

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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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.*, 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. *Quarfoot 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. *Egektiv 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, 252d, 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, 241NW556. 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.

A bonus forfeited for usury goes in reduction of the loan as made and not in payment of it afterwards, and borrower has nothing to say as to its application. 174M 68, 218NW451.

**7038. Usurious contracts invalid—Exceptions.**

**1. In general.**

172M126, 214NW924.  
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.

A note tainted with usury may be purged thereof by a compromise and a settlement. 173M524, 218NW102.

Usury is negated by finding that there was no loan or forbearance money to a borrower, but instead a purchase at a discount in good faith of the security in question from a third party. 175M468, 221NW720.

An agreement to "finance" plaintiff, held to contemplate lending of money, within meaning of usury laws. Fred G. Clark Co. v. E., 247NW225. See Dun. Dig. 9961.

**4. Form not controlling.**

Court will look beyond mere form of contract. E. C. Warner Co. v. W. B. Foshay Co., (CCA8), 57F(2d)656. Certiorari denied 52SCR641.

**6. Burden of proof.**

Burden of proof is on party asserting usury to negative every reasonably supposable fact which if true would render transaction lawful. 179M381, 230NW258.

**7. Degree of proof required.**

Finding that execution and delivery of mortgage and trust deed was a joint venture and that there was no usury involved, held sustained by evidence. 175M560, 222NW278.

Finding that transaction was a loan wherein the note and mortgage were assigned as security, sustained. 177 M321, 225NW115.

Evidence held sufficient to sustain finding that mortgage was void for usury. Clausen v. S., 187M534, 246 NW21. See Dun. Dig. 9996.

One who asserts usury must negative by his proof any hypothesis reasonably drawn from evidence which would render transaction lawful, but where language imports a bonus for loan of money, there is no room for a presumption that transaction was legal. Fred G. Clark Co. v. E., 247NW225. See Dun. Dig. 9993.

Evidence held insufficient to sustain a finding that an agreement to make a loan involved a payment of a salary as fair compensation for services actually contemplated. Fred G. Clark Co. v. E., 247NW225. See Dun. Dig. 9971.

If bonus is paid to a lender by a third person for his own reason without knowledge of borrower, transaction will not be usurious. Fred G. Clark Co. v. E., 247NW225. See Dun. Dig. 9971.

**9. Sale of property as a cover for usury.**

Where lender of money sold property to borrower at grossly excessive value of additional inducement to loan the transaction is usurious and void where the amount received by the lender greatly exceeded the permissible rate of interest. E. C. Warner v. W. B. Foshay Co., (CC A8), 57F(2d)656. Certiorari denied 52SCR641.

**10. Effect of collateral contract.**

All instruments designed as part of the loan transaction are invalidated. 180M358, 230NW819.

**12. Liability of principal for acts of agent.**

When an officer who is intrusted with management of corporation exacts or receives a bonus of any kind for loan of money made by corporation through him, it is presumed to be act of corporation, as regards usury. Fred G. Clark Co. v. E., 247NW225. See Dun. Dig. 9968.

**13. Effect of commission or bonus to loan agent.**

180M358, 230NW819.

**19. Extensions.**

Subsequent extensions did not affect legal result where usury was in the original transaction. 177M321, 225NW 115.

**20. Who may assail.**

Personal to borrower, but sureties may make defense. 180M358, 230NW819.

**22. Bona fide purchasers.**

Rights of bona fide purchaser of accommodation paper discounted at a rate sufficient to constitute usury. 177 M491, 225NW443.

Where one buys a certificate of mortgage foreclosure sale and pays his money without any notice of the usurious character of the mortgage, he is protected as a bona fide purchaser of the property. Kanevsky v. T., 185M93, 240NW103. See Dun. Dig. 9988.

**25. Conflict of laws.**

Loan to Delaware corporation under Minnesota contract, held governed by Minnesota law with respect to usury, though Delaware law precluded corporation from interposing of usury. E. C. Warner Co. v. W. B. Foshay Co., (CCA8), 57F(2d)656. Certiorari denied 52 SCR641.

**27. Evidence.**

Evidence required finding that plaintiff was a party to alleged usurious contract. Fred G. Clark Co. v. E., 247NW225. See Dun. Dig. 9996.

Evidence required a finding that certain corporate stock, which plaintiff claims was exacted and given as a bonus for loan of money at time of transaction, was reasonably worth at least par. Fred G. Clark Co. v. E., 247NW225. See Dun. Dig. 9971, 9996.

**30. Real estate mortgages held not usurious.**

Mortgage held not usurious by reason of deduction of expenses from amount loaned. 174M474, 219NW878.

