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1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STATUTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED BY THE SUBSEQUENT LEGISLATION OF 1925 AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES 1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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CHAPTER 51

INTEREST AND NEGOTIABLE INSTRUMENTS

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INTEREST

7036. Rate of interest—The interest for any legal indebtedness shall be at the rate of six dollars upon one hundred dollars for a year, unless a different rate is contracted for in writing; and no person 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 eight dollars on one hundred dollars for one year; and in the computation of interest upon any bond, note, or other instrument or agreement interest shall not be compounded, but any contract to pay interest, not usurious, upon interest overdue, shall not be construed to be usury. Contracts shall bear the same rate of interest after they become due as before, and any provision in any contract, note, or instrument providing for an increase of the rate of interest after maturity, or any increase therein after making and delivery, shall work a forfeiture of the entire interest; but this provision shall not apply to notes or contracts which bear no interest before maturity. (R. L. '05 § 2733, G. S. '13 § 5805, amended '23 c. 70 § 1)

In General.

An oral contract for interest in excess of six per cent, is void as to the excess (63–258, 65+452; 72–536, 75+744). A contract in an instrument to pay interest on interest overdue thereon is illegal (2–350, 302; 3–339, 238; 4–51, 26; 19–67, 45; 24–267; 93–4, 100+379). But interest on overdue interest may be recovered if the contract therefor is in the form of interest coupons (25–314; 29–68, 77, 11+228; 39–122, 124, 39+74, 140; 93–4, 100+379). A contract for a greater rate of interest after maturity is illegal (3–339, 238; 3–347, 246; 22–19; 24–43, 33–144, 224 633; 39–122, 39+74, 140; 51–485, 53+767). But such a stipulation does not render the entire contract void but simply works a forfeiture of all interest (51–485, 53+767; 62–498, 65+84). A note with no provision as to interest bears the legal rate of interest after maturity (18–429, 386). Interest is recoverable at the legal rate on a "legal indebtedness" (15–217, 169; 67–160, 69+715, 1069; 78–129, 133, 80+831).

Interest as a legal incident to demand for damages (124–266, 144+954). Validity is presumed; and the law of the state governs upholding validity of notes as against laws of state rendering same usurious, when no express or actual interest appears in the instruments (128–35, 150+231). A person has no vested rights in the defense of usury (132–20, 155+765). Test of usury (132–325, 156+667). Parties residents of Wisconsin, there executed notes and mortgage on land security in Minnesota, transaction construed a Minnesota contract (141–

402, 170+346). Compounding of interest on policy liens (151–41, 185+946). Highest legal rate of interest besides collection and attorney's fees, not usurious (155–30, 192+111). Rate of interest increase, if unpaid at maturity, does not render note non-negotiable, but works a forfeiture (195+284).

See also 293 Fed. 60.

212+1; 212+408.

A note is not rendered non-negotiable by a provision for reasonable attorney's fees if not paid at maturity, nor by a provision for an increase in the rate of interest if not paid at maturity; but under our statute a provision for an increase in the rate of interest after maturity works a forfeiture of all interest. 156–453, 195+281.

A provision in a promissory note for a higher rate of interest after maturity than before works a forfeiture of the interest, but does not render the note non-negotiable as to the principal sum. 161–10, 200+849.

Usury.

To constitute "usury" there must be a loan with an agreement to repay with greater than legal interest. 159–580, 199+240.

If that be the transaction, no matter what device or shift is used to conceal it, there is usury. 159–580, 199+240.

A mere discount or sale of commercial paper, though the buyer makes more than the legal rate, is not usurious; but a transaction in the form of a sale or discount, at a rate greater than the legal rate of interest, if in fact a loan, is usurious. 159–580, 199+240.

Record examined and found to sustain the findings of fact resulting in a usurious transaction. 161–525, 201+442.

The evidence was sufficient to sustain the verdict 162–235, 202+727.

Usury does not exist in the absence of a loan, nor in the absence of a contract. 162–235, 202+727.

The contract must be usurious at its inception. 162–235, 202+727.

It is not usury to pay excessive interest for the past use of money. 162–235, 202+727.

Guaranty contracts. 163–76, 203+518.

Purchase of mortgage. 165–342, 206+645.

The evidence sustains the verdict finding a loan usurious, and that it was exacted by the bank. 165–396, 206+728.

Payment of a commission to an agent of the borrower by the lender does not render the loan usurious. 167–1, 208+191.

The retaining by the lender with the assent of the borrower of a sum out of the amount loaned, for services rendered by the lender to the borrower, and not for the use of the money, does not render the transaction usurious. 167–1, 208+191.

The evidence sustains the finding that the compensation to be paid defendant above the legal rate of interest on the money advanced was for other services to be performed by him and that the contract was not usurious. 211+828.

Burden of Proof.

The burden is upon the party alleging the charge of usury to negative, by competent proof, every fact which, if true, would render the transaction lawful. 167–1, 208+191.

Questions for Jury.

Usury is a question of fact and must be left to the jury. Where there is no dispute in the testimony and the evidence shows a direct contract whereby, for a loan, the lender exacts a usurious bonus or excessive interest, the intent to evade the law is presumed, and then, only, usury becomes a question of law. 162–235, 202+727.

7037. Usurious interest—Recovery — Every person who for any such loan or forbearance shall have paid or delivered any greater sum or value than in § 7036 allowed to be received may, by himself or his personal representatives, recover in an action against the person who shall have received the same, or his personal representatives, the full amount of interest or premium so paid, with costs, if action therefor be brought within two years after such payment or delivery: Provided, that one-half of the amount so recovered shall be paid by the officer collecting the same into the treasury of the county where collected, for the use of common schools. (2734) [5806]

53–191, 54+1062; 61–490, 492, 63+1031.

See also notes under § 7036.

Dealings under two written contracts, one for building construction and the other for the joint operation of a hotel, held to show no usury, because there was no exaction of or agreement to pay any sum in excess of lawful interest for the loan or forbearance of money. 167–319, 209+21.

7038. Usurious contracts invalid—Exceptions—All bonds, bills, notes, mortgages, and all other contracts and securities whatsoever, and all deposits of goods, or any other thing, 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 hereinbefore prescribed, shall be void except as to bona fide purchasers of negotiable paper, in good faith, for a valuable consideration and before maturity, as hereinafter provided. But no merely clerical error in the computation of interest, made without intent to avoid the provisions of this chapter, shall constitute usury. Interest at the rate of one-twelfth of eight per cent. for every thirty days shall not be construed to exceed eight per cent. per annum; nor shall the payment of interest in advance of one year, or any less time, at a rate not exceeding eight per cent. per annum, constitute usury; and nothing herein shall prevent the purchase of negotiable mercantile paper, usurious or otherwise, for a valuable consideration, by an innocent purchaser, at any price before the maturity of the same, when there has been no intent to evade the provisions of this chapter, or where such purchase has not been a part of the original usurious transaction; but where the original holder of a usurious note sells the same to an innocent purchaser the maker thereof, or his representatives may recover back from the original holder the amount of principal and interest paid by him on said note. (R. L. '05 § 2735; G. S. '13 § 5807, amended 23 c. 283 § 1)

Maximum interest rate payment and also mortgage registry tax (125–218, 146+350; 132–20, 155+765). Note is valid but mortgage invalid (132–323, 156+667). Disguising transaction as a sale to avoid usury (155– , 195+279).

1. **In general**—Usury is the taking of a greater rate of interest for the loan or forbearance of money, goods, or things in action, than is allowed by law (28–211, 9+734. See 35–312, 29+134; 35–456, 29+154; 46–360, 365, 49+55). The three essentials of usury are (1) a loan; (2) an agreement for its return at all events; and (3) an agreement to pay more than the legal rate of interest for the use of it (59–468, 475, 61+560). There can be no usury without a loan of money (53–350, 353, 55+555; 69–199, 71+913); or without a contract (35–312, 29+134). The test is, will the contract, if performed, result in producing to the lender a rate of interest greater than is allowed by law, and was that result intended by the lender (55–520, 526, 57+311). To be usurious a contract must be so when it is made (55–466, 57+205; 55–520, 526, 57+311). A contract to pay for the past use of money cannot be usurious (21–530; 68–210, 70+978). Usury laws are enacted to protect the weak and necessitous from oppression (37–441, 443, 35+265).

See also notes under § 7036.

156–407, 195+39; 211+470.

To constitute usury an agreement to repay the principal sum at all events is essential; if it be payable only on some contingency, the transaction is not usurious. 156–160, 194+321.

Where corporate stock is in form sold at a price in excess of its stock exchange value, the stock being listed and readily salable on any business day, and a note is taken for the purchase price at the highest legal rate, the purpose being to make a loan on which the vendor gets more than the legal rate, the devise of a sale being a cover for usury, the form will be disregarded and the transaction will be held usurious as it is in substance. 156–442, 195+278.

That a promissory note was sold at a usurious discount does not relieve the makers from their obligation, if in fact they were not parties to the usury, but received full value for their obligation. 211+161.

2. **Intent—Presumptions**—It is of the essence of usury that there be a corrupt intent to take or reserve a

greater compensation for the future use of money than is allowed by law (31–304, 17+630; 42–438, 44+316; 49–496, 498, 52+135; 66–343, 69+3; 70–380, 388, 73+165). But the law raises a presumption of usury from the fact that the lender reserves greater compensation than the law allows (46–400, 49+189), and the rule that a person is presumed to have intended the necessary consequences of his acts applies (92–128, 133, 99+415). The intent or knowledge of the borrower is immaterial (37–441, 35+265; 42–438, 44+316; 46–400, 49+189).

3. Usurious contracts void—Except as to bona fide purchasers usurious contracts are absolutely void as well as all security given therefor (31–495, 18+450; 36–306, 31+213; 63–258, 65+452). Executory usurious contracts are non-enforceable (21–415). Any amount however small above the lawful rate is fatal (49–496, 52+135).

4. Form not controlling—Forms and names are not controlling. Courts look to the substance and effect of transactions. There is no shift or device on the part of the lender to evade the statute under or behind which the law will not look in order to ascertain the real object of the transaction (34–409, 26+229; 37–441, 35+265; 40–329, 42+20; 42–438, 44+316; 52–356, 54+591; 59–468, 61+560; 60–303, 62+260; 69–199, 202, 71+913; 89–386, 390, 94+1088; 92–128, 99+415; 59–468, 61+560; 83–114, 117, 85+939; 97–265, 106+911). Unusual clauses always excite suspicion (52–356, 54+591; 59–468, 61+560).

5. Question of fact—Whether a transaction is usurious is a question of fact (46–360, 49+55; 49–111, 51+816; 59–468, 474, 61+560; 56–155, 57+462; 64–3, 65+959; 64–162, 66+269; 66–343, 69+3; 70–89, 72+817; 97–265, 106+911), to be submitted to the jury (35–312, 29+134; 49–496, 52+135; 102–166, 112+1009, 1067; 104–510, 116+919), except where only one reasonable inference can be drawn from the evidence (40–329, 42+20; 60–422, 62+544).

6. Burden of proof—The burden of proving usury is on him who asserts it (40–200, 41+1030; 49–111, 118, 51+816; 64–162, 164, 66+269; 70–89, 93, 72+817). He must negative by his proof every supposable fact which if true would render the transaction lawful (60–422, 62+544). The burden rests on a principal to prove that the acts of his general agent in taking unlawful interest were without his knowledge or consent (43–307, 310, 45+439; 48–69, 50+1015; 85–242, 88+845).

