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To

Mason's Minnesota Statutes

1927

(1927 to 1940)

(Superseding Mason's 1931, 1934, 1936 and 1938 Supplements)

Containing the text of the acts of the *1929, 1931, 1933, 1935, 1937* and *1939* General Sessions, and the 1933-34, 1935-36, 1936 and 1937 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.

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"Attendance in district court" means actual attendance at court, and not time while panel is excused for definite time or court is adjourned to fixed day. Op. Atty. Gen., May 16, 1933.

Juror is not entitled to compensation for Sunday where court adjourns over week-end. Id.

County is liable for witness fees to employee of secretary of state subpoenaed to appear in Municipal Court in connection with prosecution under Laws 1933, c. 170. Op. Atty. Gen. (196r-3), Mar. 12, 1936.

Grand jurors are not entitled to extra compensation for committee meetings or for investigation when no quorum is present. Op. Atty. Gen. (260b), Apr. 30, 1937.

7011. Coroner and justice jurors.

Juror in justice court is to receive one dollar for entire services and not one dollar for each day's service. Op. Atty. Gen. (260a-4), May 4, 1938.

Jurors in justice court are not entitled to mileage. Op. Atty. Gen. (260a-4), July 6, 1938.

7012. Fees of court commissioner.

Court commissioner is not entitled to mileage when conducting insanity hearings away from county seat. Op. Atty. Gen., Aug. 14, 1933.

7013. [Repealed].

Repealed Feb. 21, 1931, c. 22.

7014. Fees for services not rendered—Illegal fees.

Op. Atty. Gen., Dec. 19, 1931; note under §6998.

Provisions that "no fee or compensation shall be demanded or received by any officer or person for any service unless the same was actually rendered," does not prevent in any proper case collection in advance of prescribed fee for official service wanted, purpose of statute being only to prevent exaction of larger fees than law allows. St. Louis County v. M., 198M127, 269NW105. See Dun. Dig. 8753.

7018. Turning fees into county treasury.

Sheriff of St. Louis County is a salaried official with no personal interest in fees earned by him, under Laws 1911, c. 145, Laws 1921, c. 492; Laws 1925, c. 130, St. Louis County v. M., 198M127, 269NW105. See Dun. Dig. 8753.

Sheriff of St. Louis county is by virtue of his office a trustee in respect to fees earned by him, whether collected or not, and he is held to a strict accountability and highest practical degree of care as to collection of such fees, burden being upon him to prove exercise of such care as to fees earned but not collected. Id.

A custom of the sheriff's office of serving papers without collecting the fees in advance and then, without more, merely holding the originals for payment of the fees comes so far from having any legal justification that, however much acquiesced in by other public officials, it cannot create an estoppel against the county. Id.

When a fee office has by statute been put upon a salary basis, its fees are made public property. Id. See Dun. Dig. 8005.

Fees collected by the clerk of the district court under §3208 are payable into the county treasury under this section in counties where a definite salary is provided for the clerk. Op. Atty. Gen., Jan. 18, 1930.

County auditor must turn into county all fees received, including fees for making of certified copies of official records. Op. Atty. Gen., Nov. 28, 1931.

Where county officials receive a stated salary, they are liable to the county for all fees to be charged by law for the performance of their official duties, whether such fees are actually collected by such officials or not. Op. Atty. Gen., Feb. 29, 1932.

County treasurer is not entitled to a fee for preparing tax lists for banks desiring to remit taxes for their customers. Op. Atty. Gen., May 19, 1933.

Registers of deeds may carry item for fees in connection with administration of chattel mortgages for loan made by federal emergency crop and seed loan section of Farm Credit Administration. Op. Atty. Gen. (833d), Jan. 30, 1935.

County commissioners are not entitled to compensation for serving on county relief committee. Op. Atty. Gen. (124a), Nov. 19, 1935.

Under Laws 1935, c. 113, county board may not receive a salary or per diem for special meeting, nor can board appoint its entire membership to a committee and obtain compensation as such, though proper members of a committee are entitled to compensation. Op. Atty. Gen. (124a), Feb. 26, 1936.

Section 657 limits mileage and compensation of members of county board, though administration of Laws 1937, c. 65, (Seed Loan Act), increases their duties beyond twelve meetings per year. Op. Atty. Gen. (833k), Apr. 19, 1937.

CHAPTER 49A

Trade and Commerce

1. Contracts and written instruments in general.

In order to prove incompetency at time of a particular transaction, it is proper to show a subsequent adjudication of incompetency. Johnson v. H., 197M496, 267NW 486. See Dun. Dig. 3438, 3440.

Where plaintiff and defendant entered into a contract wherein defendant purchased a definite quantity of oil of any weight or weights defendant should designate within weights listed, weight controlling price, lack of agreement as to weight and price created such an indefiniteness and uncertainty in contract as to make it unenforceable. Wilhelm Lubrication Co. v. B., 197M626, 268NW634. See Dun. Dig. 8496.

In formation of a contract words alone are not only medium of expression, and there can be no distinction in effect of promise whether it be expressed in writing, orally, in acts, or partly in one of these ways and partly in others. Zieve v. H., 198M580, 270NW581. See Dun. Dig. 1723.

One may condition his entry into contract relations as he sees fit, resorting even to absurdities if he chooses. State v. Bean, 199M16, 270NW918. See Dun. Dig. 1728.

Evidence held to indicate that parties intended to keep modified agreement alive and in full force and effect after date stated in agreement as expiration date. Schultz v. U., 199M131, 271NW249. See Dun. Dig. 1774.

Ambiguous sentence, printed in small type to left of defendant's signature, on contract prepared and tendered by plaintiff, cannot be construed so as to change plain meaning of terms of contract, it being made no part thereof by reference. Sitterley v. G., 199M475, 272NW387. See Dun. Dig. 1816.