**7040. Usurious contracts—cancellation.**

E. C. Warner Co. v. W. B. Foshay Co., (CCA8), 57F (2d)656. Certiorari denied, 52SCR641.

Finding that usury vitiated two certain notes secured by second mortgages justified by evidence, but when the mortgages and notes were cancelled, court should have granted defendant relief by reviving liens he had discharged. 176M427, 223NW777.

**7041. Agreements to share profits—etc.**

Rates of interest otherwise usurious may be enjoyed by building and loan association. Minn. Bldg. & Loan Ass'n. v. C., 182M452, 234NW872. See Dun. Dig. 1169.

**7042. Salary loans and chattel mortgage loans.**

See §7774-34, providing that Act Apr. 15, 1933, c. 246, relating to industrial loan and thrift companies, shall not be construed as repealing this act.

**TITLE I.—NEGOTIABLE INSTRUMENTS IN GENERAL**

**ARTICLE I. FORM AND INTERPRETATION.**

**7044. Form of negotiable instrument.**

Evidence requiring finding that it was agreed that collateral to a note made upon a loan should stand as collateral to a prior unsecured note. 177M187, 224NW 841.

**1. Unconditional promise or order.**

Unconditional bond, issued and sold for the purpose of raising money for use of corporation, is in effect a promissory note for repayment of loan. Heider v. H., 186M494, 243NW699. See Dun. Dig. 862.

Evidence held to justify a finding that note sued upon was delivered conditionally. First Nat. Bank of Amboy v. O., 246NW542. See Dun. Dig. 879.

Script requiring the placing of stamps thereon as condition for redemption for cash is not negotiable. Op. Atty. Gen., Mar. 20, 1933.

**3. Statement of or reference to other transaction.**

Negotiability of a note is not destroyed by a recital that it is secured by mortgage. 181M294, 232NW336. See Dun. Dig. 886.

**10. Mental competency.**

Insane person signing as surety or accommodation party is not liable. 178M545, 227NW654.

**7046. When promise is unconditional.**

A statement of the transaction which give rise to the instrument does not render the promise conditional, and, standing alone, does not put the purchaser upon inquiry. 172M126, 214NW924.

172M126, 214NW924, cited and disapproved by Iowa Supreme Court in First Nat. Bank v. Power Equip. Co., 211IA153, 233NW103.

**7051. When payable to order.**—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

- (1) A payee who is not maker, drawer, or drawee; or
- (2) The drawer or maker; or
- (3) The drawee; or
- (4) Two or more payees jointly; or
- (5) One or more of several payees; or
- (6) The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

An instrument payable to the estate of a deceased person shall be deemed payable to the order of the administrator or executor of his estate. (G. S. '13, §5820; '13, c. 272, §8; Apr. 25, 1929, c. 353.)

Applies only to instruments payable to estates of deceased persons and not to estates of persons under guardianship. Kluczny v. M., 187M93, 244NW407. See Dun. Dig. 858.

**7052. When payable to bearer.**

A certificate of deposit payable to the order of "Christian Hanson Estate" was payable to bearer. 175M453, 221NW873.

A note payable to the estate of a named incompetent person is in legal effect payable to bearer. Kluczny v. M., 187M93, 244NW407. See Dun. Dig. 858.

**7059. Delivery—When effectual—When presumed.**

Finding sustained that there was an unconditional delivery of check. 181M487, 233NW7. See Dun. Dig. 990.  
In action on note, given upon delivery of a contract to convey land, court did not err in admitting evidence that it was understood that deal was not to be completed until defendant's husband returned from another state. 181M487, 233NW7. See Dun. Dig. 3377.

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

In a suit against a bank on a negotiable note given by one of its directors and his wife the bank is not liable under this section. 181M294, 232NW336. See Dun. Dig. 861a, 6915.

A corporation doing its business in name of another corporation, its agent, may be held as undisclosed principal of latter for loans obtained to conduct business for former, there having been no payment to or settlement with agent by undisclosed principal before lender discovered existence of undisclosed principal and presentation of claim against latter. American Fund v. A., 187M300, 245NW376. See Dun. Dig. 2112a.

**7062. Signature by agent—Authority—How shown.**

American Fund v. A., 187M300, 245NW376; note under §7061.

**7066. Forged signature—Effect of.**

No title is required to a promissory note transferred by a forged indorsement. 173M554, 218NW106.

## ARTICLE II. CONSIDERATION

**7067. Presumption of consideration.**

Endorsement of note, held supported by ample consideration. 177M325, 225NW113.

**7068. Consideration, what constitutes.**

Finding that note was executed without consideration and through mistake sustained. 173M491, 496, 217NW 595.

After failure of bank on which check was drawn, held that promissory note given for the indebtedness was without consideration. 173M533, 217NW934.

Lack of consideration in note given for work to be subsequently done, held not shown. 177M477, 225NW 388.