7. Degree of proof required—All that is required to prove usury is a fair preponderance of evidence (37–441, 35+265; 40–329, 42+20; 43–307, 45+439; 60–303, 62+260). But as usury works an absolute forfeiture of the entire debt the proofs on which it rests should be scrutinized and the rule as to the effect of a fair preponderance of evidence applied, with more strictness than in ordinary civil actions (61–452, 63+1093; 64–162, 167, 66+269). Especially is this true where the adverse party is dead (80–419, 83+379). The evidence must warrant something more than a mere suspicion (40–329, 42+20. See 59–468, 61+560). Evidence may be wholly circumstantial (59–468, 61+560).

8. Effect of commission or bonus to lender—34–409, 26+229; 35–312, 29+134; 40–200, 41+1030; 43–517, 45+1100; 55–520, 57+311; 58–473, 59+1103; 60–303, 62+260; 64–3, 65+959; 64–457, 67+355; 90–377, 97+113.

9. Sale of property as a cover for usury—43–307, 45+439; 49–111, 51+816; 51–523, 53+754; 61–83, 63+250; 64–162, 66+269; 70–89, 72+817; 83–114, 85+939; 97–265, 106+911; 98–420, 108+951; 98–489, 108+877.

10. Effect of collateral contract—49–111, 51+816; 55–466, 57+205; 90–377, 97+113.

11. Effect of including in note more than received—34–409, 26+229; 35–312, 29+134; 44–121, 46+327; 46–8, 48+412; 46–400, 49+189; 49–111, 51+816; 49–496, 52+135; 60–534, 63+108; 83–203, 85+1012; 84–286, 87+774; 90–377, 97+113.

12. Liability of principal for acts of agent—37–441, 35+265; 43–307, 45+439; 44–121, 46+327; 44–218, 46+360; 49–431, 52+39; 60–534, 63+108; 85–242, 88+845. See cases under note 13.

13. Effect of commission or bonus to loan agent—28–211, 9+734; 31–495, 18+450; 33–194, 22+295; 35–456, 29+154; 35–513, 29+337; 40–329, 42+20; 43–307, 45+439; 44–121, 46+327; 44–218, 46+360; 45–448, 48+185; 46–360, 49+55; 48–69, 50+1015; 49–431, 52+39; 58–137, 59+985; 58–487, 60+132; 62–295, 64+898; 66–343, 69+3; 70–542, 73+514; 85–242, 88+845; 89–386, 94+1088; 92–149, 99+641.

14. Repayment contingent—59–468, 61+560; 69–318, 72+121.

15. Payment of interest in advance—55–520, 527, 57+311; 70–380, 73+165; 89–386, 391, 94+1088.

16. Miscellaneous—Delay in delivering loan (43–517, 45+1100). Retention of part of loan for past services (51–276, 53+648). Note for services in procuring loan (39–339, 40+358). Provision for attorney's fees (31–182, 17+274; 55–341, 56+1119). Renewal of note (44–419, 46+908; 49–496, 52+135). Removal of taint of usury (37–182, 33+567). Pretended agency (52–356, 54+591).

17. Effect of new security—Where a new contract is substituted for a usurious one the taint of usury will affect the new security (31–495, 18+450; 37–441, 35+265).

18. Clerical mistake—31–304, 17+630. See 69–178, 71+929.

19. Extensions—If a note is not originally usurious it cannot be made so by a subsequent extension granted in consideration of usurious interest (35–456, 29+154; 65–37, 67+655; 68–210, 70+978). An agreement at the time of the original loan for an extension at the option of the borrower at an illegal rate does not render the original loan usurious if not intended as an evasion of the usury law (44–218, 46+360).

20. Who may assail—44–218, 46+360; 70–380, 73+165; 71–351, 74+146.

21. Estoppel—36–57, 29+674; 42–438, 44+316; 71–351, 74+146.

22. Bona fide purchasers—The term "innocent purchaser" means a bona fide indorsee or bearer within the law merchant (27–87, 6+422; 61–490, 63+1031; 62–62, 64+90; 62–295, 64+898. See 40–329, 42+20; 53–267, 55+123). Exception in favor of bona fide purchaers limited to negotiable paper. Does not extend to mortgages securing negotiable paper (36–460, 32+89, 864; 55–520, 57+311). A bona fide purchaser at a foreclosure sale of a usurious mortgage is protected (31–495, 18+450; 53–350, 55+555).

23. Discounting commercial paper—53–350, 55+555; 63–459, 65+928.

24. Liability of national banks—66–257, 68+1092; 76–458, 79+509; 79–266, 82+1118.

25. Conflict of laws—36–333, 31+348; 55–520, 57+311; 74–335, 77+230.

26. Pleading—36–333, 31+348; 45–448, 48+185; 46–8, 48+412; 58–385, 59+1038; 60–422, 424, 62+544; 61–490, 63+1031; 64–3, 65+959; 66–257, 68+1092; 72–229, 75+106; 90–377, 97+1113.

27. Evidence—46–360, 49+55; 67–510, 70+799.

28. Chattel mortgages held usurious—35–496, 29+196; 36–123, 30+439; 43–270, 45+443; 45–448, 48+185; 52–356, 54+591; 78–94, 80+862.

29. Real estate mortgages held usurious—37–182, 33+567; 55–520, 57+311; 70–542, 73+514; 83–114, 85+939; 85–242, 88+845; 92–128, 99+415.

30. Real estate mortgages held not usurious—40–200, 41+1030; 43–517, 45+1100; 64–162, 66+269; 68–183, 70+1077; 68–210, 70+978; 69–178, 71+929; 77–97, 79+609; 89–386, 94+1088.

7039. Offenders to answer on oath—Every person offending against the provisions of this chapter shall be compelled to answer on oath the complaint in any action brought against him in the district court of 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. (2736) [5808]

7040. Usurious contracts — Cancellation — 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 chapter, it shall declare the same to be void, enjoin any proceeding thereon, and order it to be canceled and given up. (2737) [5809]

Plaintiff need not repay what he has received (36–460, 32+89, 864; 37–182, 33+567; 69–318, 72+121; 77 Fed. 32; 172 U. S. 351. Requisites of complaint (51–274, 53+647; 69–318, 72+121; 71–112, 73+513). Cited (68–183, 70+1077).

See 155–445, 195+278.

The plaintiffs may have affrmative relief under our statute, which makes a usurious transaction void, and provides for a cancellation, without restoring as a condition to relief the money received. 156–442, 195+278.

A lender of money, innocent of all intent to exact a usurious return, held not responsible for the act of a loan broker in exacting from the borrower an unauthorized commission, which, if added to the interest, would make the loan usurious. 156–478, 195+455.

The rule that it is largely within the discretion of the trial court to grant or deny an application for a temporary injunction is applicable in a case where the injunction is sought to restrain the negotiation of a promissory note alleged to be tainted with usury and the enforcement of a mortgage given to secure the note. 167–330, 209+5.

7041. Agreements to share profits—Building associations—Nothing in this chapter shall be construed as in any way affecting any contract whereby one party advances money to be used in business or other ven-

tures mutually determined upon, and whereby the party receiving such money agrees to refund the same, with lawful stipulated interest, and in addition thereto agrees to share, equally or otherwise, with the party so advancing the money, the profits of such business or ventures; nor shall its provisions apply to mutual building associations. (2738) [5810]

60–422, 62+544; 77–97, 79+609.
212+408.

7042. Salary loans and chattel mortgage loans—The words "salary loan" as used in this act shall mean a loan in a case where the lender shall take as security for the repayment thereof a promissory note or other written agreement secured by an endorsement, or by an assignment, transfer or pledge of the whole, or any part of any wages or salary whether earned or to be earned. The words "chattel mortgage loan" shall mean a loan in a case where the lender shall loan money upon a promissory note or other written agreement secured by mortgage or other lien upon any personal property.

It shall be lawful for any corporation organized under the laws of the state of Minnesota, and carrying on a "salary loan" or "chattel mortgage loan" business or both a "salary loan" and a "chattel mortgage loan" business in any city of the first class in this state, upon complying with all the provisions of this act, to charge and collect on loans in sums not exceeding two hundred dollars ($200.00) to any one person, any rate of interest, not exceeding the rate of one per cent (1%) per month thereon, and in cases where a chattel mortgage is taken and possession or control over the possession of the property mortgaged is not taken at the time of making the loan, a fee in addition to the interest allowed by this act of any sum not exceeding in the aggregate $1.75 on loans of $20 or less, $2.75 on loans over $20 and not over $45, $3.75 on loans over $45 and not over $75, $4.75 on loans over $75 and not over $150, and $5.75 on loans over $150. No sum shall be directly or indirectly charged to or received from the borrower, either as a bonus, attorney's fee, or as a charge for examining or valuing the property offered as security, or for filing or recording of instruments or otherwise, in excess of said fees hereinbefore specified. It shall not be lawful to divide or split up loans in any transaction whatsoever for the purpose of requiring or exacting any other or greater charges than those prescribed herein, nor to make any such charge for renewals or extensions, or for any transfer or change of the loan within one year from the date of the original loan, or oftener than once in each year thereafter, except in cases where a new and additional sum shall be loaned at the time of making such renewal or change, at the request of the borrower in each case the fee above prescribed may be charged for such additional amount loaned. ('13 c. 439 § 1) [5811]

7043. License—Before any such corporation shall engage in the business of making such loans, and charge the rates and fees permitted by this act, it shall first obtain and have in force and effect a license for carrying on such business in the city in which such business shall be transacted. Such license shall be issued by the city clerk or corresponding officer of such city, and it shall be renewed annually, and shall not be transferable. Such license shall be granted on application to such city clerk or corresponding officer in writing pursuant to such form as such clerk or corresponding officer, or city council, or corresponding body may prescribe, for which license the licensee shall pay annually to the treasurer of said city at the time of taking out said license or renewal a uniform fee of $25.00 per year. Such licenses shall not be granted until the applicant therefor shall file a statement under oath by its treasurer or some other officer, stating the place in the city where the business is to be carried on, the names of the corporation's officers and manager, and also an affidavit by its treasurer that in the fiscal year of said corporation next preceding the date of said application, the corporation did not pay its stockholders upon their shares in money or money's worth dividends in excess of eight per cent (8). ('13 c. 439 § 2, amended '15 c. 117 § 1) [5812]

TITLE I. NEGOTIABLE INSTRUMENTS IN GENERAL

ARTICLE I. FORM AND INTERPRETATION

7044. Form of negotiable instrument—An instrument to be negotiable must conform to the following requirements:

(1) It must be in writing and signed by the maker or drawer;

(2) Must contain an unconditional promise or order to pay a sum certain in money;

(3) Must be payable on demand, or at a fixed or determinable future time;

(4) Must be payable to order or to bearer; and

(5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. ('13 c. 272 § 1) [5813]

"An act to make uniform the law of negotiable instruments." By section 198 the act takes effect July 1, 1913.

The act enacts the so-called "Negotiable Instruments Law" recommended to the legislatures of the states by the National Conference of State Boards of Commissioners for Promoting Uniformity of Legislation in the United States and now in force in most of the states.

Section 195 departs from the draft in one particular.

144–364, 175+612; 154–250, 191+415.

A "customer's acceptance" (282 Fed. 920).

Unconditional Promise or Order.