2. ——Mutual Assent.

Offer made by director of national bank to settle liability arising from his acts as director, held to have been accepted by the receiver of the bank so as to constitute a binding contract. Karn v. Andresen, (USDC-Minn), 51F(2d)521, aff'd 60F(2d)427.

Contract of corporation to purchase electricity from municipal plant at a certain rate, for twenty years, for rural distribution to customers of the corporation, held void for uncertainty and lack of mutuality, where amount of power to be furnished depended entirely upon the will and wants of the company, and the municipality was bound only so long as it elected to be bound. Owatonna v. I. (USDC-Minn), 18FSupp6.

It is not the subjective thing known as meeting of the minds, but an objective thing, manifestation of mutual assent, which makes a contract. Benedict v. P., 183M 396, 237NW2. See Dun. Dig. 1742(57).

In the absence of conflicting legal requirement, mutual assent may be expressed by conduct rather than words. Benedict v. P., 183M396, 237NW2. See Dun. Dig. 1742.

Agreement of second mortgagee to pay interest on first mortgage if foreclosure was withheld, held not invalid for want of mutuality. Bankers' Life Co. v. F., 188M349, 247NW239. See Dun. Dig. 1758.

Not a meeting of minds, but expression of mutual assent, is operation that completes a contract. New England Mut. Life Ins. Co. v. M., 188M511, 247NW803. See Dun. Dig. 1742.

Whether defendants agreed to pay plaintiff's printing bill, held for jury. Randall Co. v. B., 189M175, 248NW752. See Dun. Dig. 1742.

Distinguishment between an express contract and one implied as of fact involves no difference in legal effect, but lies merely in mode of manifesting assent. McArdle v. W., 193M433, 258NW818. See Dun. Dig. 1724.

In formation of a contract words alone are not only medium of expression, and there can be no distinction in effect of a promise, whether it be expressed in writing, orally, in acts, or partly in one of these ways and partly in others, but it is objective thing, manifestation of mutual assent which is essential to making of a contract. Id. See Dun. Dig. 1742.

Expressed intention of parties determines terms of contract, and secret intention or motive of one of parties thereto is not material. Wiseth v. G., 197M261, 266 NW850. See Dun. Dig. 1816.

Where plaintiff and defendant's agent made an oral agreement relating to payment of commissions for sale of a farm and thereafter agent wrote to plaintiff confirming agreement, plaintiff's failure to object to terms contained in letter constituted acquiescence to agent's version of agreement. Murphy v. J., 198M459, 270NW136. See Dun. Dig. 1730a.

Where dealings terminate in negotiation stage there is no contract to enforce and court cannot remedy situation by making a contract for the parties. Bjerke v. A., 203M501, 281NW865. See Dun. Dig. 8780.

Mutual insurance company is liable on a policy issued to school district, though district has no right to become member. Op. Atty. Gen., Sept. 9, 1932.

Bids as acceptance in auctions "without reserve." 15 MinnLawRev375.

Unilateral palpable and impalpable mistake in construction contracts. 16MinnLawRev137.

Effective time of an acceptance. 23MinnLawRev776.

2½.—Alteration.

Where an alteration of a chattel mortgage is made without any intent to defraud, merely to correct an error in drawing instrument so as to make instrument conform to undoubted intention of parties, it will not avoid instrument. Hannah v. S., 195M54, 261NW583. See Dun. Dig. 259.

Defense of modification or cancellation of a prior contract is new matter in nature of confession and avoidance and must be pleaded specially in order that evidence thereof can properly be admitted. Davis v. R., 197 M189, 266NW855. See Dun. Dig. 7585.

3. ——Execution and delivery.

Whether parties intended that contract should not bind unless signed by another person, held for jury. Fitzke v. F., 186M346, 243NW139. See Dun. Dig. 1736.

Whether there was delivery of contract, held for jury. Fitzke v. F., 186M346, 243NW139.

Delivery of written contract is ordinarily an essential element of execution. Wm. Lindeke Land Co. v. K., 190 M601, 252NW650. See Dun. Dig. 1736.

Evidence sustains finding of jury that it was orally agreed that defendant electric company should pay to plaintiff cost of service line constructed by him. Bjornstad v. N., 195M439, 263NW289. See Dun. Dig. 2996d.

Statute of frauds aside, it is not necessary that a party to a contract sign same if he acquiesces in, accepts, and acts upon writing. Taylor v. M., 195M448, 263 NW537. See Dun. Dig. 1734.

Where no knowledge or notice that defendant signed a guaranty upon condition that another should also sign was communicated to plaintiff, it is no defense. Northwestern Nat. Bank v. F., 196M96, 264NW570. See Dun. Dig. 4072.

To make a writing operative as a contract, all parties thereto must have expressed an intention that such it shall be. Minar Rodelius Co. v. L., 202M149, 277NW523. See Dun. Dig. 1736.

Delivery is not in and of itself conclusive evidence that contract has become operative, as delivery may be conditional. Id.

Delivery is, as a general rule, essential to execution of a contract in writing, and is usual method of expressing final assent of parties to be bound thereby. Id.

A written instrument does not become binding as a contract until parties express an intention that it be so. Hayfield Farmers E. & M. Co. v. N., 203M522, 282NW265. See Dun. Dig. 1736.

Acknowledgment as of Oct. 11, which was Sunday was valid where signing and acknowledgment was actually on Monday, Oct. 12. Op. Atty. Gen., Oct. 30, 1933.

3½. ——Parties to contracts.

An agreement by other corporate bondholders to extend time of payment of their bonds, not consented to by plaintiff, did not affect his rights. Heider v. H., 186M 494, 243NW699.

An "estate" of a person deceased is not a legal entity, and so cannot become party to a contract. Miller v. P., 191M586, 254NW915. See Dun. Dig. 1731.

