If a third person acts in collusion with agent to defraud principal, latter will not be chargeable with any information which agent receives pertaining to transaction. *Steigerwalt v. W.*, 186M558, 244NW412. See Dun. Dig. 215.

#### 27. —Ratification and waiver.

Owner of foxes held not to have waived his right to have defendant fur farm sell his foxes in plaintiff's name. *Nygaard v. M.*, 183M388, 237NW7. See Dun. Dig. 205.

Owner of foxes held not to have ratified act of fur farm in selling plaintiff's foxes under its own name. *Nygaard v. M.*, 183M388, 237NW7. See Dun. Dig. 190.

Application of payments made in manner directed by debtor is final and will not be set aside at the direction of a third party claiming an equity of which creditor had no notice. *Anderson v. N.*, 184M200, 238NW164. See Dun. Dig. 7457.

A contract made for one's benefit by an unauthorized agent was adopted and ratified by a demand for an accounting and the bringing of a suit. *Bringgold v. G.*, 185M142, 240NW120. See Dun. Dig. 184a.

Seller of land who insists upon keeping benefits of bargain induced by fraudulent representations of his agents is liable for money paid on rescission by purchaser. *McDermott v. R.*, 247NW683. See Dun. Dig. 184.

#### 28. —Liability of agent.

One acting as disclosed agent of named principals, to whom no credit has been extended by plaintiff, is under no personal liability to latter. *Lamson v. T.*, 187M368, 245NW627. See Dun. Dig. 217.

Loan broker was not liable, quasi ex contractu, because borrower wrongfully diverted money from association. *Lamson v. T.*, 187M368, 245NW627. See Dun. Dig. 217.

#### 29. —Release.

A wife who joins her husband in releasing both their claims against a common defendant for injuries and expenses due to alleged negligence cannot be relieved from her contract because the husband appropriated the entire consideration or because, in computing the amount to be paid in settlement of both claims, only items were included for which the husband alone was entitled to recover. *West v. K.*, 184M494, 239NW157. See Dun. Dig. 8370.

That defendant represented to plaintiff that she would recover sooner than she did does not amount to fraud justifying the setting aside of a release where the character of plaintiff's injuries was known to both. *West v. K.*, 184M494, 239NW157. See Dun. Dig. 8374.

Settlement and release of cause of action against defendants' own agent discharged same cause of action asserted against plaintiffs for damages for misrepresentations. *Martin v. S.*, 184M457, 239NW219. See Dun. Dig. 8373.

One who accepts satisfaction for a wrong done, from whatever source, and releases his cause of action, cannot recover thereafter from any one for the same injury, or any part of it. *Smith v. M.*, 184M485, 239NW223. See Dun. Dig. 8373.

Where injured person effected a settlement and gave a general release to those causing the injuries, such settlement constituted a bar to an action against sur-

geon for malpractice aggravating damages. *Smith v. M.*, 184M485, 239NW223. See Dun. Dig. 8373.

Where a joint tort-feasor by compromise and settlement of tort liability supersedes it by a contract obligation to injured party, tort liability is waived and released, and other joint tort-feasors are thereby released. *De Cock v. O.*, 246NW385. See Dun. Dig. 8373.

Effect of a release held limited to obligations arising from the transaction to which the document was self-restricted. *Hopkins v. H.*, 249NW584. See Dun. Dig. 8371.

Release of damages by railroad employee held not avoidable on ground of mutual mistakes as to extent of injuries. *Yocum v. C.*, 249NW672. See Dun. Dig. 8375.

### 30. Accord and satisfaction.

The receipt and cashing of a check labeled "in full up to date," held not to constitute an accord and satisfaction. *Bashaw Bros. Co. v. C.*, 187M621, 246NW358. See Dun. Dig. 42.

As regards accord and satisfaction or compromise and settlement, a demand is not liquidated unless it appears how much is due, but is unliquidated when there is substantial and honest controversy as to amount. *Addison Miller v. A.*, 249NW795. See Dun. Dig. 40, 1518.

Settlement of fire loss held complete accord and satisfaction, notwithstanding insurers denied liability on one item of substantial amount and included nothing therefor in amount paid. *Id.* See Dun. Dig. 42.

### 31. Gifts.

A gift can be established only by clear and convincing evidence. *Quarfot v. S.*, 249NW668. See Dun. Dig. 4038.

An actual or constructive delivery is necessary to a gift. *Id.* See Dun. Dig. 4024.

### 32. Suretyship.

#### 33. —Subrogation.

A surety who pays obligation of his principal is subrogated to remedies of obligee and may pursue them until met by equal or superior equities in one sued. *National Surety Co. v. W.*, 185M50, 244NW290. See Dun. Dig. 9045.

#### 34. —Discharge.

In the case of a compensated surety a technical departure from the strict terms of the surety contract does not discharge the surety unless he has suffered injury. *Hartford A. & I. Co. v. F.*, (CCA8), 59F(2d)950. See Dun. Dig. 9093.

#### 35. —Actions.

In an action by the obligee in a bond against the surety the denial of a motion by defendant to abate the action unless the receiver of the obligee be required to intervene, held not error. *Hartford A. & I. Co. v. F.*, (CCA8), 59F(2d)950. See Dun. Dig. 9107e.

#### 36. Estoppel.

Acceptance of benefits from contract with knowledge of facts and rights creates estoppel. *Bacich v. N.*, 185M654, 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.*, 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.*, 247NW1. See Dun. Dig. 6270.

## CHAPTER 50

### Weights and Measures

**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. *Egekivist Bakeries v. B.*, 186M520, 243NW853. See Dun. Dig. 8921.

**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.  
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.*, 186M588, 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, 245NW145. See Dun. Dig. 4879, 10413.

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, 219NW76.

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, 219NW86.

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, 9991.

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 \$8 on \$100 for one year, jury or trier of facts may find usury. *Cemstone Products Co. v. G.*, 187M416, 245NW624. 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.

###### 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. Poshay Co.*, (CCA8), 57F(2d) 656. Certiorari denied 52SCR641; note under §7038.