Preexisting debts was ample consideration for notes and mortgages. 172M612, 225NW908.

Release of pecuniary demand is consideration for note. 180M13, 230NW128.

Evidence held to sustain finding that earnest money contract was a legal consideration for check, where payee of check was able, ready and willing to convey good title to the property. 181M487, 233NW7. See Dun. Dig. 992.

To constitute a compromise and settlement sufficient to make consideration for a note given, there must be a bona fide mutual concession by each of the parties. Goodhue Co. Nat. Bk. v. E., 183M361, 236NW629. See Dun. Dig. 869, 1767.

Note given a bank upon a claim by the bank that defendant was liable to it for an obligation he had assumed on guaranties, held without consideration. Goodhue Co. Nat. Bk. v. E., 183M361, 236NW629. See Dun. Dig. 869, 1767.

**7071. Effect of want of consideration.**

Guardian of estate of an incompetent who by fraud obtains signature of a comaker to a note to "estate" to cover his official shortage is vulnerable to defense of lack of consideration. Kluczny v. M., 187M93, 244NW 407. See Dun. Dig. 1018.

A partial want, or partial failure, of consideration is a defense, pro tanto, to a negotiable promissory note in hands of original payee, or in hands of one not a holder in due course. Cemstone Products Co. v. G., 187 M416, 245NW624. See Dun. Dig. 1017.

**7072. Liability of accommodation party.**

180M326, 230NW218.

Payee of negotiable note for accommodation of third party who pays full consideration direct to such third party knowing that it is accommodation paper, is a "holder for value" entitled to recover against maker. 173M14, 216NW314.

A person who loans commercial paper for the accommodation of another may limit the use to be made thereof unless it passes to a holder in due course. 173M554, 218NW106.

Notes held signed by accommodation maker for an individual and not as accommodation makers for banks. 174M261, 219NW93.

Evidence held to support finding that promissory note was accommodation paper to be used for designated special purpose. 176M425, 223NW682.

Party giving note for work to be subsequently done, held not shown to be an accommodation party. 177M 477, 225NW388.

Notes and securities executed to a bank to deceive examiner by making an appearance of assets, could be collected by receiver representing creditors, though probably not enforceable by the bank itself. 177M529, 225NW891.

Insane person is not liable. 178M545, 227NW654.

Evidence held to show that note given to bank was without consideration and as accommodation. Stebbins v. F., 178M556, 228NW150.

Maker of notes for accommodation of officer at bank, held liable to bank purchasing paper. 179M77, 228NW 348.

Note given by director and stockholder of closed bank to enable the bank to open, held not an accommodation note, irrespective of understanding with bank officials. Markville State Bk. v. S., 179M246, 223NW757.

Where one took deed to land from bank, executed note and mortgage, and then reconveyed land to bank, his obligation is primary, and he cannot compel the holder of the note to first exhaust the mortgage security. 181 M82, 231NW403.

Where father gave note for part of purchase price of property sold son and received note from son for same amount, father was not an accommodation party, notwithstanding statement of cashier of bank that he was such. Citizens' State Bank of Franklin v. V., 184M506, 239NW249. See Dun. Dig. 969.

Contribution properly awarded one of two accommodation makers of a promissory note against the other, both having been found to have been accommodation makers for the third promisor. Deden v. G., 185M278, 240NW 909. See Dun. Dig. 1925(67).

Whether note was made to bank for its accommodation or to cashier for his accommodation, held for jury. First Nat. Bank of Barnum v. B., 187M38, 244NW340. See Dun. Dig. 969.

An action cannot be maintained by payee in an accommodation note so long as it remains in payee's hands unnegotiated. First Nat. Bank of Barnum v. B., 187M 38, 244NW340. See Dun. Dig. 975.

Guardian of estate of an incompetent who by fraud obtains signature of a comaker to a note to "estate" to cover his official shortage is vulnerable to defense of accommodation. Kluczny v. M., 187M93, 244NW407. See Dun. Dig. 969.

Direction of defendant to apply purchase price of shares of stock as part payment on note disproves defense that note was an accommodation note. Boeder v. T., 187M337, 245NW428. See Dun. Dig. 969.

## ARTICLE III. NEGOTIATION

**7073. What constitutes negotiation.**

The transfer of a promissory note operates as an equitable assignment of a real estate mortgage securing the same. 173M554, 218NW106.

Where a person steals a certificate of deposit and forges the payee's indorsement thereon and cashes it at the bank which in turn delivers it to the issuing bank and receives the amount thereof, both banks are liable to the payee in an action for conversion. Moler v. S., 176M449, 223NW780.

The indorser's warranty, under §7109, relates to the face of the instrument and not to the indorsements upon the back thereof. Moler v. S., 176M449, 223NW780.