Where a contract was made with employers by representatives of certain labor unions on behalf of employees in stated services, one of such employees may sue on contract as a party thereto. Mueller v. C., 194M83, 259NW798. See Dun. Dig. 1896.

An insane person may have capacity to make an ordinary contract though he lacks testamentary capacity. Schultz v. O., 202M237, 277NW918. See Dun. Dig. 1731(89), 4519.

4. ——Rights of third persons.

Where a corporation with a contract to purchase electrical power at a certain rate, for twenty years, from a municipal plant for rural distribution, sold its system of lines, no liability under the contract was imposed upon the vendee of the property. Owatonna v. I., (US DC-Minn), 18FSupp6.

Near relationship between plaintiff and deceased niece, together with acknowledged consideration due for services rendered, established privity between plaintiff and niece as regarded action against estate of niece to enforce agreement between niece and nephew whereby nephew conveyed corporate stock to niece with remainder over to plaintiff. Mowry v. T., 189M479, 250NW 52. See Dun. Dig. 3593g.

Discharge of promisor by promisee in a contract is effective against creditor beneficiary if latter does not materially change his position in reliance thereon. Morstain v. K., 190M78, 250NW727. See Dun. Dig. 6294.

Where lessor covenanted for a specified time not to enter into a business competitive with that of lessee, and during term of lease conveyed property and assigned reversion to plaintiff, and thereafter breached his covenant with lessee, who rescinded lease, to plaintiff's damage. plaintiff has no cause of action either in tort for wrongful interference with his business or in contract for breach of defendant's covenant with lessee. Dewey v. K., 200M289, 274NW161. See Dun. Dig. 1733.

Right to perform a contract and to reap profits and right to performance by other party are property rights, entitling each party to protection in its performance. Johnson v. G., 201M629, 277NW252. See Dun. Dig. 9637.

Contract between individual doing business as a film service, its successors and assigns, and a motion picture theater, requiring film service to use its best efforts to solicit contracts for advertising film service, held to require personal performance by the individual and his administrator was not entitled to require theater to continue service or to give notice of cancellation in accordance with contract. Smith v. Z., 203M535, 282NW269. See Dun. Dig. 1729.

A finding that a corporation organized to take over business of an individual impliedly assumed obligation to pay for cash register purchased under title retaining contract by individual defendant, is sustained by evidence. National Cash Register Co. v. N., 204M148, 282NW 827. See Dun. Dig. 1896.

A creditor beneficiary of a third party contract can recover obligation. Id. See Dun. Dig. 1897.

Creditor's rights in securities held by surety. 22Minn LawRev316.

4½. ——Modification.

A parol modification of a written contract must be made to appear by clear and convincing evidence. Slawson v. N., 201M313, 276NW275. See Dun. Dig. 1774.

Order granting judgment notwithstanding verdict, because evidence of a parol modification of a written contract made many years prior to trial was not clear and convincing was proper. Id. See Dun. Dig. 5082.

Unequivocal and uncontradicted testimony of one witness held to be of clear and convincing quality necessary to prove parol modification of written contract. Butterick Pub. Co. v. J., 201M345, 276NW277. See Dun. Dig. 1774.

Though a parol modification of a written contract must be proved by clear and convincing evidence, test of "clear and convincing" proof has to with character of testimony itself and not number of witnesses from whom it comes. Id.

4¾. Novation.

Evidence did not require finding that there was a novation substituting plaintiff bank as debtor and releasing bank taken over from liability on savings accounts. State Bank of Monticello v. L., 198M98, 268NW918. See Dun. Dig. 7237.

Where plaintiffs entered into contract with a corporation to furnish extracts, corporation to take over all labels and dies on plaintiff's hands at termination of contract, and corporation sold all of its business and assets to another corporation, and new corporation informed plaintiff that it wanted to continue business with him on same terms as old corporation, and business was so continued for three years, new corporation was bound by obligation of old corporation to pay for all dies, labels, etc., on hand when it terminated relationship with plaintiff. Zieve v. H., 198M580, 270NW581. See Dun. Dig. 7238.

5. Quasi contracts.

One selling clay to a member of board of county commissioners who used it for improving a highway was entitled to recover in quasi contract an amount equal to the benefit that the county received, though the transaction was invalid but in good faith. Wakely v. C., 185M93, 240NW103. See Dun. Dig. 4303.

If a school board expends money in the purchase of real estate without authority from the voters, an individual member of the board who participates therein is liable to the district for the money so expended. Tritchler v. B., 185M414, 241NW578. See Dun. Dig. 7998, 8676.

An action for money had and received cannot be maintained where the rights of the litigants in the money or property are governed by a valid contract. Renn v. W., 185M461, 241NW581. See Dun. Dig. 6127 (68).

That services rendered by attorney were rendered under contract for fixed compensation, held sustained, and plaintiff cannot recover under quantum meruit. Melin v. F., 186M379, 243NW400. See Dun. Dig. 10366.

There is no cause of action, quasi ex contractu, against a defendant who is not shown to have been wrongfully enriched at expense of plaintiff. Lamson v. T., 187M368, 245NW627. See Dun. Dig. 1724.

Evidence held to warrant recovery under implied contract for reasonable value of goods delivered. Krocak v. K., 189M346, 249NW671. See Dun. Dig. 8645.

Unjust enrichment warranting recovery quasi ex contractu always exists where a plaintiff has paid money for a supposed contractual right which turns out to be non-existent. Seifert v. U., 191M362, 254NW273. See Dun. Dig. 6127, 6129.

Where there is an express contract determinative of rights of litigants, there can be no recovery by one from other quasi ex contractu because of payments made on contract. Aasland v. I., 192M141, 255NW630. See Dun. Dig. 1724.

