

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



Edited by

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

CITER- DIGEST CO.
SAINT PAUL, MINNESOTA.
1934

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 supercedes 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.*, 246NW885. 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. Foshay Co., (CCA8), 57F(2d) 656. *Certiorari denied* 52SCR641; note under §7038.