The rule that a bank must know the signature of its customer has a direct reference to the ordinary depositor having a checking account, and is not applicable to the indorsement of a certificate of deposit by the payee therein. Moler v. S., 176M449, 223NW780.

Assignment of interest in note payable to third persons, held to pass title to assignee, though the note was subsequently renewed between the original parties thereto. 180M1, 230NW260.

One pledging note and mortgage which were subsequently sold by bank holding them as collateral could not recover because the note was not indorsed without restoring the benefits received by him. Rohwer v. Y., 182M168, 233NW851. See Dun. Dig. 931.

**7077. Special indorsement—Indorsement in blank.**

The words "to draw 7 per cent interest from 3-5-1920," following a special indorsement on the back of a 6 per cent note was surplusage and without legal significance between the endorsee and the maker, and was not of such character as to place the endorsee upon inquiry. 175M287, 221NW10.

**7079. When indorsement restrictive.**

The words "to draw 7 per cent interest from 3-5-1920," following a special indorsement on the back of a 6 per cent note was surplusage and without legal significance between the endorsee and the maker, and was not of such character as to place the endorsee upon inquiry. 175M287, 221NW10.

**7081. Qualified indorsement.**

The words "to draw 7 per cent interest from 3-5-1920," following a special indorsement on the back of a 6 per cent note was surplusage and without legal significance between the endorsee and the maker, and was not of such character as to place the endorsee upon inquiry. 175M287, 221NW10.

Parol evidence is inadmissible to show that indorsement on negotiable instrument was intended to be "without recourse." Johnson Hardware Co. v. K., 246 NW663. See Dun. Dig. 1012, 3368.

**7092. Transfer without indorsement—Effect of.**

A person who acquires a promissory note without a valid indorsement cannot be a holder in due course. 173M554, 218NW106.

Title to promissory note in custody of third person may be transferred by oral agreement. 176M18, 222NW 509.

Title to a promissory note can be transferred by delivery without indorsement though the new owner is not entitled to the privileges of a bona fide holder. 176 M246, 223NW287.

## ARTICLE IV. RIGHTS OF THE HOLDER

**7094. Right of holder to sue—Payment.**

One receiving stolen bonds as collateral security has burden of proving that he gave value. 28F(2d)463.

In action by executor to recover on promissory note given by defendant to a bank, evidence held to sustain finding that bank had not transferred the note to the decedent prior to closing for insolvency. *Rosholt v. N.*, 184M330, 238NW636. See Dun. Dig. 950.

Endorsement of promissory notes carried mortgage with it. *Jefferson County Bank v. E.*, 247NW245. See Dun. Dig. 575, 6276.

Pledgee is proper party to bring action on bills payable pledged by bank, that has since closed. *Op. Atty. Gen.*, May 22, 1929.

**7095. What constitutes holder in due course.**

180M326, 230NW812.

176M52, 222NW340; note under §7098.

A person who acquires a promissory note without a valid endorsement cannot be a holder in due course. 173M554, 218NW106.

Finding that plaintiff was not good faith purchaser of note for value and before maturity, held sustained by the evidence. 174M115, 218NW464.

Whether plaintiff was holder of promissory notes in due course held for jury. 174M258, 219NW95.

Whether plaintiff was holder in due course, held for jury. 174M558, 219NW905.

Where bonds were conclusively proven to have been stolen, burden shifted to defendant in replevin to show that it was a holder in due course. *Commercial Union Ins. Co. v. C.*, 183M1, 235NW634. See Dun. Dig. 1040(64).

Bank which bought land purchase money notes held a bona fide purchaser for value before maturity and a holder in due course. *Patzwald v. O.*, 184M529, 239NW 771. See Dun. Dig. 950.

Guardian of estate of an incompetent who by fraud obtains signature of a comaker to a note to "estate" to cover his official shortage is vulnerable to defenses of fraud, lack of consideration, and accommodation. Such defenses are also available against his successor as guardian. *Kluczny v. M.*, 187M93, 244NW407. See Dun. Dig. 1019.

(4).

Evidence held to sustain finding that bank had actual or constructive notice that beneficial ownership of county warrants deposited by a broker was in a third person. *Berg v. U.*, 186M529, 243NW696. See Dun. Dig. 953.

**7096. When person not deemed holder in due course.**

An agreement not to present a check until drawer should notify payee that deposit had been made in bank may amount to a waiver by the drawer of prompt presentment and during the period of delay drawer may be liable as upon a negotiable instrument, and is not subject to garnishment. 173M504, 218NW99.

**7098. When title defective.**

One receiving stolen bonds as collateral security has burden of proving that he gave value. 28F(2d)463.

Evidence held to show consideration for promissory note and that plaintiff was holder in due course. 176M52, 222NW340.