Implied contracts must be distinguished from quasi contracts, which unlike true contracts are not based on apparent intention of parties to undertake performances in question, nor are they promises, but are obligations created by law for reasons of justice. McArdle v. W., 193M433, 258NW818. See Dun. Dig. 1724, 4300.

Even in absence of special contract, a landowner may be held liable in quasi contract for benefit received from labor and material of another used in reasonable or necessary repairs of his buildings. Karon v. K., 195M134, 261NW861. See Dun. Dig. 1724.

Where it is apparent, both as to form of action and course and theory of trial, that liability was predicted solely upon express contract, enforcement of liability as for unjust enrichment cannot be had. Swenson v. G., 200 M354, 274NW222. See Dun. Dig. 7671.

A party is not liable quasi ex contractu for benefits forced upon him. Mehl v. N., 201M203, 275NW843. See Dun. Dig. 4303.

Quasi contractual liability for unjust enrichment is based upon ground that a person receiving a benefit, which it is unjust for him to retain, ought to make restitution or pay value benefit to party entitled thereto. Id.

One is not unjustly enriched by retaining benefits involuntarily acquired which law and equity give him absolutely without any obligation on his part to make restitution or payment. Id.

In action by mortgagor against mortgagee in possession, circumstances held not to entitle plaintiff to recover on theory of "unjust enrichment" arising from loss of rents or possession during redemption period due to foreclosure of a second mortgage. Seifert v. M., 203M 415, 281NW770. See Dun. Dig. 1724.

One whose property has been acquired by another to his unjust enrichment is entitled to judicial relief. Smith v. S., 204M255, 283NW239. See Dun. Dig. 619.

City purchasing fire engine under conditional sales contract is not bound thereby, but may be obligated to pay value of benefits from use of engine. Op. Atty. Gen., June 3, 1932.

Civil engineer irregularly employed to ascertain and estimate cost of contemplated pavement would be entitled to compensation upon basis of value to city but not upon basis of any contract of employment. Op. Atty. Gen., June 18, 1932.

Mistake of fact as ground for relief from compromise and settlement. 20MinnLawRev230.

Liability for loss or extras caused by defects in plans and specifications. 21MinnLawRev70.

Quasi contractual recovery in law of sales. 21Minn LawRev529.

5½. Contribution.

A life tenant who redeems an outstanding mortgage lien is entitled to contribution from remaindermen in an amount equal to mortgage lien less present worth of life tenant's liability to pay interest during his expectancy. Engel v. S., 191M324, 254NW2. See Dun. Dig. 1922a.

Without equality of equity, there can be no contribution. Hartford Accident & I. Co. v. A., 192M200, 256NW 185. See Dun. Dig. 1921.

Contribution is the right of one, who has discharged a common liability or burden, to recover of another also liable the aliquot portion which he ought to pay or bear. Parten v. F., 204M200, 283NW408. See Dun. Dig. 1919.

Right of contribution between insurers of joint tort feasors. 20MinnLawRev236.

6. Bailment.

Evidence held to sustain finding that there was a contract of storage from time defendant found his automobile in plaintiff's garage and allowed it to remain there, pending settlement. Pratt v. M., 187M512, 246NW 11. See Dun. Dig. 5673a.

Evidence held to show that bailor of chair for repairs was to call for it and was liable for storage. Ridgway v. V., 187M552, 246NW115. See Dun. Dig. 731a.

Question whether defendant contracting company rented road equipment of plaintiff copartnership was one of fact for jury. Potter v. I., 190M437, 252NW236. See Dun. Dig. 7048.

City taking possession of condemned real property held to create relationship in nature of constructive bailment of personal property thereon and to have become gratuitous bailee liable only for failure to exercise good faith as regards care of property. Dow-Arneson Co. v. C., 191M28, 253NW6. See Dun. Dig. 728.

Where after commencement of action against bailee, plaintiff's claim was assigned to an insurer who had made good loss, defendant's remedy was by motion for substitution of plaintiff's assignee and not contention on trial that plaintiff could not recover because not real party in interest. Peet v. R., 191M151, 253NW546. See Dun. Dig. 13, 7330.

Where property *is lost or stolen while in hands of* bailee, he has burden of proof that his negligence did not cause loss. Id. See Dun. Dig. 732.

Care required of any bailee is commensurate to risk, that is care that would be exercised by a person of ordinary prudence in same or similar circumstances. Id.

In action to recover unpaid installments under lease of sound-reproducing equipment, which defendant was to keep in good working order, evidence held to show that equipment worked satisfactorily after being serviced by plaintiff. RCA Photophone v. C., 192M227, 255NW814. See Dun. Dig. 8562.

Evidence held to sustain finding of jury that plaintiff, after fully performing his contract with defendant to care for and feed certain lambs, redelivered same to defendant at place specified in contract, and court erred in ordering judgment notwithstanding verdict on ground of nondelivery. Stebbins v. F., 193M446, 258NW824. See Dun. Dig. 1787.

In gratuitous bailment, if lender of automobile knows of defects in it, rendering it dangerous for purpose for which it is ordinarily used, or for which he is aware it is intended, he is bound to communicate information of such defects to bailee, and if he does not do so, and bailee is injured, bailor is liable; but he is not liable for injuries due to defects of which he was not aware. Blom v. M., 199M506, 272NW599. See Dun. Dig. 731c.

One who furnishes an instrumentality for a special use or service impliedly warrants article furnished to be reasonably fit and suitable for purpose for which it is expressly let out, or for which, from its character, he *must be aware it is intended to be used.* Butler v. N., 202M282, 278NW37. See Dun. Dig. 731d. See Dun. Dig. 731c.

Where the owner of a chattel delivers it to another to perform work in respect to or by means of it, the relationship is that of bailor and bailee where the owner parts with control over it and is that of master and servant where he retains control thereof. Wicklund v. N., 287NW7. See Dun. Dig. 728.