"Customer's acceptance" held a negotiable instrument. 282 Fed. 920.

The trust deed provided that the trustee and the mortgagor might alter the terms of the deed if it was deemed consistent with the best interests of the bondholders. The promise to pay, contained in the bonds, was subject to this provision and ceased to be unconditional, an essential of negotiability. 158–481, 198+798.

Custom of Treating Instruments as Negotiable.

Custom of generally treating instruments as negotiable is inadmissible. 158–481, 199+437.

Statement of or Reference to Other Transaction.

A statement of the transaction which gave rise to an instrument negotiable in form does not destroy its negotiability if the statement amounts to nothing more than a mere reference to the transaction or to some other instrument. 158–481, 199+437.

A reference in a note or bond to a mortgage or deed of trust given as security does not destroy the negotiability, unless it appears to have been the purpose of the parties to burden the instrument with the conditions of the mortgage or deed. 158–481, 199+437.

Certainty as to Sum.

A provision in a promissory note for a higher rate of interest after maturity than before works a forfeiture of the interest, but does not render the note nonnegotiable as to the principal sum. 161–10, 200+849

Signature.

Signature. 209+892.

County Warrants.

County warrants are not negotiable under the law merchant, but the transferee takes them subject to all defenses which existed against them in the hands of the payee. 167–458, 209+638.

Note as Payment.

The instruction was necessarily based on the unwarranted assumption that promissory notes given by the purchaser of a stock of goods were accepted by the seller as the equivalent of cash in hand. 162–341, 202+738.

A note given for an antecedent debt is not payment unless given and received as such; and the finding of the jury that the note in suit was not payment is sustained. 165–492, 206+929.

Guaranty of Notes.

Guaranty of notes. 163–76, 203+518.

Real Party in Interest.

The bank remained the holder of the note and the real party in interest, notwithstanding the fact that the note had been charged to plaintiff's president to avoid appearance of the papers being carried as overdue. 211+163.

Mental Competency.

The evidence sustains the verdict to the effect that the maker of the promissory note in suit was mentally incompetent to transact business when he executed the same. 211+306.

Paper Deposited in Bank.

Commercial paper, deposited in a bank for collection, remains the property of the depositor, and the bank is merely his agent to collect it. 211+332.

7045. Certainty as to sum—What constitutes—The sum payable is a sum certain within the meaning of this act, although it is to be paid:

(1) With interest or

(2) By stated instalments; or

(3) By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or

(4) With exchange, whether at a fixed rate or at the current rate on or at a given place; or

(5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity. ('13 c. 272 § 2) [5814]

133–230, 158+253; 153–248, 190+182; 155– , 195+284; 282 Fed. 920.

A note is not rendered nonnegotiable by a provision for reasonable attorney's fees if not paid at maturity, nor by a provision for an increase in the rate of interest if not paid at maturity; but under court statute a provision for an increase in the rate of interest after maturity works a forfeiture of all interest. 156–453, 195+281.

7046. When promise is unconditional—An unqualified order or promise to pay is unconditional within the meaning of this act though coupled with:

(1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

(2) A statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional. ('13 c. 272 § 3) [5815]

144–364, 175+612; 145–149, 176+496; 154–250, 191+415; 282 Fed. 920.

Although the indorsement of the payee made them transferable by delivery, merely intrusting them to an agent for collection is not such conduct on the part of the owner as will estop him from reclaiming them from a purchaser from such agent. 158–57, 196+809.

County warrants drawn on a special fund and indorsed by the treasurer, "Not paid for want of funds," are not negotiable instruments. 158–57, 196+809.

Where such warrants, indorsed in blank by the payee, are sold to a person who thereafter places them in the hands of an agent for collection, and such agent, instead of collecting them, wrongfully sells them to a good-faith purchaser, the owner may recover them from such purchaser. 158–57, 196+809.

Mere statement of transaction which gave rise to instrument negotiable in form does not destroy its negotiability. 158–481, 199+437.

Parol evidence is not admissible to show that a promissory note was not to be paid according to its terms, but only on the happening of a contingent future event and out of a special fund. 160–205, 199+905.

7047. Determinable future time—What constitutes—An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

(1) At a fixed period after date or sight; or

(2) On or before a fixed or determinable future time specified therein; or

(3) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable and the happening of the event does not cure the defect. ('13 c. 272 § 4) [5816]

7048. Additional provisions not affecting negotiability—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

(1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

(2) Authorizes a confession of judgment if the instrument be not paid at maturity; or

(3) Waives the benefit of any law intended for the advantage or protection of the obligor; or

(4) Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal. ('13 c. 272 § 5) [5817]

7048-1. Bonds, notes, debentures and promises to pay secured by mortgage, deed of trust, indenture or lien deemed negotiable—That any bond, note, debenture, or promise to pay, which shall be secured by a mortgage, deed of trust, indenture, or lien upon any property, real, personal or mixed, and which shall have been authenticated, certified or approved by the authorized signature of a duly authorized mortgagee, trustee, registrar, or fiscal agent, when otherwise so drawn as to fall under and within the provisions of the uniform Negotiable Instruments Act (Chapter 272, General Laws of 1913), shall be deemed to be a "negotiable instrument" as defined by law and shall be held and construed to be such "negotiable instrument" notwithstanding the fact that it shall refer to or recite that it is issued under, in connection with, or secured by such mortgage, deed of trust, indenture, or other lien of any kind or nature, and whether or not the terms of said mortgage, deed of trust, indenture, or lien, purport to be incorporated therein or made a part thereof, or otherwise. ('27, c. 416, § 1)

7048-2. Same—Pending actions not affected—This act shall not be construed to affect any action now pending in any of the courts of this state. ('27, c. 416, § 2)

7049. Omissions — Seal — Particular money — The validity and negotiable character of an instrument are not affected by the fact that:

(1) It is not dated; or

(2) Does not specify the value given, or that any value has been given therefor; or

(3) Does not specify the place where it is drawn or the place where it is payable; or

(4) Bears a seal; or

(5) Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of

the consideration to be stated in the instrument. ('13 c. 272 § 6) [5818]

7050. When payable on demand—An instrument is payable on demand:

(1) Where it is expressed to be payable on demand; or at sight, or on presentation; or

(2) In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand. ('13 c. 272 § 7) [5819]

149–47, 182+724.

A demand of payment is not a prerequisite to the enforcement of a note payable on demand. 164–57, 204+546.

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 some 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. ('13 c. 272 § 8) [5820]

7052. When payable to bearer—The instrument is payable to bearer:

(1) When it is expressed to be so payable; or

(2) When it is payable to a person named therein or bearer; or

(3) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or

(4) When the name of the payee does not purport to be the name of any person; or

(5) When the only or last indorsement is an indorsement in blank. ('13 c. 272 § 9) [5821]

7053. Terms when sufficient—The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. ('13 c. 272 § 10) [5822]

7054. Date, presumption as to—Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement as the case may be. ('13 c. 272 § 11) [5823]

7055. Ante-dated and post-dated—The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. ('13 c. 272 § 12) [5824]

7056. When date may be inserted—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date. ('13 c. 272 § 13) [5825]

7057. Blanks—When may be filled—Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. ('13 c. 272 § 14) [5826]

7058. Incomplete instrument not delivered—Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery. ('13 c. 272 § 15) [5827]

7059. Delivery—When effectual—When presumed—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved. ('13 c. 272 § 16) [5828]

144–190, 174+890.

Where one indorses a promissory note, made by another, before delivery, and the note then passes from the maker to the payee, that is prima facie a delivery. But, when the answer of such indorser alleges an oral agreement, to the effect that the note should not become operative until indorsed by certain other parties, which never occurred, it is competent to show such agreement by parol evidence. 165–82, 205+699.

Where promissory notes are given to a payee pursuant to a written contract, and it is orally agreed that the notes are to be used by the payee with a particular person for a certain purpose, it does not, in law, constitute a "conditional delivery." 165–87, 205+696.

7060. Construction where instrument is ambiguous—Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

(2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

(3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

(4) Where there is a conflict between the written

and printed provisions of the instrument, the written provisions prevail;

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

(6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. ('13 c. 272 § 17) [5829]

Subd. 1. (152–204, 188+262).

Former rule abrogated; third party signing promissory note before delivery is not a maker, but an indorser. 155– , 192+493.

166–472, 208+186.

Where a plain promissory note is executed by one who fully understands its terms and there is neither mutual mistake, nor mistake by the maker and deception by the payee, nor fraud, there can be no reformation by the incorporation of a parol agreement which varies or contradicts the terms of the note. 163–31, 203+444.

The general rule is that a written instrument, including promissory notes, cannot be varied by parol evidence as to a prior or contemporaneous oral agreement. 166–50, 207+20.

7061. Liability of person signing in trade or assumed name—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. ('13 c. 272 § 18) [5830]

7062. Signature by agent—Authority—How shown—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency. ('13 c. 272 § 19) [5831]

7063. Liability of person signing as agent, etc.—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. ('13 c. 272 § 20) [5832]

A person who executes a promissory note in a representative capacity without authority is personally liable thereon to the payee, if he took it without knowledge of such lack of authority, but not if he took it knowing all the facts. 160–341, 200+300.

7064. Signature by procuration—Effect of—A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. ('13 c. 272 § 21) [5833]

7065. Effect of indorsement by infant or corporation—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. ('13 c. 272 § 22) [5834]

7066. Forged signature—Effect of—When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority. ('13 c. 272 § 23) [5835]

135–174, 160+667.

ARTICLE II. CONSIDERATION

7067. Presumption of consideration—Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value. ('13 c. 272 § 24) [5836]

54–323, 56+38; 124–532, 144+1135; 137–264, 163+516; 147–80, 179+645.

157–348, 196+275, notes under § 7098; 210+84.

In a suit on promissory notes, the evidence examined, and held to support a verdict for defendant on his two defenses of failure of consideration and duress. 156–460, 195+275.

Drafts. 160–102, 199+519.

Neither the claim that the consideration for the note had failed, nor the claim that defendant had agreed to surrender it under a subsequent contract, is sustained by the evidence. 163–173, 203+603.

The defendant failed to sustain the burden of proving that the note was without consideration and was not an actual obligation of the maker. 163–288, 204+36.

7068. Consideration, what constitutes—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time. ('13 c. 272 § 25) [5837]

123–208, 143+353; 127–390, 149+658; 128–241, 150+870.

211+820.

Where a promissory note given for a previously existing and past-due debt is payable at a future day, the extension of time is a sufficient consideration to support a guaranaty of payment made by third parties before delivery of the note. 158–108, 196+963.

A bank which takes by indorsement an accommodation promissory note, knowing it to be accommodation, as collateral security to an antecedent liability of a bank as an indorser on discounted paper, is protected against defenses of the maker just as a bona fide purchaser of negotiable paper for which a present consideration is given is protected. 158–140, 197+271.

If a depositor's account with a bank shows a balance in his favor, when the bank receives from him a draft made payable to its order, and credits it to his account, and thereafter the bank is closed before the depositor draws out any portion of the proceeds of the draft, there is a failure of consideration for the draft. 160–102, 199+519.

The indebtedness of the payee to the indorsee, existing at the time when the draft was received and credited, was a valuable consideration for the taking of the draft. 160–102, 199+519.

If there was a promise to make advances, such promise was a sufficient consideration for the note. 163–288, 204+36.

Subscription to college fund. 164–57, 204+546.

