

1936 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1936)
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



Edited by

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

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1936

TITLE IV. GENERAL PROVISIONS

ARTICLE I.

7235. Definitions and meaning of terms.

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

7237. Reasonable time, what constitutes.

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

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

7239. Application of act.

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

If facts making a defense under §7247 are established a purchaser of note in due course is not protected. M & M Securities Co. v. D., 190M57, 250NW801. See Dun. Dig. 1019.

MISCELLANEOUS PROVISIONS

7247. Instrument obtained by fraud.

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

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

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

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

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

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

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

In action on notes, fraud held for jury. *Wiebke v. E.*, 189M102, 248NW702. See Dun. Dig. 1019.

Burden is upon maker of showing that his signature was obtained by fraud as to nature and terms of contract; that he did not believe instrument to be a promissory note; and that he was not negligent in signing without knowledge. *M. & M. Securities Co. v. D.*, 190M57, 250NW801. See Dun. Dig. 1019.

If facts making a defense under §7247 are established, a purchaser of note in due course is not protected. *Id.*

Prejudicial error was not committed in permitting defendant to introduce testimony of fraud sufficient as a defense at common law without first producing affirmative proof that plaintiff was not a holder in due course and so making an issue for jury upon evidence tendered by plaintiff. *Id.* See Dun. Dig. 424.

Where defense to note is based on actual or common-law fraud merely consisting of misrepresentations as to merchandise sold, proof of absence of negligence is not essential as in case of note obtained by fraudulent trick or artifice. *Id.* See Dun. Dig. 1018.

Note given for corporate stock, held not obtained by fraud or misrepresentation. *Edson v. O.*, 190M444, 252NW217. See Dun. Dig. 2041b.

Evidence sustains finding that there was no fraud in obtaining signature of defendant to vote. *Erickson v. H.*, 191M177, 253NW361. See Dun. Dig. 1019.

CHAPTER 52

Partition Fences

7248. Fence viewers.

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

7250. Occupants to maintain.

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

A village must maintain its share of partition fence as to land outside village limits used in connection with water system of village operating in both a proprietary capacity and governmental capacity. *Op. Atty. Gen.*, Mar. 24, 1934.

There can be no partition fence between land separated by a cartway established either under the statute or by dedication as a public road, but if third person using the way has merely a license, there may be a partition fence. *Op. Atty. Gen.* (377b-10(e)) (631h), July 5, 1934.

CHAPTER 53

Estrays and Beasts Doing Damage

BEASTS DOING DAMAGE

7274. Who may distrain.

Where federal government purchased and branded distressed cattle in drouth areas and turned them over to state emergency relief administration for grazing and they were contracted out to individuals under an agreement that they be grazed and cared for, owner of property damaged by such animals may not hold them in attempt to force collection of damages; such cattle belonging to the state. *Op. Atty. Gen.* (400a), Sept. 28, 1934.

7275. Notice to owner.

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

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

MISCHIEVOUS DOGS

7285. Keeping after notice.

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

7286. Dogs worrying livestock or poultry.

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

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

7287. Nuisance, when—Procedure.

174M457, 219NW770.

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

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

RUNNING AT LARGE OF CERTAIN ANIMALS

7297-1. County board to license dogs.—The Board of County Commissioners of any county, by a majority vote, may provide for the licensing and regulating the running at large of dogs, and create a live-stock indemnity fund to be handled and disbursed as hereinafter set forth. After the plan therefor shall have been in operation in any county for at least one year, the Board of County Commissioners thereof may by a majority vote, abandon the same. In any county containing a city of the first class or a city of the second class located in more than one county the board of county commissioners shall exclude from the operation of this act such city of the first class or a city of the second class located in more than one county. (Act-Apr. 21, 1931, c. 295, §1; Jan. 24, 1936, Ex. Ses., c. 69.)

7297-2. Owners to obtain licenses.—The owners of all dogs six months old or over, except dogs kept in kennels, in all counties providing for the licensing