Liability of parking lot operator for theft of automobiles. 18MinnLawRev352.

7. Employment.

Under contract whereby plaintiff was employed as salesman to procure contracts for engineering service, held that plaintiff at the time of his resignation had earned compensation. Gelb v. H., 185M295, 240NW907. See Dun. Dig. 5812.

Whether plaintiff was entitled to commission for services in effecting a sale or merger of abstract and title insurance companies, held for jury. Segerstrom v. W., 187M20, 244NW49. See Dun. Dig. 1125.

Where broker procures a purchaser ready, able, and willing to purchase on terms proposed, or when principal closes with purchaser procured on different terms, broker has earned his commission. Segerstrom v. W., 187M20, 244NW49. See Dun. Dig. 1149, 1152.

Evidence held insufficient to show that plaintiff was procuring cause of merger or sale of abstract and title companies. Segerstrom v. W., 187M20, 244NW49. See Dun. Dig. 1149.

Two letters held a contract of employment at will, terminable by either party at any time without cause. Steward v. N., 186M606, 244NW813. See Dun. Dig. 5808.

Acceptance of reduced wages did not conclusively refute employe's claim that he refused to acquiesce in modification of original contract of employment. Dormady v. H., 188M121, 246NW521. See Dun. Dig. 3204a.

In action for commissions on sale of merchandise, whether reduction in price made by defendant was special price to few or regularly quoted catalog price, held question of fact. Mienes v. L., 188M162, 246NW667. See Dun. Dig. 203.

Whether salesman's commissions were to be computed with or without discount allowed by employer to induce prompt payment, held settled by practical construction of contract by parties. Id.

Provision in salesman's commission contract that any credits allowed or service charges made should be deducted before computing salesman's commissions, held not to include general credit given customers by employer on account of advertising by them. Id.

Evidence held to sustain verdict that plaintiff's deceased was entitled to 10% of insurance received by defendant insured under adjustment negotiated by deceased. Cohoon v. L., 188M429, 247NW520.

Question whether defendant contracting company hired individual plaintiff as an operator of road equipment was one of fact for jury. Potter v. I., 190M437, 252NW236. See Dun. Dig. 5841.

Contract between manager and prize fighter held one of joint enterprise or adventure, and not one of employment. Safro v. L., 191M532, 255NW94. See Dun. Dig. 5801, 4948b.

Where a salesman working on commission has a drawing account, there can be no recovery against him of overdrafts thereon, in the absence of contractual obligation on his part to repay. Leighton v. B., 192M223, 255NW848. See Dun. Dig. 203.

Construing a contract wherein plaintiff, an engineering concern, was employed by defendant city to render certain specified services in a prospective enlargement of city power and light plant, it is held that city, having paid plaintiff agreed price for certain preliminary services rendered, was not obligated to further pay plaintiff *for profit it would have made had improvement project* not been abandoned by city. Pillsbury Engineering Co. v. C., 193M58, 257NW658. See Dun. Dig. 1853a.

Evidence held to sustain finding of agreement to pay for services as a practical nurse in caring for sister-in-law. Murray v. M., 193M93, 257NW809. See Dun. Dig. 5808a.

Burden upon an employer to show that a discharged employee could have obtained like employment with a reasonable effort is sustained if employer shows that in good faith he offered to reinstate employee in his former position at same salary. Schisler v. P., 193M160, 258NW 17. See Dun. Dig. 5829.

There was a contract as implied of fact by mortgagee to pay for plowing done by mortgagor during period of redemption, where mortgagee told mortgagor to do plowing and that some arrangement would be made for a lease for following year, refinancing, or by resale to mortgagor. McArdle v. W., 193M433, 258NW818. See Dun. Dig. 1724.

A contract which is result of collective bargaining between employers and employees must stand upon same rules of interpretation and enforcement that prevail as

to other contracts. Mueller v. C., 194M83, 259NW798. See Dun. Dig. 5800.

Life insurance agent held not entitled to renewal commissions on business written by other agents because contract limited his right to renewal commissions to business written by or through himself. Wicker v. M., 194M447, 261NW441. See Dun. Dig. 5812.

Evidence held to sustain finding of oral contract whereby employer agreed to pay in common stock each month an additional sum to employee in return for assuming duties in addition to regular duties. Schneider v. Y., 198 M375, 269NW899. See Dun. Dig. 5808a.

By accepting and cashing semimonthly checks for his wages during period of five years, tendered to and received as payment in full for each semimonthly period of work, there was an accord and satisfaction of all claims for wages. Olen v. S., 198M363, 270NW1. See Dun. Dig. 42.

Application and agreement for work for street railway company containing no statement as to minimum wage while on extra list, was not modified or amended by a subsequent letter or printed notice telling applicant to report for work, though such letter contained statement that $3.50 per day was minimum while on extra list. Id. See Dun. Dig. 5817.

Where road contractor hired equipment for $1,200 per month, $600 per month additional to be paid if equipment be used on double shift, second party guarantying rental for 60 days, and equipment was used on double shift for only part of 60 days and earned only $2,180 for period used, contractor was only liable for $2,400, and not for an additional amount by reason of double shift. Mead v. S., 198M476, 270NW563. See Dun. Dig. 731.

Presumption is that when a child remains in parental home after reaching his majority, regardless of value of services he performs, such services are in nature of family duties and are not compensable. Hage v. C., 199 M533, 272NW777. See Dun. Dig. 7307.

Evidence sustained finding that there existed an implied contract to pay for services rendered at request of deceased mother during her lifetime. Id.

To overcome presumption that services of child for parents were gratuitous, it was not necessary to prove an express contract for compensation, but it was incumbent upon child to show facts and circumstances from which an implied promise to compensate might be inferred. Anderson's Estate, 199M588, 273NW89. See Dun. Dig. 7307.