The evidence amply justifies the finding that there was a valuable consideration for the indorsement of the notes in controversy. 165–330, 206+646.

The rule that permits inquiry as to a recital of consideration has no application to the contractual obligation in a promissory note to pay a definite sum of money. 166–50, 207+20.

Action on a promissory note, given by the decedent for a part of the loss resulting from forgeries of one Hanscome. The cause of action arising out of the forgeries having previously been released and discharged, there was no valid consideration for the note. 166–392, 208+15.

There was no error in charging the jury that it might find that a note given for a tractor, which was taken back by the vendors and another delivered to the vendee, was by the understanding of the parties given for the second one. 167–60, 208+422.

Where paper is executed without consideration for a special purpose, taking security does not change the nature or effect of the transaction. 167–93, 208+805.

The finding that the note of a third party, signed by plaintiff after it became due, was signed without consideration, is sustained by the evidence. 209+899.

The agreement in the new note to pay interest accruing in the future is a sufficient consideration to support the contract for extension. 213+375.

7069. What constitutes holder for value—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. ('13 c. 272 § 26) [5838]

122–215, 142+139.

See also notes under § 7095.

158–140, 197+271, note under § 7068.

The defendants gave their separate notes to one Gugisberg, who was the president of the plaintiff bank, and heavily interested in the Gugisberg Incubator Company. At the same time, and as a part of the same transaction, Gugisberg gave his note to each of the defendants for the same amount and upon the same terms as such defendant's note to him. They now have such notes. Gugisberg made out the deposit slips. His overdrawn account was credited with two of the notes. There was still left an overdraft. The other note was credited to the Incubator account, thus paying its overdraft, and leaving a small credit balance. The three notes were carried to the bills receivable account in the usual way. It is held that the notes of Gugisberg were a consideration for the notes of the defendants, that the notes of the defendants were not an accommodation for the bank, and that the defendants are liable thereon. 156–136, 194+98.

7070. *When lien on instrument constitutes holder* for value—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. ('13 c. 272 § 27) [5839]

7071. *Effect of want of consideration*—Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. ('13 c. 272 § 28) [5840]

123–66, 142+1041; 125–215, 145+785; 147–80, 179+644.

163–288, 204+36, notes under §§ 7067, 7068.

The signing of such note by the son, after it was past due, without any new consideration, did not create a valid obligation on his part. 156–332, 194+769.

Unless plaintiff is holder in due course failure of consideration is a defense. 160–102, 199+519.

7072. Liability of accommodation party—An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. ('13 c. 272 § 29) [5841]

156–332, 194+769.

A bank which takes by indorsement an accomodation promissory note, knowing it to be accomodation, as collateral security to an antecedent liability of a bank as an indorser on discounted paper, is protected against defenses of the maker just as a bona fide purchaser of negotiable paper for which a present consideration is given is protected. 158–140, 197+271.

Plaintiff was a holder in due course, and the admitted truth of the allegations of the answer in respect to *plaintiff's full knowledge of the land deal* and the agreement between the party accommodated and defendant, that the latter should incur no personal liability upon the indorsements, does not defeat a recovery. 161–310, 201+440.

In an action upon a promissory note brought by the payee, therein named, against the maker, where it is alleged in the answer that the note was made and delivered as an accommodation note, oral testimony that it was so executed does not vary or contradict the written contract within the rule excluding parol evidence, held, that the answer stated a defense. 163–151, 203+604.

The Negotiable Instruments Law makes an accommodation maker *primarily liable to a holder for value*. In consequence, he cannot avail himself of the defenses, such as extension of time of payment without his consent, *which are available only to a surety*. 166–472, 208+186.

One who, without consideration, executes paper for the accommodation of another, may impose as a condition that it shall be used only for a designated special purpose, and, if it be used for a different purpose, he is not liable thereon unless it passes to a holder in due course. 167–93, 208+805.

Under the Negotiable Instrument Law, accommodation parties are liable in the capacity in which they appear upon the instrument, whether as maker or as indorsers. 212+2.

ARTICLE III. NEGOTIATION

7073. What constitutes negotiation—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery. ('13 c. 272 § 30) [5842]

Although the indorsement of the payee made them transferable by delivery, merely intrusting them to an agent for collection is not such conduct on the part of the owner as will estop him from reclaiming them from a purchaser from such agent. 158–57, 196+809.

It is not error to exclude, testimony corroborating a telephone talk which is in substance admitted. 158–280, 197+282.

The agreement in controversy did not create a contract to sell, but merely gave plaintiff an option to sell which expired without being exercised. 163–1, 203+434.

Held, under the proofs, that the transactions had between the plaintiff and defendant banks amounted to a discount and sale of the notes in question. 165–285, 206+459.

Under the proofs, it is held that the transaction between the two banks amounted to a discount and sale of the promissory notes in question, and that the plaintiff is not entitled to recover in this action. 165–428, 206+708.

7074. Indorsement—How made—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. ('13 c. 272 § 31) [5843]

158–280, 197+282, note under § 7073.

7075. Indorsement must be of entire instrument—The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue. ('13 c. 272 § 32) [5844]

7076. Kinds of indorsement—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional. ('13 c. 272 § 33) [5845]

7077. Special indorsement—Indorsement in blank—A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery. ('13 c. 272 § 34) [5846]

7078. Blank indorsement—How changed to special indorsement—*The holder may convert a blank indorsement* into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. ('13 c. 272 § 35) [5847]

7079. When indorsement restrictive—An indorsement is restrictive, which either:

(1) Prohibits the further negotiation of the instrument; or

(2) Constitutes the indorsee the agent of the indorser; or

(3) Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive. ('13 c. 272 § 36) [5848]

7080. Effect of restricting indorsement—Rights of indorsee—A restrictive indorsement confers upon the indorsee the right:

(1) To receive payment of the instrument.

(2) To bring any action thereon that the indorser could bring.

(3) To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement. ('13 c. 272 § 37) [5849]

7081. Qualified indorsement—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. ('13 c. 272 § 38) [5850]

210+84.

An indorsement "without recourse" on a negotiable instrument protects the indorser against liability by reason of the indorsement, but has no tendency to relieve the indorser from his obligation arising from his separate contract of guaranty. 160–129, 199+901.

7082. Conditional indorsement—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally. ('13 c. 272 § 39) [5851]

7083. Indorsement of instrument payable to bearer—Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. ('13 c. 272 § 40) [5852]

7084. Indorsement where payable to two or more persons—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others. ('13 c. 272 § 41) [5853]

7085. Effect of instrument drawn or indorsed to a person as cashier—Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer. ('13 c. 272 § 42) [5854]

7086. Indorsement where name is misspelled et cetera—Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature. ('13 c. 272 § 43) [5855]

122–215, 145+785.

7087. Indorsement in representative capacity—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability. ('13 c. 272 § 44) [5856]

7088. Time of indorsement—Presumption—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. ('13 c. 272 § 45) [5857]

7089. Place of indorsement—Presumption—Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated. ('13 c. 272 § 46) [5858]

7090. Continuation of negotiable character—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. ('13 c. 272 § 47) [5859]

7091. Striking out indorsement—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument. ('13 c. 272 § 48) [5860]

7092. Transfer without indorsement—Effect of—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. ('13 c. 272 § 49) [5861]

128–215, 142+139.

7093. When prior party may negotiate instrument—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. ('13 c. 272 § 50) [5862]

ARTICLE IV. RIGHTS OF THE HOLDER

7094. Right of holder to sue—Payment—The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument. ('13 c. 272 § 51) [5863]

7095. What constitutes a holder in due course—A holder in due course is a holder who has taken the instrument under the following conditions:

(1) That it is complete and regular upon its face.

(2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact.

(3) That he took it in good faith and for value.

(4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. ('13 c. 272 § 52) [5864]

123–374, 143+980; 127–291, 149+467; 137–46, 162+1051; 137–123, 162+1076; 154–133, 191+587; 195+283.

Plaintiff is not in a position to claim the rights of a good-faith purchaser, for value, in due course, and before maturity, for the evidence shows that the purchase price of the note in suit was placed to the credit of the payee, the seller of the note, and fails to show that such credit was exhausted before notice of the defense. 156–424, 195+141.

The undisputed evidence conclusively established that plaintiffs were holders in due course under the Negotiable Instruments Act. 156–453, 195+281.

A purchaser of a note or bond does not acquire the rights of a holder in due course unless the instrument

is complete and regular upon its face. When the language of a bond not only refers to the provisions of the trust deed securing it, but makes the bond subordinate to the conditions of the deed, the bond shows upon its face that it is not a complete and regular instrument. 158–481, 199+437.

A broker, who had bonds for sale to investors, held some of them as collateral to a note he had paid for the issuer of the bonds and separated them from the note and repledged them to secure another debt. This amounted to a conversion of the bonds repledged and the subpledgee got no better title than the broker. 158–481, 198+798.

Evidence established as a matter of law that plaintiff was a holder in due course and was entitled to a directed verdict. 159–469, 199+91.

A promissory note, which complies with all the conditions required to make it negotiable, and which discloses nothing to indicate that it has been altered or was not intended to be operative according to its terms, is regular on its face. 161–10, 200+849.

Plaintiff was a holder in due course, and the admitted truth of the allegations of the answer in respect to *plaintiff's full knowledge of the land deal and the agreement* between the party accommodated and defendant, that the latter should incur no personal liability upon the indorsements, does not defeat a recovery. 161–310, 201+440.

The payee named in a promissory note, indorsed in blank before delivery by the person to be held, with notice to the payee that such indorsement was made under an oral agreement that the note should not become operative until indorsed by a third party, is not a holder in due course. 165–82, 205+699.

7096. When person not deemed holder in due course—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. ('13 c. 272 § 53) [5865]

157–348, 196+275, notes under § 7098; 2 F. (2d) 348.

7097. *Notice before full amount paid*—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount *agreed to be paid therefor, he will be deemed a holder* in due course only to the extent of the amount theretofore paid by him. ('13 c. 272 § 54) [5866]

Existing debt is a valuable consideration. 160–102, 199+519.

7098. When title defective—The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. ('13 c. 272 § 55) [5867]

143–281, 173+661; 143–388, 173+804; 144–410, 175+614; 149–267, 183+832; 150–260, 185+261; 150–316, 185+374; 153–250, 190+183.

158–140, 197+271, note under § 7102; 161–231, 201+318, note under § 7102; 161–310, 201+440, note under § 7095; 2 F. (2d) 348.

Where a straight promissory note is executed and delivered by the maker to the payee as collateral to an open running account upon which there is a balance owing from the maker to the payee, the note becomes an enforceable obligation. 157–348, 196+275.

Where a promissory note for $4,000, payable upon demand, is given in the manner stated, and the amount thereof is credited to the open account by the payee, the payee acquires an interest in the note, which he may assign. 157–348, 196+275.

Where a promissory note is given as collateral to an open account, under an alleged oral agreement not to negotiate the same, and where the payee thereafter negotiates the same to an innocent purchaser, the transaction does not render the title to the note defective within the meaning of the statute. 157–348, 196+275.

The record fails to disclose or warrant an inference that the note in suit was negotiated by the payee in breach of faith or under circumstances amounting to a fraud. 157–348, 196+275.

Where a negotiable promissory note is executed and delivered to the payee, for value, under an alleged oral *agreement that it should not be negotiated, parol evi*dence is inadmissible to show such oral agreement as against an innocent holder. 157–348, 196+275.

