

GENERAL STATUTES

33

OF THE

STATE OF MINNESOTA,

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VOL. 1.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOT
REMEDIAL, THE LATTER BEING IN VOL. 2.

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CHAPTER 23.

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

Legislation on the subject of interest in this country had its origin in the English statutes, 53 Geo. III, ch. 93; 3 and 4 Will. IV, ch. 98, § 7; 5 and 6 Will. IV, ch. 41; 7 Will. IV, and 1 Vict. ch. 80; 2 and 3 Vict. ch. 37; 3 and 4-Vict. ch. 83; 4 and 5 Vict. ch. 54; 6 and 7 Vict. ch. 45; 8 and 9 Vict. ch. 102, which modified the former law. The latter did away with fine distinctions as to what constituted usury. Stat. 12 Anne, ch. 16, made usurious contracts void. 58 Geo. III, ch. 93, excepted commercial paper in hands of indorser for value without notice. 3 and 4 Will. IV, ch. 98, § 7, excepted commercial paper payable in three months. 5 and 6 Will. IV, ch. 41, provided that, instead of being void, should be decreed to be for an illegal consideration.

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INTEREST ON MONEY.

Sec. 2089. Rate of interest.— The interest for any legal indebtedness shall be at the rate of seven (7) dollars upon one (100) hundred dollars for a year, unless a different rate is contracted for in writing,* and no person, company, or corporation, shall directly or indirectly take or receive in money, goods or things in action or in any other way, any greater sum or any greater value for the loan or forbearance of money, goods or things in action than ten (10) dollars on one hundred (100) dollars for one year.

Not compounded.— And in the computation of interest upon any bond, note or other instrument or agreement, interest shall not be compounded.

Not usury.— But any contract to pay interest not usurious upon interest overdue shall not be construed to be usury.

Same interest after due.— *Provided*, that all contracts hereafter made shall bear the same rate of interest after they become due as before, and that any provision in any contract, note or instrument providing for an increase of the rate of interest upon maturity or any increase therein after the making and delivery thereof, shall work a forfeiture of the entire interest thereon. *Provided, further*, that the foregoing proviso shall not apply to notes or contracts which bear no interest before maturity.

1879, ch. 66, § 1: "An act relating to interest on money and usury." Approved March 5th. In force July 1, 1879. As amended 1887, ch. 66, by adding the provisos. Supersedes G. S. ch. 23, § 1, and acts 1877, ch. 15, § 1. Below * G. S. provided that all contracts should bear the same rate of interest after as before due, if such was the intention of the parties; but no contract for a greater rate than \$12 upon one hundred for a year shall be valid for the excess of interest over twelve per cent. Between * and first proviso is § 2, ch. 15, acts 1877, which was "An act to amend § 1, ch. 23, G. S.," and added five new sections to said section, all of which are superseded by acts 1879, ch. 66. The statute 58 Geo. III, ch. 93, introduced the exception of commercial paper when discounted *bona fide* without notice of its usurious inception. For the learning on this subject see *Selleck v. French*, 1 Am. L. Cas. 496. 2 M. 350; 3 M. 339, 347; 15 M. 217; 21 M. 415, 530; 22 M. 19, 341; 22 M. 84.

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SEC. 2090. Usury — Whole interest forfeited.— Every person who for any such loan or forbearance, shall have paid or delivered any greater sum or value than is above allowed to be received, may by himself or his personal representatives, recover in an action against the person who shall have taken or received the same, or his personal representatives, the full amount of interest or premium so paid, with costs, if such action shall be brought within two (2) years after such payment or delivery: *Provided*, that one-half of the amount so recovered shall be paid by the officer collecting the same into the county treasury of the county where such penalty is collected, for the use of the common schools.

1879, ch. 66, § 2. Supersedes but same as § 2, ch. 15, acts 1877. This law is in harmony with the Eng. Stat. 5 and 6 Will. IV, ch. 41, § 1, which limited the recovery to the illegal interest.

SEC. 2091. Usurious contracts void — Exceptions.— All bonds, bills, notes, assurances, conveyances, chattel mortgages, and all other contracts and securities whatsoever, and all deposits of goods, or anything whatever, whereupon or whereby there shall be reserved, secured or taken any greater sum or value for the loan or forbearance of any money, goods or things in action, than is above prescribed, shall be void.