In order to overcome presumption of gratuity in rendering services for a relative, it must appear that services were rendered and support furnished with understanding of both parties that compensation was to be paid therefor. Stark v. S., 201M491, 276NW820. See Dun. Dig. 10375.

A substitution of employers cannot be made without knowledge or consent of employee. Yoselowitz v. P., 201M600, 277NW221. See Dun. Dig. 5800.

Where court held oral promise to will property void under statute of fraud, but allowed claimant reasonable value of services rendered decedent, there was no error in excluding evidence of value of estate as bearing on reasonable value of services, decedent's promise not being made with reference to value or to amount of services to be rendered by claimant. Roberts' Estate, 202M 217, 277NW549. See Dun. Dig. 10381.

Recovery of damages for breach of a contract of employment must be limited to amount established by findings of fact plus that admitted, if any, by pleadings. Hosford v. B., 203M138, 280NW859. See Dun. Dig. 5850.

Where rental contract of a site for an oil station provided a rental of one cent per gallon, and an agency contract with owner of lot provided for compensation in same amount as discount of Standard Oil Co., owner was entitled to both rental and Standard Oil discount, though such discount was based upon an allowance for rental. Davis v. N., 203M295, 281NW272. See Dun. Dig. 5812.

Irreparable injury, actual or threatened, must be shown before employee, who has covenanted not to compete after his term of employment, will be enjoined. Peterson v. J., 204M300, 283NW561. See Dun. Dig. 8436.

A servant is a person employed to perform service for another subject to the employer's right of control with respect to his physical conduct or the details in the performance of the service. An independent contractor is one who undertakes to do a specific piece of work without submitting himself to the control of the contractee as to the details of the work, or renders service in the course of an independent employment, representing the contractee only as to the result of the work and not the means by which it is accomplished. Wicklund v. N., 287 NW7. See Dun. Dig. 5800.

Where the owner of a chattel delivers it to another to perform work in respect to or by means of it, the relationship is that of bailor and bailee where the owner parts with control over it and is that of master and servant where he retains control thereof. Id. See Dun. Dig. 5800.

A servant employed and paid by one person, may become the servant of another to whose control he submits in rendering a particular service, although his general employer is interested in the work and the servant receives his compensation from his general master and not from the master ad hoc. Id. See Dun. Dig. 5800.

Evidence held not to show that deceased officer and employee was overpaid on claims asserted. Wentz v. G., 287NW113. See Dun. Dig. 5853.

Emergency conservation work contract for trucks held to contemplate that work should be done on basis of five-day weeks which would normally give approximately 20 working days to each month and trucks hired by month would mean calendar month. Op. Atty. Gen., Oct. 27, 1933.

Enforcement of covenant not to compete after term of employment. 16MinnLawRev316.

Right of an employee discharged for cause. 20Minn LawRev597.

Misrepresentation to secure employment. 14MinnLaw Rev646.

8. Consideration.

Compromise of disputes and dismissal of pending actions on merits furnish consideration for contract. Fitzke v. F., 186M346, 243NW139. See Dun. Dig. 1760.

Divorce settlement agreement held supported by sufficient consideration. McCormick v. H., 186M380, 243NW 392.

Writing surrendering right of lessor to cancel lease without cause held supported by a sufficient consideration. Oakland Motor Car Co. v. K., 186M455, 243NW673. See Dun. Dig. 1772.

An increase in rate of interest was legal consideration for extension of time for payment of note and mortgage. Jefferson County Bank v. E., 188M354, 247NW 245. See Dun. Dig. 1772, 9096.

Liquidation of a substantial and honest controversy by accord and payment of agreed sum in satisfaction constitutes consideration furnished by debtor as promisee for promise of releasor as promisor. Addison Miller v. A., 189M336, 249NW795. See Dun. Dig. 37, 40, 1520.

Note given for corporate stock held supported by sufficient consideration. Edson v. O., 190M444, 252NW217.

Where lessee, due to general business depression, is losing money and will be obliged to vacate premises unless amount of rent is reduced, an agreement to modify lease as to amount of rent to be paid is valid and is supported by a sufficient consideration. Ten Eyck v. Sleeper, 65 Minn. 413, 67NW1026, approved and followed. Wm. Lindeke Land Co. v. K., 190M601, 252NW650. See Dun. Dig. 5421a.

Where debt is either of two fixed amounts, acceptance of a check for smaller amount which both parties admit to be due does not constitute an accord and satisfaction because there is no consideration for such an agreement. Dwyer v. I., 190M616, 252NW837. See Dun. Dig. 37, 42.

An application for membership in a country club, accepted by latter, held no contract, because there was no mutuality of obligation, there being no evidence of either act, forbearance, or promise on part of club as consideration for promises of member. Thorpe Bros. v. W., 192M 432, 256NW729. See Dun. Dig. 1499, 1758.

Where insurable age of an applicant for life insurance changed from 34 to 35 on April 14 and application requested policy to be dated April 1 and applicant gave note payable May 1 for first premium but this was not paid until about June 20 and second premium was payable July 1 by terms of the policy, lower premium rate at the age of 34 was sufficient consideration for the shorter coverage effected by the first premium. First Nat. Bank v. N., 192M609, 255NW831. See Dun. Dig. 4646b.

A voluntary vacating of leased premises by defendant lessee and surrender of crops thereon were sufficient consideration for a promise on part of lessor to in effect waive balance of rent then unpaid. Donnelly v. S., 193 M11, 257NW505. See Dun. Dig. 5436.

Evidence supports findings that settlement was founded upon a valid consideration and its execution was not procured by means of duress or other unlawful practices. Schultz v. B., 195M301, 262NW877. See Dun. Dig. 1520.