The record shows conclusively that the plaintiff received the note for value, before maturity, and in the usual course of business. 157–348, 196+275.

The mere fact that the payee was a regular patron of the bank is, of itself, no evidence of bad faith on the part of the plaintiff in acquiring the instrument. 157–348, 196+275.

Pleading and proof. 160–102, 199+519.

Where a grain buying corporation's manager, whose honesty and fidelity plaintiff had insured, without authority drew a draft in the name of the corporation, and fraudulently procured a bill of lading from a common carrier purporting to cover a full car of wheat, naming the corporation consignor and the drawee in the draft consignee, but which car was empty, and the defendant bank in good faith exchanged its cashier's check payable to the order of the corporation for the draft with the bill of lading attached, the corporation *obtained no title to the check, and its payment by de*fendant to a holder to whom the manager had negotiated it was not a conversion of the corporation's funds. 161–204, 201+431.

One is the holder in due course of a negotiable note, *notwithstanding he bought with notice of a warranty*, provided he had no notice of a breach of that warranty. 163–18, 203+427.

If the note was supported by a consideration and was an actual obligation of the maker, the negotiation of it by the payee would not be in breach of faith or under circumstances which amounted to a fraud. 163–288, 204+36.

7099. What constitutes notice of defect—To con*stitute notice of an infirmity in the instrument or de*fect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of *such facts that his action in taking the instrument* amounted to bad faith. ('13 c. 272 § 56) [5868]

127–105, 149+5; 137–46, 162+1051; 142–69, 170+928; 143–284, 173+661; 143–389, 173+804; 144–289, 175+545; 144–364, 175+612; 153–246, 190+183; 154–129, 191+587; 195+283.

160–102, 199+519; 166–400, 208+24, note under § 7102.

Burden and time of proof. 2 F. (2d) 348.

The undisputed evidence conclusively established that plaintiffs were holders in due course under the Negotiable Instruments Act. 156–453, 195+281.

A purchaser of a promissory note is not chargeable with notice of defenses to it, unless he has actual knowledge thereof, or of such facts that his action amounts to bad faith. 161–10, 200+849.

The doctrine of lis pendens does not apply to negotiable paper, and filing a notice of his pendens, in an action to cancel a note and a mortgage securing it, does not operate as constructive notice of defenses to the note. 161–10, 200+849

7100. Rights of holder in due course—A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. ('13 c. 272 § 57) [5869]

If the facts necessary to establish the defense given by section 6015, G. S. 1913, are proved, a holder in due course cannot recover from the maker of a promissory note whose signature thereto was obtained by fraudulent representations. 160–255, 199+819.

7101. When subject to original defenses—*In the* hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives *his title through a holder in due course, and who is* not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. ('13 c. 272 § 58) [5870]

141–438, 170+596; 144–289, 175+545.

166–472, 208+186.

The receiver of a corporation may sell notes representing unpaid stock subscriptions and pass to the purchaser whatever title he has. If in a given case the makers of such notes cannot rescind the same as against the receiver, they cannot do so as against a purchaser from him. 156–487, 195+489.

Paper executed to a bank without consideration, for the sole purpose of being held until the bank makes an assessment upon its capital stock to replace worthless paper, and which is transferred to another bank which took it after the assessment had been made and with knowledge of the purpose for which it was given, cannot be enforced by the second bank. 167–93, 208+805.

7102. Who deemed holder in due course—Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. ('13 c. 272 § 59) [5871]

122–215, 142+139; 127–291, 149+467; 138–76, 163+770; 144–289, 175+545; 144–411, 175+614; 150–260, 185+261; 150–316, 185+374; 153–248, 190+182.

157–348, 196+275, notes under § 7098; 158–481, 199+437, note under § 7095; 210+84.

The evidence that the notes had their inception in fraud was sufficient to cast upon plaintiffs the burden of showing that they were holders in due course. 156–453, 195+281.

Although the indorsement of the payee made them transferable by delivery, merely intrusting them to an agent for collection is not such conduct on the part of the owner as will estop him from reclaiming them from a purchaser from such agent. 158–57, 196+809.

Where there is fraud in the inception of a note, so that the indorsee takes through a defective title, the burden is upon him to prove that his purchase was in good faith without notice. 158–140, 197+271.

Drafts. 160–102, 199+519.

The evidence does not sustain the defendant's claim that the plaintiff, the purchaser of a draft accepted by the defendant, and the drawer of the draft, were together conducting a business in connection with which the draft was drawn so that the plaintiff was not an innocent purchaser. 161–231, 201+318.

The plaintiff, though it be held that under the Negotiable Instruments Act it had the burden of proving good faith, was an innocent purchaser as a matter of law. 161–231, 201+318.

Fraud in the inception of a promissory note being conceded, in an action brought by the owner claiming to be a holder in due course, the plaintiff's burden of showing that he is such holder is not fully met merely by proof that he acquired it before maturity and for value. He must show that he acsuired it in good faith. 166–400, 208+24.

It is only where the holder of a promissory note has proven affrmatively that he was a holder in due course that the maker is required to show bad faith on the part of the holder before proving a defense to it. 210+869.

Defendant was entitled to prove that plaintiff acquired the note after maturity and that neither he nor the payee gave any consideration for it. 210+869.

ARTICLE V. LIABILITIES OF PARTIES

7103. Liability of maker—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to endorse. ('13 c. 272 § 60) [5872]

Evidence held sufficient to make the question whether promissory notes given by a third party and indorsed by defendant were given and accepted for the purpose of releasing defendant from liability for the original debt a question of fact for the jury. 158–236, 197+216.

Giving notes for antecedent debt is presumed to be conditional payment only and does not discharge the debt unless expressly given and received as absolute payment, though third parties join in the notes. 158–236, 197+216.

A promissory note, given to cover the amount of the indebtedness of a corporation as shown by an open account, is competent evidence to show that the account was stated and that the amount actually due thereon is represented by the note, although the note was executed by an officer of the corporation without authority. 160–405, 200+630.

Where the time of payment has been extended to a specified date by a written agreement, proof of a contemporaneous oral agreement for a further extension is inadmissible. 162–445, 203+212.

7104. Liability of drawer—The drawer by drawing the instrument admits the existence of the payee and his then capacity to endorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder. ('13 c. 272 § 61) [5873]

165–417, 206+725.

7105. Liability of acceptor—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(2) The existence of the payee and his then capacity to endorse. ('13 c. 272 § 62) [5874]

7106. When person deemed indorser—A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. ('13 c. 272 § 63) [5875]

192+493.

166–472, 208+186.

Guaranty of note by bank was valid. 165–278, 206+453.

7107. Liability of irregular indorser—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery he is liable as indorser, in accordance with the following rules:

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee. ('13 c. 272 § 64) [5876]

135–209, 160+676, 192+493.

In this action against an irregular indorser of promissory notes, the defense proved that the maker executed and delivered the notes to the payee absolutely and unconditionally that the notes were given for a past-due debt of the maker for which the indorser was in no way liable, and that after such delivery, without any new consideration, defendant indorsed the notes, and, since there is nothing in the record authorizing the jury to hold such proof insufficient, the court rightly directed a verdict for defendant. 158–348, 197+489.

7108. Warranty where negotiation by delivery, et cetera—Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

(1) That the instrument is genuine and in all respects what it purports to be;

(2) That he has a good title to it;

(3) That all prior parties had capacity to contract;

(4) That he has no knowledge of any fact which

would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes. ('13 c. 272 § 65) [5877]

145–325, 177+135.

165–330, 206+646; 210+84.

7109. Liability of general indorser—Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

(1) The matters and things mentioned in subdivision one, two and three of the next preceding section; and

(2) That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. ('13 c. 272 § 66) [5878]

165–330, 206+646.

The guarantors were not parties to the foreclosure action, and their liability may be enforced in the present action. 158–108, 196+963.

A promissory note executed and payable in this state is a Minnesota contract, and an action upon it in our courts is governed by our laws. A statute of another state prohibiting bringing more than one action upon such an obligation has no application here, although a mortgage securing the note was foreclosed by action in that state and a deficiency judgment against the primary debtor was rendered therein. 158–108, 196+963.

Where a person unconditionally guarantees payment of a promissory note, the holder has the right to look to him for payment, and is under no obligation to resort to the security or to take steps to preserve it for his benefit. 158–269, 197+283.

7110. Liability of indorser where paper negotiable by delivery—Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. ('13 c. 272 § 67) [5879]

7111. Order in which indorsers are liable—As respects one another indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally. ('13 c. 272 § 68) [5880]

7112. Liability of an agent or broker—Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section sixty-five [7108] of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent. ('13 c. 272 § 69) [5881]

ARTICLE VI. PRESENTMENT FOR PAYMENT

7113. Effect of want of demand on principal debtor—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. ('13 c. 272 § 70) [5882]

136–104, 161+398.

A demand of payment is not a prerequisite to the enforcement of a note payable on demand. 164–57, 204+546.

7114. Presentment where instrument is not payable on demand and where payable on demand—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. ('13 c. 272 § 71) [5883]

This section supersedes R. L. § 2741.

149–47, 182+724.

7115. *What constitutes a sufficient presentment*— Presentment for payment, to be sufficient, must be made:

(1) By the holder, or by some person authorized to receive payment on his behalf;

(2) At a reasonable hour on a business day;

(3) At a proper place as herein defined;

(4) To the person primarily liable on the instrument or if he is absent or inaccessible, to any person found at the place where the presentment is made. ('13 c. 272 § 72) [5884]

Under the established practice of banks belonging to a clearing house association to exchange checks and adjust balances through the clearing house, the presentment for payment of a check drawn upon a member bank and held by another member bank is sufficient when the check is presented through the clearing house in accordance with the rules of the association. 160–89, 199+514.

7116. Place of presentment—Presentment for payment is made at the proper place:

(1) Where a place of payment is specified in the instrument and it is there presented;

(2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

(3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

(4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. ('13 c. 272 § 73) [5885]

7117. Instrument must be exhibited—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. ('13 c. 272 § 74) [5886]

160–89, 199+514, note under § 7115.

7118. Presentment where instrument payable at bank—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. ('13 c. 272 § 75) [5887]

160–89, 199+514, note under § 7115.

7119. Presentment where principal debtor is dead—Where a person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found. ('13 c. 272 § 76) [5888]

7120. Presentment to persons liable as partners—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. ('13 c. 272 § 77) [5889]

7121. Presentment to joint debtors—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all. ('13 c. 272 § 78) [5890]

7122. When presentment not required to charge the drawer—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. ('13 c. 272 § 79) [5891]

7123. When presentment not required to charge the indorser—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented. ('13 c. 272 § 80) [5892]

7124. When delay in making presentment is excused—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence. ('13 c. 272 § 81) [5893]

7125. When presentment may be dispensed with—Presentment for payment is dispensed with:

(1) Where after the exercise of reasonable diligence presentment as required by this act cannot be made:

(2) Where the drawee is a fictitious person;

(3) By waiver of presentment, express or implied. ('13 c. 272 § 82) [5894]

136–104, 161+398.

The evidence warranted the conclusion that the indorser of a check impliedly waived presentment and notice of dishonor. 160–449, 200+468.