Exceptions.— Except as to the bona fide purchasers of negotiable paper as hereinafter provided in good faith, for a valuable consideration before maturity. * *Provided*, that no merely clerical error in the computation of interest made with no intent to avoid the provisions of this act shall constitute usury. *Provided further*, that interest at the rate of one-twelfth of ten per centum for every thirty (30) days, shall be construed not to exceed ten per centum per annum. *Provided further*, that the payment of interest in advance for one year at a rate not to exceed ten per centum per annum, shall not be construed to constitute usury.

Innocent purchaser.— *Provided further*, that nothing herein shall be construed to prevent the purchase of negotiable mercantile paper, usurious or otherwise, for a valuable consideration, by an innocent purchaser, free from all equities at any price, before the maturity of the same, when there has been no intent to evade the provisions of this act, or where said purchase has not been a part of the original usurious transaction. In any case, however, where the original holder of a usurious note sells the same to an innocent purchaser, the maker of said note or his representatives shall have the right to recover back from the said original holder, the amount of principal and interest paid by him on said note.

1879, ch. 66, § 3. Supersedes but same as § 3, ch. 15, acts 1877, except that at * the latter act read, "whether the sum or value so secured, received or taken shall appear in or from such bond, bill, note, assurance, conveyance or contract, or otherwise." Acts 1879, ch. 66, § 7, only repealed § 1, ch. 15, acts 1877. This subject originated with the Eng. Stat. 12 Anne, ch. 16, which made the usurious contract void. 58 Geo. III, ch. 93, excepted commercial paper in hands of indorser for value without notice. 3 and 4 Will. IV, ch. 98, § 7, excepted commercial paper payable within three months. 5 and 6 Will. IV, ch. 41, provided that instead of being void should be decreed to be for an illegal consideration. 31 M. 305; 28 M. 8, 214.

SEC. 2092. Contract void.— Whenever it satisfactorily appears to a court that any bond, bill, note, assurance, pledge, conveyance, contract, security or evidence of debt, has been taken or received in violation of the provisions of this act, the court shall declare the same to be void, and enjoin any proceeding thereon, and shall order the same to be cancelled and given up.

1879, ch. 66, § 6. Supersedes but same as § 6, ch. 15, acts 1877.

SEC. 2093. Bill of discovery.— Every person, company or corporation offending against the provisions of this act, shall be compelled to answer on oath any complaint that may be exhibited or filed against him in the district court for the proper county, for the discovery of any sum of money, goods,

or things in action so taken, accepted or received, in violation of any of the foregoing provisions.

1879, ch. 66, § 4. Supersedes but same as § 4, ch. 15, acts 1877. In the various states this legislation was introduced to furnish means of proof of usurious contract, and under it some courts decided that the bill would, and others that it would not, lie, where the usury could be proved by other evidence; but the United States supreme court, in 10 Pet. 497, 521, held that the bill would not lie where there was other evidence, and this must be averred in the bill.

SEC. 2094. Parties may testify — Interest after maturity.— Whenever in any action in any court the defendant shall plead or answer the defense of usury, either party to the action may be a witness in his own behalf on the trial, except in actions in which the opposite party sues or defends as administrator or personal representative of a deceased person; except, also, actions in which the opposite party claims as assignee, and the original assignee is deceased.

Interest after maturity.— In case of all notes or other instruments bearing interest, when no rate of interest is specified after maturity, the said note or other instrument shall be construed to bear the same rate of interest after maturity as before, and until fully paid and satisfied.

1879, ch. 66, § 5. Supersedes but same as § 5, ch. 15, acts 1877.

SEC. 2095. Mutual building associations excepted.— None of the provisions of this act shall apply to mutual building associations.

1879, ch. 66, § 7. Acts 1877, ch. 95, approved March 5, 1877, provided that none of the provisions of acts 1877, ch. 15, "shall apply to mutual building associations."

SEC. 2096. Certain business ventures excepted.— Nothing in this act shall be construed as in any way affecting any contract heretofore, or hereafter made, whereby one (1) of the parties thereto has advanced, or may advance, money to be used in business, or other ventures, mutually determined upon, and whereby the other party thereto, the one receiving such money, has refunded, or agrees to refund the same, with interest thereon as stipulated (provided such interest does not exceed a lawful rate) and in addition thereto has shared, or agrees to share equally or otherwise, with the party so advancing the money, the profits, if any there were or may be, of the business or other ventures carried on, or undertaken, in whole or in part with such money.