Membership contract in incorporated club, entitling member to a proportionate share in extensive property of club and to use thereof same as all members, does not lack mutuality or consideration. Lafayette Club v. R., 196M605, 265NW802. See Dun. Dig. 1499.

Whether member sued for dues had resigned from plaintiff club was a question of fact for trial court. Id.

Where parties to a contract of service expressly agree that employment shall be "permanent," law implies, not that engagement shall be continuous or for any definite period, but that term being indefinite, hiring is merely at will, but under some circumstances "permanent" employment will be held to contemplate a continuous engagement to endure as long as employer shall be engaged in business and have work for employee to do and latter shall perform service satisfactorily, as where employee purchases employment with a valuable consideration outside services which he renders from day to day. Skagerberg v. B., 197M291, 266NW872. See Dun. Dig. 5808.

When services are rendered and paid for monthly under an express valid contract of employment, the contract cannot be rejected and suit be based on quasi contract for reasonable value. Nelson v. C., 197M394, 267NW261. See Dun. Dig. 619, 5800.

Promise of seller of goods under an executory written contract is sufficient consideration without more for promise made by sureties of purchaser to guarantee performance by him. W. T. Rawleigh Co. v. F., 200M236, 273 NW665. See Dun. Dig. 4071.

An executory agreement by which plaintiff agrees to do something on condition that defendant do something else may be enforced, if what plaintiff has agreed to do is either for benefit of defendant or to trouble or prejudice of plaintiff. Associated Cinemas v. W., 201M194, 276 NW7. See Dun. Dig. 1758.

Contract between distributor and exhibitor of motion picture films held not lacking in mutuality. Id.

A promise to pay one additional compensation to do what he is already under contract to do is without consideration and not binding. Zimmerman v. C., 202M54, 277NW360. See Dun. Dig. 1766.

County court house contractor was not entitled to benefit of exception to rule as to promise of additional compensation which applies in cases where a party has refused to complete his contract because of unforeseen and substantial difficulties encountered in the performance thereof, it appearing that difficulty which arose after performance of contract was undertaken by plaintiff was anticipated by him before he made the contract. Id.

It is not necessary, as between parties, that there be a consideration for an assignment. Bowen v. W., 203M599, 281NW256. See Dun. Dig. 557.

Any consideration sufficient to support a simple contract is value for a negotiable instrument, and may consist in any benefit to promisor, or in a loss or detriment to promisee; or to exist when at desire of promisor, promisee or any other person has done or abstained from doing, or promises to do or abstain from doing, something, the consideration being the act, abstine, or promise. Becker County Nat. Bank v. D., 204M603, 284 NW789. See Dun. Dig. 1750.

A valuable consideration may consist either in some *right, interest, profit, or benefit accruing to one party,* or some forbearance, detriment, loss, or responsibility, given, suffered or undertaken by the other. Consideration means not so much that one party is benefited as that the other suffers detriment. Johnson v. K., 285NW715. See Dun. Dig. 1750.

Agreement not to sue on former contract constituted a good consideration for a contract to purchase certain corporate stocks in installments. Id. See Dun. Dig. 1750.

Doing that which one already is legally bound to do as consideration. 15MinnLawRev710.

Past cohabitation as consideration for a promise. 15 MinnLawRev823.

Moral obligation as consideration for express promise where no pre-existing legal obligation. 16MinnLawRev 808.

Enforceability of gratuitous promises on theory of estoppel. 22MinnLawRev843.

9. Fraud.

Implied fraud as a species of actual fraud which consists in deception practiced through representations implied from conduct as distinguished from representations expressly made. Stern v. N., (DC-Minn), 25FSupp948.

When the defrauded party has done nothing inconsistent, fraud inducing the contract is always a defense to an action to enforce it. Proper v. P., 183M481, 237 NW178. See Dun. Dig. 1814.

Presentation of written contract following verbal agreement is representation that it is same in effect as verbal agreement. Phillips Petroleum Co. v. R., 186M 173, 242NW629. See Dun. Dig. 1813a.

Where there is one oral agreement, and two written contracts are presented as embodying oral agreement, fraud vitiates both of written contracts if signatures were obtained thereby. Phillips Petroleum Co. v. R., 186M173, 242NW629. See Dun. Dig. 1814.

Fraud may be based upon a promise to do something in the future but the promise must be made with intention of not keeping it. Phelps v. A., 186M479, 243NW 682. See Dun. Dig. 3827.

Evidence held not to show that promise made by mortgagee to second mortgagee that rents would be applied in payment of first mortgage debt was made with fraudulent intention of not keeping it. Phelps v. A., 186M479, 243NW682.

False statements promissory in character, made with intent that they would not be kept, constituted fraud in sale of lot. McDermott v. R., 188M501, 247NW683. See Dun. Dig. 3827.

Injured railroad employe held not to have relied on statements of railroad's physician as to extent of his injuries so as to warrant avoidance of release for fraud. Yocum v. C., 189M397, 249NW672. See Dun. Dig. 8374.

Injured railroad employe held not warranted in claiming that he thought release of damages was merely receipt, in view of large type "general Release." Id.

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

Fraudulent representation concerning contents of a written contract inducing a signature thereto ordinarily renders the agreement void rather than voidable, but, if the defrauded party is negligent in signing the contract without reading it, it is voidable only rather than void. Shell Petroleum Corp. v. A., 191M275, 253NW885. See Dun. Dig. 1814.

One who has intentionally deceived another to his injury cannot make defense that such other party ought not to have trusted him. Greear v. P., 192M287, 256NW 190. See Dun. Dig. 3822.

In fraud case, if plaintiff's intelligence and experience in like transactions was such that jury could conclude that he knew representations made were not true, he did not rely thereon. Id. See Dun. Dig. 3821.