Bank having actual or constructive notice of beneficial ownership of county warrants delivered to it by a broker, it could not apply them upon a debt of the broker, nor could it so apply them even without knowledge of true ownership unless it changed its position or acquired a superior equity. *Berg v. U.*, 186M529, 243NW 696. See Dun. Dig. 961a.

Evidence held to sustain finding that bank receiving deposit of county warrants from broker did not change its position or acquire a superior equity over a third person having beneficial ownership of the warrants. *Berg v. U.*, 186M529, 243NW696. See Dun. Dig. 3192.

Guardian of an estate of an incompetent who by fraud obtains signature of a comaker to a note to "estate" to cover his official shortage is vulnerable to defense of fraud. Such defense is also available against his successor as guardian. *Kluczny v. M.*, 187M93, 244NW407. See Dun. Dig. 4114.

Evidence held to show that plaintiff was holder of promissory note in due course. *First Nat. Bank v. V.*, 187M96, 244NW416. See Dun. Dig. 956.

Evidence required finding that plaintiff is a holder of a promissory note in due course. *Case v. F.*, 187M127, 244NW821. See Dun. Dig. 956.

**7099. What constitutes notice of defect.**

Person to whom note is negotiated must have had actual knowledge of fraud or knowledge of such facts that his action in taking the paper amounted to bad faith. 175M287, 221NW10.

The general rule is that the purchaser of negotiable paper need not make inquiry or investigation as to the maker; but this rule has its exceptions under special circumstances. 175M287, 221NW10.

Rights of bona fide purchaser of accommodation paper discounted at a rate sufficient to constitute usury. 177M491, 225NW443.

**7100. Rights of holder in due course.**

Negotiable character of note does not extend to mortgage securing it. 180M104, 230NW277.

Bank taking note secured by mortgage without knowledge that the holder took the same as indemnity, held a holder of the note in good faith. 180M104, 230NW271.

**7101. When subject to original defenses.**

One purchasing note after maturity is holder in due course where endorser was holder in due course. *Case v. F.*, 187M127, 244NW821. See Dun. Dig. 961.

Evidence held not to show duress in obtaining check to cover indebtedness of son. *General Motors Acceptance Corp. v. J.*, 248NW213. See Dun. Dig. 2848.

**7102. Who deemed holder in due course.**

One receiving stolen bonds as collateral security has burden of proving that he gave value. 28F(2d)463.

Burden is on holder to prove that he or some person under whom he claims to have acquired the title, is a holder in due course, where it appears that the note was fraudulently procured from the maker. 175M287, 221NW10.

The fact that notes were endorsed by the payee "without recourse" does not indicate bad faith. 175M293, 221NW12.

Transferee of note given for work subsequently to be done held holder in due course. 177M477, 225NW388.

Evidence held to show that plaintiff was holder of promissory note in due course. *First Nat. Bank v. V.*, 187M96, 244NW416. See Dun. Dig. 956.

Bank relying upon endorsement of payee and refusing to take notes without recourse need not make inquiry to discover infirmities. *Case v. F.*, 187M127, 244NW821. See Dun. Dig. 955.

## ARTICLE V. LIABILITIES OF PARTIES

**7103. Liability of maker.**

Notes and securities executed to a bank to deceive examiner by making an appearance of assets could be collected by receiver representing creditors, though probably not enforceable by the bank itself. 177M529, 225NW891.

Insane person signing as surety or accommodation party is not liable. 178M545, 227NW654.

Transaction whereby bank president gave his note guaranteed by the bank in exchange for a certificate of deposit held a transaction of the bank and it was liable on the note. 178M476, 227NW659.

Uniform Negotiable Instruments Act does not control rights of principals and sureties arising from conveyance of mortgaged premises wherein vendees assume and agree to pay mortgage debt. *Jefferson County Bank v. E.*, 247NW245. See Dun. Dig. 6295.

**7108. Warranty where negotiation by delivery, etc.**

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. 941(32).

**7109. Liability of general indorser.**

173M325, 217NW381.

Where a person steals a certificate of deposit and forges the payee's indorsement thereon and cashes it at the bank which in turn delivers it to the issuing bank and receives the amount thereof, both banks are liable to the payee in an action for conversion. 223NW781.

The indorser's warranty, under this section, relates to the face of the instrument and not to the indorsements upon the back thereof. *Moler v. S.*, 176M449, 223NW 780.

**7111. Order in which indorsers are liable.**

Indorsers held joint and one paying was entitled to contribution. 172M52, 214NW767.

Three years' delay in suing for contribution did not bar action on theory of laches. 172M52, 214NW767.

The statutory rule of successive liability does not apply as between joint makers of a promissory note, who are primarily liable on the instrument. *Deden v. G.*, 185M278, 240NW909. See Dun. Dig. 874, 1899, 1900, 1920, 1925.