1889, ch. 121: "An act to amend an act entitled an act relating to interest on money and usury, being ch. 66, laws 1879, as the same has been amended and now reads," by adding after § 7 an additional section as above. Approved April 24, 1889.

BONDS.

SEC. 2097. Negotiable.— Bonds and other obligations under seal for payment of money, payable to the bearer, or some person designated or bearer, or payable to order, issued by any corporation or joint-stock company, shall be negotiable in the same manner and to the same extent as promissory notes.

G. S. ch. 23, § 2 (9). 23 M. 296.

SEC. 2098. Reissue of municipal bonds.— That whenever any bond, order or warrant of the state of Minnesota, or any county, city, township or school district in the state of Minnesota, shall become so far mutilated as to become unfit for circulation, or shall be lost or destroyed, a duplicate thereof may be issued by the officers authorized by law to issue such bonds, orders, or warrants, under the regulations and restrictions hereinafter prescribed.

1883, ch. 76, § 1: "An act concerning mutilated, lost and destroyed bonds, orders and warrants." Approved March 5, 1883.

SEC. 2099. Duplicate.— Such duplicate shall correspond in number, date, amount and coupons, with the original bond, order or warrant, and shall have

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indorsed on its face and on the face of each coupon, by the officer issuing the same, the word "duplicate," together with the date of its issuance.

. 1883, ch. 76, § 2.

SEC. 2100. **Warrant.**— On the delivery to the proper officer of any mutilated bond, order or warrant, a duplicate of such bond, order, or warrant shall be issued as herein provided.

. 1883, ch. 76, § 3.

SEC. 2101. **Bond for reissue.**— A duplicate for a lost or destroyed bond, order or warrant shall not issue until there shall have been filed with the proper officer an affidavit of the owner thereof, setting forth the ownership of such bond, order or warrant, the description thereof, the number of coupons thereto attached, and the manner of its loss and destruction, and until there shall have been executed and filed with the same officer an indemnifying bond, with sureties to be approved by such officer, in a sum equal to double the amount of such warrant, order or bond, and the coupons attached, conditioned that the parties thereto shall pay all damages which the state, county, city, township, or school district, as the case may be, may sustain, if compelled to pay such lost or destroyed bonds, orders or warrants.

1883, ch. 76, § 4.

SEC. 2102. **Record.**— Any officer issuing duplicates under this act, shall keep a record showing the number, dates and amounts of such mutilated, lost or destroyed bonds, orders or warrants, and the number of coupons thereto attached, together with the date of issuance of the duplicates therefor, and the names of the persons to whom issued.

1883, ch. 76, § 5.

BILLS OF EXCHANGE—PROMISSORY NOTES.

SEC. 2103. **Maturing on Sunday or holiday.**— Bills of exchange, drafts, promissory notes, and contracts, due or payable, or to be executed on Sunday, Thanksgiving Day, Good Friday, Christmas Day, New Year's Day, the twenty-second day of February, the fourth day of July, or on the following day when either of the four days last mentioned occurs on Sunday, shall be payable or performable upon the business day next preceding said days; and in case of non-payment or non-fulfilment, shall be noted and protested upon such preceding day; but notice of the dishonor, non-payment or non-fulfilment need not be given until the business day next following the days above specified.

G. S. ch. 23, § 3 (10), as amended 1869, ch. 86; 1871, ch. 46. Amendments added Good Friday and New Years. This legislation in this country had its origin in 39 and 40 Geo. III, ch. 42; 7 and 8 Geo. IV, ch. 15. See 1 Pet. 31; 9 Wheat. 581; 20 Wend. 205; 2 Ca. Ca. 195; 2 Hill, 588.