7126. When instrument dishonored by non-payment—The instrument is dishonored by non-payment when:

(1) It is duly presented for payment and payment is refused or cannot be obtained; or

(2) Presentment is excused and the instrument is overdue and unpaid. ('13 c. 272 § 83) [5895]

7127. Liability of person secondarily liable, when instrument dishonored—Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder. ('13 c. 272 § 84) [5896]

7128. Payment of negotiable instruments when falling due on holidays or Saturdays—Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday; and if presented after 12 o'clock noon on Saturday when that entire day is not a holiday may at the option of the payor be then paid. ('13 c. 272 § 85, amended '17 c. 204 § 1) [5897]

7129. Time—How computed—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment. ('13 c. 272 § 86) [5898]

7130. Rule where instrument payable at bank—Where the instrument is made payable at a bank it shall not be equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. ('13 c. 272 § 87) [5899]

7131. What constituted payment in due course—Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. ('13 c. 272 § 88) [5900]

ARTICLE VII. NOTICE OF DISHONOR

7132. To whom notice of dishonor must be given—Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. ('13 c. 272 § 89) [5901]

7133. By whom given—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given. ('13 c. 272 § 90) [5902]

7134. Notice given by agent—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. ('13 c. 272 § 91) [5903]

7135. Effect of notice given on behalf of holder—Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. ('13 c. 272 § 92) [5904]

7136. Effect where notice is given by party entitled thereto—Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given. ('13 c. 272 § 93) [5905]

7137. When agent may give notice—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice himself the same time for giving notice as if the agent had been an independent holder. ('13 c. 272 § 94) [5906]

7138. When notice sufficient—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. ('13 c. 272 § 95) [5907]

7139. Form of notice—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails. ('13 c. 272 § 96) [5908]

7140. To whom notice may be given—Notice of dishonor may be given either to the party himself or to his agent in that behalf. ('13 c. 272 § 97) [5909]

7141. Notice where party is dead—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased. ('13 c. 272 § 98) [5910]

7142. Notice to partners—Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution. ('13 c. 272 § 99) [5911]

7143. Notice to persons jointly liable—Notice to joint parties who are not partners must be given to each of them unless one of them has authority to receive such notice for the others. ('13 c. 272 § 100) [5912]

7144. Notice to bankrupt—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. ('13 c. 272 § 101) [5913]

7145. Time within which notice must be given—Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act. ('13 c. 272 § 102) [5914]

7146. Where parties reside in same place—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;

(2) If given at his residence, it must be given before the usual hours of rest on the day following;

(3) If sent by mail, it must be deposited in the postoffice in time to reach him in usual course on the day following. ('13 c. 272 § 103) [5915]

7147. Where parties reside in different places—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

(1) If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

(2) If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision. ('13 c. 272 § 104) [5916]

7148. When sender deemed to have given due notice—Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. ('13 c. 272 § 105) [5917]

7149. Deposit in postoffice—What constitutes—Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department. ('13 c. 272 § 106) [5918]

7150. Notice to subsequent party—Time of—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. ('13 c. 272 § 107) [5919]

7151. Where notice must be sent—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

(1) Either to the postoffice nearest to his place of residence, or to the post-office where he is accustomed to receive his letters; or

(2) If he live in one place, and have his place of business in another, notice may be sent to either place; or

(3) If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section. ('13 c. 272 § 108) [5920]

7152. Waiver of notice—Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied. ('13 c. 272 § 109) [5921]

7153. Whom affected by waiver—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only. ('13 c. 272 § 110) [5922]

7154. Waiver of protest—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor. ('13 c. 272 § 111) [5923]

7155. When notice is dispensed with—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged. ('13 c. 272 § 112) [5924]

7156. Delay in giving notice—How excused—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to this [his] default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence. ('13 c. 272 § 113) [5925]

7157. When notice need not be given to drawer—Notice of dishonor is not required to be given to the drawer in either of the following cases:

(1) Where the drawer and drawee are the same person;

(2) When the drawee is a fictitious person or a person not having capacity to contract;

(3) When the drawer is the person to whom the instrument is presented for payment.

(4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;

(5) Where the drawer has countermanded payment. ('13 c. 272 § 114) [5926]

149–47, 182+724.

7158. When notice need not be given to indorser—Notice of dishonor is not required to be given to an indorser in either of the following cases:

(1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

(2) Where the indorser is the person to whom the instrument is presented for payment;

(3) Where the instrument was made or accepted for his accommodation. ('13 c. 272 § 115) [5927]

7159. Notice of non-payment where acceptance refused—Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor

by non-payment is not necessary, unless in the meantime the instrument has been accepted. ('13 c. 272 § 116) [5928]

7160. Effect of omission to give notice of non-acceptance—An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission. ('13 c. 272 § 117) [5929]

7161. When protest need not be made—When must be made—Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange. ('13 c. 272 § 118) [5930]

ARTICLE VIII. DISCHARGE OF NEGOTIABLE INSTRUMENTS

7162. Instrument—How discharged—A negotiable instrument is discharged:

(1) By payment in due course by or on behalf of the principal debtor;

(2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

(3) By the intentional cancellation thereof by the holder;

(4) By any other act which will discharge a simple contract for the payment of money;

(5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right. ('13 c. 272 § 119) [5931]

210+892.

In a suit brought to cancel a promissory note, the evidence justified the court in finding that at the time of the execution of the note it was agreed between the maker and the payee that, when the former assigned and delivered a certain mortgage to the latter, the note should be surrendered. 158–119, 196+962.

A note is not discharged by the maker's tender of money which, at the time being, was not his to tender; the property therein being in another. Such a tender cannot be unconditional. 166–472, 208+186.

A bank is not estopped from enforcing a promissory note, by reason alone of the fact that its cashier, upon an informal inquiry from the maker, told the latter that the bank had none of his paper, even though the maker may have acted to his detriment upon the assumption of the truth of the information. 166–472, 208+186.

The renewal of a note and mortgage does not necessarily discharge the first note and mortgage. 211+838.

7163. When persons secondarily liable on, discharged—A person secondarily liable on the instrument is discharged:

(1) By any act which discharges the instrument;

(2) By the intentional cancellation of his signature by the holder;

(3) By the discharge of a prior party;

(4) By a valid tender of payment made by a prior party;

(5) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;

(6) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved. ('13 c. 272 § 120) [5932]

124–541, 145+164.

166–472, 208+186; 210+892.

The mere expression of a willingness to let a note run pending the collection of another note, there being no agreement to forbear collection until the other note is due or paid, does not constitute a promise to extend time of payment. 212+2.

The pledge of a collateral note, being something to which the holder of the principal obligation was not entitled, is a sufficient consideraton for an agreement to extend time of payment of the latter. 212+2.

The mere taking of another note as collateral to the original obligation will not discharge a guarantor. Where a new note is taken, and the original note is not surrendered, there is no presumption that the former is collateral to the latter. 213+375.

When a person by a separate written instrument guarantees the payment of a promissory note when due, the stipulations in the note, wherein the guarantors agree that renewal or extensions may be granted the maker without their consent, cannot be read into the contract of guaranty unless they are set forth or identified by reference. 213+375.

The acceptance of renewal notes for a definite period constitutes a definite agreement of extension of time of payment to the maturity of the notes. 213+375.

7164. Right of party who discharges instrument—Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

(1) Where it is payable to the order of a third person, and has been paid by the drawer; and

(2) Where it was made or accepted for accommodation, and has been paid by the party accommodated. ('13 c. 272 § 121) [5933]

7165. Renunciation by holder—The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. ('13 c. 272 § 122) [5934]

A "renunciation" to be in writing or accompanied by a delivery back of the instrument, applies only to the unilateral act of the holder, usually, if not always, without consideration, whereby he expresses the intention of abandoning his rights on the instrument or against one or more parties thereto. 210+892.

7166. Cancellation—Unintentional—Burden of proof—A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority. ('13 c. 272 § 123) [5935]

7167. Alteration of instrument—Effect of—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor. ('13 c. 272 § 124) [5936]

135–173, 160+668.

160–250, 199+970, note under § 7168.

Where one of several indorsers of a promissory note, as surety, after indorsing the note, intrusts it to the maker, and the maker, before delivery to the payee, permits such indorser to mark his name off by drawing a pen through it, without the knowledge or consent of the other indorsers, is not such an alteration of the instrument as to discharge the other indorsers, where the payee had no notice or knowledge, when he took the note, of the circumstances under which the name was so marked off. 165–330, 206+646.

Where an erasure of the name of one of several indorsers of a promissory note is apparent upon the back of the note, the legal presumption is that the erasure was made prior to the delivery of the note. 165–330, 206+646.

The burden of proof that a material alteration, apparent upon the face of a note, was made after delivery is upon the defendant asserting it. 167–507, 209+632.

7168. What constitutes a material alteration—Any alteration which changes:

(1) The date;

(2) The sum payable, either for principal or interest;

(3) The time or place of payment;

(4) The number or the relations of the parties;

(5) The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. ('13 c. 272 § 125) [5937]

128–519, 151+529.

167–507, 209+632, note under § 7167.

The evidence sustains a finding that the words "without recourse" above an indorsement by the payee of a note were erased and the words "demand and protest waived" substituted. Such change was a "material alteration" and avoided the instrument except as against one making or assenting to the alteration, and subsequent indorsers, and except that a holder in due course, not a party to the alteration, can enforce payment according to the original tenor of the instrument. 160–250, 199+970.

TITLE II. BILLS OF EXCHANGE

ARTICLE I. FORM AND INTERPRETATION

7169. Bill of exchange defined—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. ('13 c. 272 § 126) [5938]

150–304, 185+498.

165–339, 206+930; 166–481, 208+413, note under § 7170.

7170. Bill not an assignment of funds in hands of drawee—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. ('13 c. 272 § 127) [5939]

The order was in the form of a bill of exchange, but was not accepted by the garnishee in writing. Held, that the transaction operated as an equitable assignment of the garnishee's indebtedness to the defendant in the amount represented by the order. 166–481, 208+413.

7171. Bill addressed to more than one drawee—A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession. ('13 c. 272 § 128) [5940]

7172. Inland and foreign bills of exchange—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. ('13 c. 272 § 129) [5941]

7173. When bill may be treated as promissory note—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. ('13 c. 272 § 130) [5942]

7174. Referee in case of need—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit. ('13 c. 272 § 131) [5943]

ARTICLE II. ACCEPTANCE

7175. Acceptance—How made, et cetera—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. ('13 c. 272 § 132) [5944]

151–244, 186+575.

165–339, 206+930; 166–481, 208+413, note under § 7170.

7176. Holder entitled to acceptance on face of bill—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored. ('13 c. 272 § 133) [5945]

7177. Acceptance by separate instrument—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. ('13 c. 272 § 134) [5946]

7178. Promise to accept—When equivalent to acceptance—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who upon the faith thereof, receives the bill for value. ('13 c. 272 § 135) [5947]

7179. Time allowed drawee to accept—The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance if given, dates as of the day of presentation. ('13 c. 272 § 136) [5948]

The retention by the drawee bank of a check for more than 24 hours after its presentment constitutes acceptance. 165–492, 206+929.

7180. Liability of drawee retaining or destroying bill—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder he will be deemed to have accepted the same. ('13 c. 272 § 137) [5949]

165–339, 206+930.