**7112. Liability of an agent or broker.**

A broker who acts for a disclosed principal is not liable for breach of the resulting contract. Only the principal is bound. *Ammon v. W.*, 183M71, 235NW533. See Dun. Dig. 1156, 217.

## ARTICLE VI. PRESENTMENT FOR PAYMENT

**7113. Effect of want of demand on principal debtor.**

Holder of draft payable on demand who negligently failed to present the same for payment within a reasonable time, there being funds for its payment, suffers the loss where the drawer fails; and where such draft has been sent by a debtor to his creditor on account, the debt is paid. 173M83, 216NW531.

**7114. Presentment where instrument is not payable on demand and where payable on demand.**

173M83, 216NW531; note under §7113.

**7124. When delay in making presentment is excused.**

173M83, 216NW531; note under §7113.

**7125. When presentment may be dispensed with.**

173M325, 217NW381.

**7131. What constitutes payment in due course.**

Payment of draft to bank to which sent by drawer at request of drawee, held payment to latter, though bank fails before proceeds cleared. 180M199, 230NW467.

Payment to payee, of note, who does not produce it, does not operate as payment thereof where the note has been transferred to a holder in due course. Gordon v. O., 183M188, 235NW875. See Dun. Dig. 903.

## ARTICLE VII. NOTICE OF DISHONOR

**7152. Waiver of notice.**

When the indorsers of a certificate of deposit, with full knowledge of the omission of presentment and notice of dishonor, unconditionally promise to pay the obligation or acknowledge themselves bound, the jury may find implied waiver of notice of dishonor. Instruction in this case approved. 172M574, 216NW237.

**7153. Whom affected by waiver.**

Waiver of presentment, etc., on endorsement of note. 172M405, 215NW785.

**7161. When protest need not be made—When must be made.**

A bill of exchange both drawn and payable within the state need not be protested no matter what indorsement it bears. Op. Atty. Gen., Nov. 18, 1931.

If bill of exchange is drawn outside the state or payable outside the state, or both drawn and payable outside the state, it should be protested. Op. Atty. Gen., Nov. 18, 1931.

## ARTICLE VIII. DISCHARGE OF NEGOTIABLE INSTRUMENTS

**7162. Instrument—How discharged.**

Evidence held not to show passage of title to furniture and consequent payment of conditional sales note given for an automobile, providing that title to the car should pass when payee should receive furniture in full payment of the note. 172M16, 214NW479.

Evidence held insufficient to warrant finding that certain note was given in payment of previous guaranteed note. 172M22, 214NW760.

Giving of note is conditional payment of old note only, in absence of express agreement. First Nat. Bank v. O., 247NW387. See Dun. Dig. 7444.

County's check was paid as far as county was concerned where check was paid by bank and charged against county's account, though payee never received the money due to closing of correspondent bank receiving the money. Op. Atty. Gen., June 26, 1929.

**7163. Persons secondarily liable.**

The renewal of a note is not payment unless given and received as such. 172M223, 214NW781.

One who makes an absolute guaranty of commercial paper is not relieved because the holder fails to exercise diligence in collecting from the makers or others. 176M529, 224NW149.

Evidence held to justify finding that notes were not taken as payment to an endorser who was required to pay another note. 177M325, 225NW113.

**7167. Alteration of instrument—Effect of.**

First Trust Co. v. M., 187M468, 246NW1.

## TITLE II. BILLS OF EXCHANGE

## ARTICLE I. FORM AND INTERPRETATION

**7169. Bill of exchange defined.**

173M83, 216NW531; note under §7113. Op. Atty. Gen., Nov. 18, 1931; note under §7161.

**7172. Inland and foreign bills of exchange.**

173M83, 216NW531; note under §7113. Op. Atty. Gen., Nov. 18, 1931; note under §7161.

## ARTICLE IV. PROTEST

**7202. When protest dispensed with.**

Whether farmer living  $7\frac{1}{2}$  miles from town presented a check for payment within reasonable time, held for jury. 181M104, 231NW789.

## TITLE III. PROMISSORY NOTES AND CHECKS

## ARTICLE I.

**7227. Promissory note defined.**

A written agreement for the extension of a loan secured by a mortgage does not supplant the original

note as the primary evidence of debt to the extent that its possession by a broker is any evidence of authority to collect on behalf of the mortgagee. 176M399, 223NW459.

Cancellation of contract for sale of land discharged liability on note. 177M174, 224NW842.

**7228. Check defined.**

No person shall be adjudged a garnishee by reason of any liability incurred as maker or otherwise upon any check or bill of exchange. 173M504, 216NW249.

Where a check is unconditionally delivered, parol evidence is incompetent to show an agreement that it should not be presented until drawer should notify payee that a deposit had been made. 173M504, 216NW249.