SEC. 2104. **Demand notes.**— Upon a promissory note payable on demand, a demand made at the expiration of sixty days from the date thereof without grace, or at any time within that term, shall be deemed to be made within a reasonable time; and any act, neglect or other thing, which, by the rules of law and the customs of merchants, is deemed equivalent to a presentment and demand on a note payable at a fixed time, or which would dispense with such presentment and demand, if it occurs at or within said term of sixty days, shall be deemed a dishonor thereof, and shall authorize the holder of such note to give notice of the dishonor to the endorser as upon a presentment to the promisor, and his refusal or neglect to pay the same. No presentment of such note to the promisor and demand of payment shall charge the endorser, unless made on or before the last day of said term of sixty days.

G. S. ch. 23, § 4 (11). 37 M. 337.

SEC. 2105. **Same — Indorser's liability.**— The several indorsers of promissory notes payable on demand, upon due and reasonable notice of the

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dishonor of such notes, shall be liable in the same manner and to the same effect as upon the dishonor of promissory notes payable at a fixed time, and not otherwise.

G. S. ch. 23, § 5 (12).

SEC. 2106. Acceptance of bill.—No person within this state shall be charged as an acceptor on a bill of exchange, unless his acceptance is in writing, signed by himself or his duly authorized agent.

G. S. ch. 23, § 6 (13). 8 M. 407. This legislation does not abrogate the common law of general and qualified acceptance which is regulated by statute in most of the states. Prior to 1 and 2 Geo. IV., defining general and qualified acceptance, the decisions upon such liability were not harmonious. Chitty on Bills, ch. 7, p. 331. This caused the enactment of that statute. The decision of the house of lords in the leading case, on this subject, of *Rowe v. Young*, 2 Bligh's Par. Ca. 391 (2 B. & B. 165; 6 Eng. C. L. 53), disapproved in this country. 13 Pet. 136; Story on Bills, §§ 239, 356.

SEC. 2107. Damages on foreign bills.—Whenever any bill of exchange, drawn or endorsed within this state, and payable without the limits of the United States, is duly protested for non-acceptance or non-payment, the party liable for the contents of such bill, shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand, and damages at the rate of ten per cent. upon the contents thereof, together with interest on the said contents, to be computed from the date of the protest; and said amount of contents, damages and interest shall be in full of all damages, charges and expenses.

G. S. ch. 23, § 7 (14).

SEC. 2108. Same—On inland bills.—If any bill of exchange, drawn upon any person, or body politic or corporate, out of this state, but within the United States, for the payment of money, is duly presented for acceptance, or payment, and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest, according to its tenor, and five per cent. damages, together with costs and charges of protest.

G. S. ch. 23, § 8 (15).

SEC. 2109. Notes payable to maker or fictitious person.—Promissory notes made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect, and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to bearer.

G. S. ch. 23, § 9 (16).

SEC. 2110. Days of grace.—On all bills of exchange payable at sight, or at a future day certain, within this state, and on all negotiable promissory notes, orders and drafts, payable at a future day certain within this state, in which there is not an express stipulation to the contrary, grace shall be allowed in like manner as it is allowed by the custom of merchants on foreign bills of exchange, payable at the expiration of a certain period after date or sight.

G. S. ch. 23, § 10 (17).

SEC. 2111. Same—Not allowed on demand notes.—The provisions of the preceding section shall not extend to any bill of exchange, note or draft, payable on demand.

G. S. ch. 23, § 11 (18).

VOID NOTES AND BILLS.

SEC. 2112. When signature obtained by fraud.—No person, nor the heirs or personal representatives of any person, whose signature is obtained to any bill of exchange, promissory note, or other paper negotiable under the law merchant, shall be held on any such bill, note, or contract, nor liable in any manner on account of such signature, if it shall be made to appear as a matter

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of fact that the signature to such bill, note or contract is obtained by fraudulent representation, trick or artifice as to the nature and terms of the contract so signed, and that the person whose signature is so obtained does not at the time of affixing such signature believe that the contract so signed is a bill of exchange, promissory note or other paper negotiable under the law merchant, and that the person whose signature is so obtained was not guilty of negligence in signing such paper without knowledge of its terms; that the question of negligence in any suit or such contract shall in all cases be one of fact for the jury, or (if the suit be tried by the court without a jury) for the court. That in all such cases the person sought to be charged on such bill, note, or contract shall be entitled to a jury trial on such question of negligence.

1883, ch. 114: "An act to declare bills, notes and other negotiable instruments obtained by fraudulent representations or artifices void in the hands of any person." Approved March 6, 1883.