7181. Acceptance of incomplete bill—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. ('13 c. 272 § 138) [5950]

7182. Kinds of acceptances—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. ('13 c. 272 § 139) [5951]

7183. What constitutes a general acceptance—An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere. ('13 c. 272 § 140) [5952]

7184. Qualified acceptance—An acceptance is qualified, which is:

(1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

(2) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(3) Local, that is to say, an acceptance to pay only at a particular place;

(4) Qualified as to time;

(5) The acceptance of some one or more of the drawees, but not of all. ('13 c. 272 § 141) [5953]

7185. Rights of parties as to qualified acceptance—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto. ('13 c. 272 § 142) [5954]

ARTICLE III. PRESENTMENT FOR ACCEPTANCE

7186. When presentment for acceptance must be made—Presentment for acceptance must be made:

(1) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

(2) Where the bill expressly stipulates that it shall be presented for acceptance, or

(3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. ('13 c. 272 § 143) [5955]

7187. When failure to present releases drawer and indorser—Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged. ('13 c. 272 § 144) [5956]

7188. Presentment—How made—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and:

(1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

(2) Where the drawee is dead, presentment may be made to his personal representative;

(3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. ('13 c. 272 § 145) [5957]

7189. On what days presentment may be made—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two [7115] and eighty-five [7128] of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day. ('13 c. 272 § 146) [5958]

7190. Presentment where time is insufficient—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers. ('13 c. 272 § 147) [5959]

7191. Where presentment is excused—Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:

(1) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

(2) Where, after the exercise of reasonable diligence, presentment cannot be made.

(3) Where, although presentment has been irregular, acceptance has been refused on some other ground. ('13 c. 272 § 148) [5960]

7192. When dishonored by non-acceptance—A bill is dishonored by non-acceptance:

(1) When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

(2) When presentment for acceptance is excused and the bill is not accepted. ('13 c. 272 § 149) [5961]

7193. Duty of holder where bill not accepted—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers. ('13 c. 272 § 150) [5962]

7194. Rights of holder where bill not accepted—When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary. ('13 c. 272 § 151) [5963]

ARTICLE IV. PROTEST

7195. In what cases protest necessary—Where a foreign bill appearing on its face to be such is dishonored by non-acceptance it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. ('13 c. 272 § 152) [5964]

7196. Protest—How made—The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify:

(1) The time and place of presentment;

(2) The fact that presentment was made and the manner thereof;

(3) The cause or reason for protesting the bill;

(4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. ('13 c. 272 § 153) [5965]

7197. Protest—By whom made—Protest may be made by:

(1) A notary public; or

(2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. ('13 c. 272 § 154) [5966]

7198. Protest—When to be made—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. ('13 c. 272 § 155) [5967]

7199. Protest—Where made—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary. ('13 c. 272 § 156) [5968]

7200. Protest both for non-acceptance and non-payment—A bill which has been protested for non-acceptance may be subsequently protested for non-payment. ('13 c. 272 § 157) [5969]

7201. Protest before maturity where acceptor insolvent—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. ('13 c. 272 § 158) [5970]

7202. When protest dispensed with—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. ('13 c. 272 § 159) [5971]

7203. Protest where bill is lost, et cetera—When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. ('13 c. 272 § 160) [5972]

ARTICLE V. ACCEPTANCE FOR HONOR

7204. When bill may be accepted for honor—Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party. ('13 c. 272 § 161) [5973]

7205. Acceptance for honor—How made—An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. ('13 c. 272 § 162) [5974]

7206. When deemed to be an acceptance for honor of the drawer—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. ('13 c. 272 § 163) [5975]

7207. Liability of the acceptor for honor—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. ('13 c. 272 § 164) [5976]

7208. Agreement of acceptor for honor—The acceptor for honor, by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given him. ('13 c. 272 § 165) [5977]

7209. Maturity of bill payable after sight—Accepted for honor—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor. ('13 c. 272 § 166) [5978]

7210. Protest of bill accepted for honor, et cetera—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need. ('13 c. 272 § 167) [5979]

7211. Presentment for payment to acceptor for honor—How made—Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

(2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four [5916]. ('13 c. 272 § 168) [5980]

7212. When delay in making presentment is excused—The provisions of section eighty-one [7124] apply where there is delay in making presentment to the acceptor for honor or referee in case of need. ('13 c. 272 § 169) [5981]

7213. Dishonor of bill by acceptor for honor—When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him ('13 c. 272 § 170) [5982]

ARTICLE VI. PAYMENT FOR HONOR

7214. Who may make payment for honor—Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn. ('13 c. 272 § 171) [5983]

7215. Payment for honor—How made—The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it. ('13 c. 272 § 172) [5984]

7216. Declaration before payment for honor—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays. ('13 c. 272 § 173) [5985]

7217. Preference of parties offering to pay for honor—Where two or more persons offer to pay a bill for the honor of different parties, the person whose

payment will discharge most parties to the bill is to be given the preference. ('13 c. 272 § 174) [5986]

7218. **Effect on subsequent parties where bill is paid for honor**—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. ('13 c. 272 § 175) [5987]

7219. **Where holder refuses to receive payment supra protest**—Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment. ('13 c. 272 § 176) [5988]

7220. **Rights of payer for honor**—The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. ('13 c. 272 § 177) [5989]

ARTICLE VII. BILLS IN A SET

7221. **Bills in sets constitute one bill**—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill. ('13 c. 272 § 178) [5990]

7222. **Right of holders where different parts are negotiated**—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him. ('13 c. 272 § 179) [5991]

7223. **Liability of holder who indorses two or more parts of a set to different persons**—Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. ('13 c. 272 § 180) [5992]

7224. **Acceptance of bills drawn in sets**—The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. ('13 c. 272 § 181) [5993]

7225. **Payment by acceptor of bills drawn in sets**—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. ('13 c. 272 § 182) [5994]

7226. **Effect of discharging one of a set**—Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. ('13 c. 272 § 183) [5995]

TITLE III. PROMISSORY NOTES AND CHECKS

ARTICLE I

7227. **Promissory note defined**—A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him. ('13 c. 272 § 184) [5996]

7228. **Check defined**—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check. ('13 c. 272 § 185) [5997]

160–89, 199+514, note under § 7115; 165–339, 206+930; 165–417, 206+725. Accord and satisfaction. 163–329, 203+960.

7229. **Within what time a check must be presented**—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. ('13 c. 272 § 186) [5998]

143–423, 174+416.

A school-teacher received, in exchange for school orders issued to her for wages, two checks drawn by the district treasurer on a bank located several miles from the place where she taught and boarded. She held them for three days while she continued to teach before she attempted to precent them to the bank for payment. Held, that it was for the jury to determine whether the checks were presented within a reasonable time. 162–357, 203+46.

7230. **Certification of check—Effect of**—Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance. ('13 c. 272 § 187) [5999]

7231. **Effect where the holder of check procures it to be certified**—Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon. ('13 c. 272 § 188) [6000]

7232. **When check operates as an assignment**—A check of itself does not 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, unless and until it accepts or certifies the check. ('13 c. 272 § 189) [6001]

Where a vendee draws a check on his bank payable to the bank for the vendor and delivers it to the bank with instructions to pay the amount thereof to the vendor on delivery of the deed, but thereafter withdraws his funds from the bank before they have been so applied, the bank is not liable to the vendor for the amount of the check. 163–344, 204+31.

Following Security Bank v. Northwestern Fuel Co., 58 Minn. 141, 59 N. W. 987, it is held, that the deposit referred to in the opinion was absolute and passed the title of the check and its proceeds to the defendant bank. 164–484, 205+447.

Where a depositor draws a check upon one bank, and deposits it in another, which credits it to his account, it may be charged back to him, if not paid, unless a loss resulted from negligence on the part of the payee or holder. 165–417, 206+725.

7233. **Banks permitted to forward a check direct to payor**—[Repealed.]

This section (Laws 1919, c. 319, § 1) is repealed by Laws 1927, c. 382, § 2. See § 7233-2, herein.

Section does not include authority for the collecting bank to accept a draft in payment of such check. 212+16.

A collecting bank is liable to the payee named in a check where it accepts a draft in payment of such check. 212+16.

A check, drawn upon one bank, deposited by the payee in another bank, is presumed to be for collection. 212+16.

7233-1. **Banks receiving items for deposit or collection—Acting only as collecting agent for depositor—Liability**—Any bank, savings bank or trust company (hereinafter called "bank") doing business in this state, in receiving items for deposit or collection, in the absence of a written agreement to the contrary, shall act only as the depositor's collecting agent and shall have no responsibility beyond the exercise of due care. All such items shall be credited subject to final

payment in cash or solvent credits. Such bank shall not be liable for default or negligence of its duly selected correspondents nor for losses in transit, and each correspondent so selected shall not be liable except for its own negligence. Such bank or correspondent may send items, directly or indirectly, to any bank including the payer, and accept its draft, check, or credit as conditional payment in lieu of cash. It may charge back any item at any time before final payment whether returned or not. ('27, c. 138, § 1, effective 30 days after passage by § 3)

7233-2. Same—Laws repealed—Chapter 319 of Laws of 1919 and all other Acts or parts of Acts in so far as they are inconsistent herewith, are hereby repealed. ('27, c. 138, § 2, effective 30 days after passage by § 3)

7233-3. Same—Pending actions or proceedings—Provided that the provisions of this act shall not apply to or affect any action or proceeding now pending in any of the courts in this state. ('27, c. 138, § 4, effective 30 days after passage by § 3)

TITLE IV. GENERAL PROVISIONS

ARTICLE I

7234. Short title—This act may be cited as the Uniform Negotiable Instruments Act. ('13 c. 272 § 190) [6002]

7235. Definitions and meaning of terms—In this act, unless the context otherwise requires,—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print. ('13 c. 272 § 191) [6003]

It is within the scope of the implied power of the cashier of a bank to indorse negotiable paper in the ordinary transaction of banking business. 167–394, 209+311.

An unqualified indorsement of a promissory note, by means of a rubber stamp, is sufficient and satisfies the requirement of the statute, if made by some one having authority so to do. 167–394, 209+311.

7236. Person primarily liable on instrument—The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable. ('13 c. 272 § 192) [6004]

65–107, 67+803; 151–351, 186+794.

166–472, 208+186; 212+2, note under § 7072.

7237. Reasonable time, what constitutes—In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. ('13 c. 272 § 193) [6005]

143–422, 174+416.

157–348, 196+275, notes under § 7098; 162–357, 203+46, note under § 7229; 2 F. (2d) 348.

7238. Time, how computed—When last day falls on holiday—Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. ('13 c. 272 § 194) [6006]

7239. Application of act—The provisions of this act do not apply to negotiable instruments made and delivered prior to the taking effect hereof, nor shall they be construed as modifying, repealing or superseding any of the terms and provisions of section 2747, Revised Laws, 1905 [7247]. ('13 c. 272 § 195) [6007]

150–259, 185+260.

164–425, 205+286.

7240. Cases not provided for in act—In any case not provided for in this act the rules of (law and equity including) the law merchant shall govern. ('13 c. 272 § 196) [6008]

2 F. (2d) 348.

Custom of generally treating certain instruments as negotiable is inadmissible. 158–481, 199+437.

7241. Repeals—All acts and parts of acts inconsistent with this act are hereby repealed. ('13 c. 272 § 197) [6009]

2 F (2d) 348.

MISCELLANEOUS PROVISIONS

7242. Contracts due on holidays, etc.—Bills of exchange, promissory notes, and other contracts payable or to be performed on Sunday, Good Friday, Thanksgiving Day, or on any legal holiday, shall be payable or performable on the next succeeding business day. (2739) [6010]

139–420, 166+1075.