**7229. Within what time a check must be presented.**

173M83, 216NW531; note under §7113.

Drawer of check held not released by delay of presenting check to bank which became insolvent where such delay was caused by conduct of drawer. 173M389, 217NW506.

An agreement not to present a check until drawer should notify payee that deposit had been made in bank may amount to a waiver by the drawer of prompt presentment and during the period of delay drawer may be liable as upon a negotiable instrument, and is not subject to garnishment. 173M504, 218NW99.

Whether farmer living  $7\frac{1}{2}$  miles from town presented a check for payment within reasonable time, held for jury. 181M104, 231NW789.

Holder of check and collecting banks, held to have used due diligence in presenting check for payment before failure of drawee bank. 181M212, 231NW928. See Dun. Dig. 985, 7445.

**7232. When check operates as an assignment.**

If drawer intends to appropriate a specific portion of the fund to the payment of the check, an equitable assignment of the fund results, as between the drawer and the payee. Appointments of a receiver does not affect the rights of the parties where they dealt with each other in good faith before notice of the appointment. 172M24, 214NW750.

Surrender of drafts to be collected from the drawer constituted a "valuable consideration" for the assignment. 172M24, 214NW750.

A check of itself does not operate as an assignment of funds in the bank to the credit of the drawer, though with other circumstances, it may amount to an assignment. 173M289, 217NW365.

Bank accepting deposit to cover certain checks to be issued could not be applied on other indebtedness of the depositor. 173M289, 217NW365.

Notations on a check intended to indicate the purpose of the payment attempted to be made thereby have no effect against the bank in which the check is deposited by the payee. 173M383, 217NW366.

Where check was presented to drawee bank and bank draft was accepted for check, the debt was paid. 173M533, 217NW934.

A check does not of itself operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder of the check, unless and until it accepts or certifies the check. Lambrecht v. M., 182M442, 234NW869. See Dun. Dig. 554(26).

An unpaid check in the hands of a payee attorney, a part of the proceeds of which will, when collected, belong to his client, does not constitute garnishable money or property. Lundstrom v. H., 185M40, 239NW664. See Dun. Dig. 3967.

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

Federal reserve bank held not negligent in sending check direct to payer bank, to be paid by draft. 172M58, 214NW918.

Correspondent bank was authorized to direct drawee bank to remit by exchange, and when such bank closed after it sent its draft, but before it reached the correspondent bank, the latter could charge the check back, and there was no payment received thereon, though drawee marked it paid. 181M212, 231NW928. See Dun. Dig. 986, 7446.

It is presumed that bank receiving check for deposit became the depositor's collecting agent, so that drawer of check did not become indebted to the bank, and where the bank sent the check to a correspondent bank, the drawer, stopping payment on the check, was not liable to such correspondent bank. 34F(2d)348.

Bank agreeing to remit in Russian rubles, held not liable for negligence of competent subagent. 180M110, 230NW280.

Where check was deposited in bank, and correspondent bank collected the check and sent a draft, and then closed, the payee must present his claim against the insolvent bank. Op. Atty. Gen., June 26, 1929.

If federal reserve bank was negligent in forwarding checks or in securing payment, it was liable. Osage Nat. Bank v. F., 184M111, 238NW44. See Dun. Dig. 790a.

The Federal Reserve Bank of Minneapolis, under Regulation J. Series 1920, of the Federal Reserve Board, and its own Circular 228, and the custom of the region in which it operated, was authorized to forward in its

district, for payment and return of proceeds, checks sent it by another federal reserve bank or directly by a member bank. It was not required to exact currency in payment. It might accept exchange. *Osage Nat. Bank v. F.*, 184M111, 238NW44. See Dun. Dig. 7446.

In action by bank on renewal of note given either for bank's accommodation or cashier's accommodation, evidence held not sufficiently definite to justify submitting to jury defendant's contention that his note was discharged by certain transactions and settlements between bank and cashier. *First Nat. Bank of Barnum v. B.*, 187M38, 244NW340. See Dun. Dig. 9093.

## TITLE IV. GENERAL PROVISIONS

### ARTICLE I.

#### 7235. Definitions and meaning of terms.

A certificate of deposit payable to the order of "Christian Hanson Estate" was payable to bearer. 175M453, 221NW873.

#### 7237. Reasonable time, what constitutes.

Whether farmer living  $7\frac{1}{2}$  miles from town presented a check for payment within reasonable time, held for jury. 181M104, 231NW789.

Holder of check and collecting banks, held to have used due diligence in presenting check for payment before failure of drawee bank. 181M212, 231NW928. See Dun. Dig. 987, 7445.

#### 7239. Application of act.

Negotiable Instrument Act did not repeal §7247 relating to obtaining signature by deceit, trick or artifice. *Wisno Co. v. M.*, 186M593, 244NW76.

### MISCELLANEOUS PROVISIONS

#### 7247. Instrument obtained by fraud.

Evidence sustained verdict against maker and guarantor as against claim of fraud. 171M216, 213NW902.

"Trick or artifice" must deceive, and defense was without merit where there was affirmation by signer after knowledge of the precise character of the instrument. 172M126, 214NW924.

Evidence held to show that misrepresentations were made by payee in note. 174M115, 218NW464.

Finding that there was no fraud or misrepresentation by cashier of bank in transaction in which note was given held sustained by evidence. 174M261, 219NW93.

Evidence held sufficient to establish defense under this section, which creates a new defense that is not lost by the mere fact that the payee or holder of the note becomes insolvent and goes into the hands of a receiver after its execution. *Simerman v. H.*, 178M31, 225NW913.

This section was not repealed by Negotiable Instrument Act. *Wisno Co. v. M.*, 186M593, 244NW76. See Dun. Dig. 1019.

Evidence held to sustain finding that signature to note was obtained by deceit and artifice without negligence on part of maker. *Wisno Co. v. M.*, 186M593, 244NW76. See Dun. Dig. 1019.

In action on notes, fraud held for jury. *Wiebke v. E.*, 248NW702. See Dun. Dig. 1019.

## CHAPTER 52

### Partition Fences

#### 7248. Fence viewers.

Establishment of center of section of land. 172M388, 215NW426.

#### 7250. Occupants to maintain.

Land in part woodland, meadow and slough, adjoining other lands not under plow, held not "improved" so as to impose obligation to build joint line fence. *Op. Atty. Gen.*, Apr. 28, 1932.

## CHAPTER 53

### Estrays and Beasts Doing Damage

#### BEASTS DOING DAMAGE

##### 7275. Notice to owner.

Notice is not waived by a general statement of the owner of the animals to one taking them up, "to have the damages appraised and he would pay for them." *Pruka v. M.*, 182M421, 234NW641. See Dun. Dig. 277, 10134.

The notice required in proceedings to distrain animals doing damage is a written notice and is jurisdictional. *Pruka v. M.*, 182M421, 234NW641. See Dun. Dig. 277.

#### MISCHIEVOUS DOGS

##### 7285. Keeping after notice.

Owner of dog becomes liable on receiving notice by seeing the forbidden act or by information from any other person, oral or written. *Op. Atty. Gen.*, Oct. 30, 1929.

##### 7286. Dogs worrying livestock or poultry.

Dogs may be killed under statutory authority when they are nuisances, G. S. 1923, §7287, or when they menace live stock or poultry, G. S. 1923, §7286, as amended. 175M368, 221NW430.

Common-law rule is not abrogated by this section. 175M368, 221NW430.

##### 7287. Nuisance, when—Procedure.

174M457, 219NW770.

Dogs may be killed under statutory authority when they are nuisances, G. S. 1923, §7287, or when they menace live stock or poultry, G. S. 1923, §7286, as amended. 175M368, 221NW430.

Common-law rule is not abrogated by this section. 175M368, 221NW430.

#### RUNNING AT LARGE OF CERTAIN ANIMALS

**7297-1. County board to license dogs.**—The Board of County Commissioners of any county, by a majority vote, may provide for the licensing and regulating the running at large of dogs, and create a live-stock indemnity fund to be handled and disbursed

as hereinafter set forth. After the plan therefor shall have been in operation in any county for at least one year, the Board of County Commissioners thereof may by a majority vote, abandon the same. In any county containing a city of the first class the Board of County Commissioners shall exclude from the operation of this act such city of the first class. (Act Apr. 21, 1931, c. 295, §1.)

**7297-2. Owners to obtain licenses.**—The owners of all dogs six months old or over, except dogs kept in kennels, in all counties providing for the licensing and regulating the running at large of dogs as provided for in Section one of this act, shall annually obtain a license therefor, as herein provided, and it shall be unlawful for the owner of any dog six months old or over to allow such dog to run at large without being so licensed or without wearing the license tag herein provided for. (Act Apr. 21, 1931, c. 295, §2.)

**7297-3. Who are owners.**—For the purposes of this act, the term "owner" shall, in addition to its ordinary meaning, include any person who keeps or harbors a dog. (Act Apr. 21, 1931, c. 295, §3.)

**7297-4. County auditor to issue license.**—The owner of a dog for which a license shall be required, shall on or before the 15th day of July, of each year apply to the auditor of the county in which such owner resides for a license for each dog owned by him. (Act Apr. 21, 1931, c. 295, §4.)

**7297-5. Application.**—Application for license shall be made after July 15th and at any time, for a dog which has come into the possession or ownership of the applicant or which has reached the age of six months after said date. (Act Apr. 21, 1931, c. 295, §5.)