7243. Following day deemed holiday, when—All promissory notes, drafts, checks, acceptances, bills of exchange, or other evidences of indebtedness, falling due or maturing on Good Friday, Thanksgiving Day, Sunday, or on any legal holiday, shall be deemed due or maturing on the next succeeding business day; and when Sunday and one or more legal holidays, or two or more legal holidays, fall on the same day, the following day shall be deemed a legal holiday, and when Sunday and one or more legal holidays, or two or more legal holidays, immediately succeed each other, then such instrument, paper or indebtedness shall be deemed as due or maturing on the day following the last of such days. ('05 c. 345 § 1) [6011]

Section 2 of 1903 c. 261 was amended, as above set forth, by section 1 of 1905 c. 345.

1903 c. 261 was repealed by § 9456, its provisions being incorporated in part in the preceding section. So far as the above section differs from the Revised Laws, it is to be construed, by virtue of § 9398, as amendatory or supplementary.

7244. Corporate bonds—Seal—Bonds and other obligations under seal for payment of money to bearer, or to some designated person or bearer, or 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. (2740) [6012]

28–291, 9+799.

The finding of misrepresentation in the sale of bonds secured by a trust deed running to defendant, in that defendant stated to plaintiff that he had signed the bonds and stood back of them, is sustained by the evidence. 166–195, 207+305.

7245. Damages on international bills—Whenever any bill of exchange, drawn or indorsed in the state, and payable without the United States, is duly protested for non-acceptance or non-payment, the party liable for the contents thereof, on due notice and demand, shall 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, together with the interest on such contents, computed from the date of protest. The amount of such contents, damages, and interest shall be in full of all damages, charges, and expenses. (2743) [6013]

7246. Rate of damage on interstate bills—Whenever any bill of exchange drawn upon any person out of the state, but within the United States, is duly presented for acceptance or payment, and is protested for non-acceptance or non-payment, the drawer or indorser thereof, after due notice of such dishonor, shall pay said bill according to its tenor, with interest and five per cent. damages, together with charges of protest. (2744) [6014]

7247. Instrument 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 liable thereon if it be made to appear that the signature was obtained by fraudulent representation, trick, or artifice as to the nature and terms of the contract so signed, that at the time of signing he did not believe it to be a bill of exchange, promissory note, or other paper negotiable under the law merchant, and that he was not guilty of negligence in signing such paper without knowledge of its terms. The question of negligence in any suit on such contract shall in all cases be one of fact for the jury, and the person sought to be charged thereon shall be entitled to have the question of his negligence submitted to a jury. (2747) [6015]

51–480, 53+766; 57–391, 59+486; 63–525, 65+952; 88–401, 93+307; 89–473, 477, 95+308; 102–414, 113+1011; 104–438, 116+928; 112–239, 127+940; 113–397, 129+770; 115–414, 132+911; 122–24, 141+1096; 123–375, 143+980; 126–42, 147+823; 138–74, 163+769; 141–501, 169+228; 143–284, 173+661; 143–386, 193+803; 150–256, 185+259.

164–425, 205+286; 164–507, 205+436; 165–87, 205+696; 209+869; 211+964.

The maker's defense to an action on his notes was fraud on the part of the payee in obtaining them. The evidence offered to establish the defense was not sufficient to justify its submission to the jury. 159–406, 199+89.

The trial court did not err in instructing the jury that in determining whether defendants were negligent in signing the notes in suit they might consider evidence tending to show that the payee induced them to drink intoxicating liquor to facilitate the accomplishment of a fraudulent design to obtain their signatures. 160–255, 199+819.

If the facts necessary to establish the defense given by section 6015, G. S. 1913, are proved, a holder in due course cannot recover from the maker of a promissory note whose signature thereto was obtained by fraudulent representations. 160–255, 199+819.

The evidence sustains the finding of the jury that the signature of the defendant to the note upon which suit is brought was procured by fraud, that he did not believe it to be a note, and that he was not negligent in signing. 163–216, 203+610.

The defendant did not affrm the note, as a matter of law, after obtaining knowledge of the fraud. 163–216, 203+610.

Evidence considered and held to sustain the findings that defendant is not a bona fide owner of the note and mortgage in question; that they were obtained by fraud. 164–86, 204+926.

The evidence made a case for the jury upon the issue of fraud, where it appeared that the president of a city bank agreed to sell to a county bank "good bankable paper" and charge the amount thereof against the latter's deposit account; the selection of the paper being intrusted to the president. 164–293, 204+963.

The verdicts finding that defendant Graden had defrauded plaintiff by means of certain cashier's checks and by means of an exchange of certain promissory notes are not sustained by the evidence. 165–462, 206+706.

The defense of want of consideration and fraud in obtaining defendant's signature to a promissory note were not sustained by the evidence, and the court properly ordered judgment notwithstanding the verdict. 209+484.

Evidence considered and held ample to justify a finding that defendant's signature was obtained to the note in question by fraudulent representations, trick, and artifice, as to whether at the time of signing he believed the paper to be a promissory note and whether he was negligent in signing the same. 210+625.

The evidence supports a finding that certain representations made by the defendant to induce the plaintiffs to purchase bonds secured by a mortgage on certain land were substantially true and correct. 212+892.

7247-1. Transfer of security receipts and equipment trust certificates—Definitions—For the purpose of this act: 1. The term "security receipt" means any writing in and by which the signer sets forth that the person named therein or the bearer is entitled to receive a specified principal amount, par value or number of bonds, notes, debentures, shares of stock, voting trust certificates for shares, of stock, scrip or other security or securities of any kind or character, identified or described therein, absolutely or when, as and if received by the signer or upon any other contingency stated or referred to therein.

2. The term "equipment trust certificate" means any writing in and by which the signer sets forth that the person named therein or the bearer is entitled to an interest or a share of a specified principal amount or par value in money in a trust under an identified trust indenture pursuant to the terms of which the title to rolling stock or equipment for use by or on the lines or routes of common carriers or to vessels or other marine equipment, is held by the trustees for the benefit of all the holders of the interests or shares.

For the purposes of this act, the character of any such security receipt or equipment trust certificate is not affected by the inclusion therein of other provisions not limiting the right of transfer and the negotiable quality thereof as in this act provided. ('27, c. 433, § 1)

7247-2. Same—Manner of transfer—1. The title to any security receipt or equipment trust certificate which by its terms entitles the bearer to the benefits thereof, may be transferred by the delivery thereof by any person in possession of the same how so ever such possession may have been acquired.

2. The title to any security receipts or equipment trust certificate which, by its terms, entitles a person named therein to the benefits thereof and which provides, in substance, that title thereto is transferable with the same effect as in the case of a negotiable instrument, may be transferred by delivery thereof by any person in possession of the same, how so ever such possession may have been acquired if endorsed in blank, or if it is endorsed to a specified person and the delivery is made to such person.

3. A person to whom title may be transferred, as in this section provided, and who shall have taken any such instrument from any other person for present or antecedent value and without notice of prior defenses or equities or claims of ownership enforceable against such other person, shall have absolute title thereto free of any defense enforceable against or claims of

ownership of the signer or any prior holder. Any holder of any such security receipt or equipment trust certificate, unless the same has been endorsed to a specified person other than the holder and has not been endorsed in blank by such specified person, shall be deemed prima facie to have title thereto as aforesaid; but when it is shown that the title of any person who has negotiated such instrument is defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder for value and without notice as aforesaid.

4. The provisions of this section shall not be applicable to the transfer of any security receipt or equipment trust certificate when it is shown that such transfer was made after the date fixed therein for the performance by the signer or his obligations thereunder or, if no date is fixed, after the expiration of a reasonable time after the happening of the contingency upon which the signer became obligated to perform. ('27, c. 433, § 2)

7247-3. Same—Negotiability of instruments not affected—This act shall not be construed to limit or impair the negotiability or quasi negotiability by agreement or otherwise of any instrument whether or not defined therein. The provisions of this act shall apply only in respect of instruments issued after the date of the taking effect thereof. ('27, c. 433, § 3)

CHAPTER 52

PARTITION FENCES

7248. Fence viewers—Supervisors in their respective towns, aldermen of cities in their respective wards, the Commissioner of Public Works in cities having a commission form of government, and village trustees in their respective villages, shall be fence viewers. (R. L. '05 § 2748; G. S. '13 § 6016, amended '21 c. 25 § 1)

The plaintiff in an action for a permanent injunction, to which he was not found entitled, was not entitled to an injunction restraining the defendant from interferring with a division line fence built by him, the plaintiff, upon land occupied by the defendant for many years, until the true boundry should be determined in subsequent litigation. 165–415, 206+654.

7249. One barbed wire permitted with woven wire as a legal fence—All fences consisting of not less than 32-inch woven wire and two barbed wires firmly fastened to well set posts not more than one rod apart, the first barbed wire being above and not more than 4 inches from the woven wire and the second barbed wire being above and not more than 8 inches from the first wire; all fences consisting of not less than 40-inch woven wire and one barbed wire firmly fastened to well set posts not more than one rod apart, the said barbed wire being above and not more than 4 inches from the said woven wire; all fences consisting of woven wire not less than 48 inches in height, and one barbed wire not more than 4 inches above said woven wire firmly fastened to well set posts not more than one rod apart; all fences consisting of not less than four barb wires with at least forty barbs to the rod, the wires to be firmly fastened to posts not more than one rod apart, the top wire to be not more than 48 inches high and the bottom wire not less than twelve inches nor more than sixteen inches from the ground; and all fences consisting of rails, timbers, wires, boards, stone walls or any combination thereof or of streams, lakes, ditches, or hedges, which shall be considered by the fence viewers as equivalent to any of the fences herein described shall be deemed legal and sufficient fences. In all cases where adjoining land owners disagree as to the kind of fence to be built on any division line, the matter shall be referred to the fence viewers who shall determine what kind of fence shall be built on such line and shall order such fence built according to law. Whenever the lands of two persons adjoin, and the land of one of such persons is enclosed on all sides except the side forming a division line between such lands by a woven wire fence, then and in such case each of such persons shall erect a fence of like character and quality along such division line for a distance of one-half the total length thereof, and shall thereafter maintain the same in equal shares. (R. L. '05 § 2749; G. S. '13 § 6017, amended '15 c. 282; '17 c. 408 § 1)

29–336, 340, 13+168; 30–1, 13+906; 30–489, 16+271; 32–88, 19+392; 80–508, 83+454; 96–176, 104+827.

130–518, 153+1086.

7250. Occupants to maintain—The adjoining owners or occupants of lands in this state when the land of one or both of such owners is in whole or in part improved and used, and one or both of such owners desires his or their land to be in whole or in part fenced, shall build and maintain the partition fence between their lands in equal shares. (R. L. '05 § 2750, amended '13 c. 525 § 1; '15 c. 173 § 1) [6018]

15–350, 283.

7251. Neglect—Complainant may build or repair—In case any person neglects to build, repair or rebuild any partition fence which of right he ought to build or maintain the aggrieved party may complain to the fence viewers who, after notice to the parties, shall examine such fence or into the need of such proposed fence and if they determine that the fence then existing is insufficient or a new fence is necessary, they shall notify the delinquent owner or occupant in writing to that effect and direct him or them to build, repair or re-build the fence within such time they deem reasonable and if the delinquent fails to comply with such directions, the complainant may build, repair or