In action for damages for misrepresentation as to indebtedness of business purchased, evidence held to show that defendant's representation as to debt of corporation was not false nor fraudulent nor made with any intention to deceive plaintiff and that he did not rely thereon. Nelson v. M., 193M455, 258NW828. See Dun. Dig. 3839.

One dealing with an infant has burden of proving that contract was a fair, reasonable, and provident one, and not tainted with fraud, and evidence that salesman of common stock of a holding company represented to infant that such holding company was owner of numerous businesses and properties, when in fact it owned only controlling stock in companies owning such businesses and properties, was sufficient to sustain court's finding *of fraud. Gislason v. H., 194M476, 260NW883.* See *Dun.* Dig. 4443, 4450.

In a suit to recover purchase price of a mortgage, on ground that buyer had been induced to purchase it because of fraudulent concealment of shape of lot covered by mortgage, where shape of lot was easily ascertainable; and facts were not peculiarly within seller's knowledge; seller's failure to ascertain and disclose its shape was not a fraud. Egan v. T., 195M370, 263NW109. See Dun. Dig. 8616.

A person is liable for fraud if he makes a false representation of a past or existing material fact susceptible of knowledge, knowing it to be false, or as of his own knowledge without knowing whether it is true or false, with intention to induce person to whom it is made to act in reliance upon it, or under such circumstances that such person is justified in acting in reliance upon it, and such person is thereby deceived and induced to act in *reliance upon it, to his pecuniary damage. Gaetke v.* E., 195M393, 263NW448. See Dun. Dig. 1813a.

It is no defense to fraud that average man under circumstances would not have believed or acted upon representations made. Id. See Dun. Dig. 3822.

A breach of promise, with nothing more, does not establish a cause of action for fraud and deceit. Carney v. F., 196M1, 263NW901. See Dun. Dig. 3827.

Fraud is an intentional perversion of truth for purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or a false representation of a matter of fact, by words or conduct, which deceives and is intended to deceive another so that he shall act upon it to his legal injury, and "collusion" implies a secret understanding whereby one party plays into another's hands for fraudulent purposes. Brainerd Dispatch Newspaper Co. v. C., 196M194, 264NW779. See Dun. Dig. 3816.

Proof of promissory fraud must fail where it is flatly contradictory of terms of a binding written contract. Northrop v. P., 199M244, 271NW487. See Dun. Dig. 3827.

Rule that a party to a written instrument will not be heard to say that he did not know what he was signing does not apply where one has been induced to sign by fraud of other party. Marino v. N., 199M369, 272NW 267. See Dun. Dig. 1735, 3832.

Defendant having made a representation as to contents of a release to induce plaintiff to sign it, cannot assert that he was negligent in relying on representation. Id. See Dun. Dig. 3822, 8374.

An uneducated investor had right to repose confidence in a lawyer having reputation for ability and integrity, as affecting conspiracy and fraud in purchase and sale of stock of a corporation of which lawyer was president. Scheele v. U., 200M554, 274NW673. See Dun. Dig. 3833.

Misrepresentations of law are treated as are misrepresentations of fact where person *misrepresenting law is* learned in field and has taken advantage of solicited confidence of party defrauded, or where person misrepresenting the law stands with reference to the person imposed upon in a fiduciary or other similar relation of trust and confidence. Stark v. E., 285NW466. See Dun. Dig. 3825.

Where two corporations have an interlocking and common management, and one of them procures property of a third party by fraud, other corporation is charged with notice, and, if it takes property or its proceeds, is chargeable with value thereof. Penn Anthracite Mining Co. v. C., 287NW15. See Dun. Dig. 2022.

False representation as to credit standing, made in a customer's report to a mercantile agency and by latter reported to another, who relies thereon in making a contract, constitutes actionable fraud. Id. See Dun. Dig. 3829.

Misrepresentations of opinion. 21MinnLawRev643.

A synthesis of the law of misrepresentation. 22Minn LawRev939.

10. ——Action for damages.

Evidence of positive oral representations as to the condition and quality of real property, made to induce a purchaser to enter into a contract of purchase, when untrue, and relied on by the purchaser with a reasonable belief in their truth, and with resulting damage, makes out a prima facie case of damages for fraud or deceit. Osborn v. W., 183M205, 236NW197. See Dun. Dig. 10062.

It is not necessary in deceit case that plaintiff prove that the representations were known by defendant to be untrue, or were made in bad faith. Osborn v. W., 183M205, 236NW197. See Dun. Dig. 3286(49).

In action for fraud in sale of corporate stock, evidence of an execution sale, later vacated, and of an agreement, not carried out by any payment, to apply the proceeds from such sale upon notes given by plaintiff held properly excluded. Watson v. G., 183M233, 236NW213. See Dun. Dig. 8612.

In action for fraud in sale of corporate stock, direct evidence by plaintiff that she relied on the representations charged held not necessary under the facts shown. Watson v. G., 183M233, 236NW213. See Dun. Dig. 8612.

In action to recover damages for loss sustained because of false representations in sale of note and chattel mortgage and for breach of a warranty to collect the same, evidence held to support verdict for plaintiff. Eidem v. D., 185M163, 240NW531. See Dun. Dig. 3839.

Giving renewal note, with knowledge of fraud, is waiver of cause of action for damages. Wiebke v. E., 189M102, 248NW702. See Dun. Dig. 8593a, 3833b.

Measure of damages for false representations for milk and cream distributing plant was difference between actual value of property and price paid and in addition thereto such special damages as proximately resulted from the fraud. Perkins v. M., 190M542, 251NW 559. See Dun. Dig. 3841.

Fraud and misrepresentation, relied on for recovery, related to existing character and terms of job plaintiff got as an inducement to purchase defendant's truck upon a conditional sales contract and warranted recovery for deceit. Hackenjos v. K., 193M37, 257NW518. See Dun. Dig. 8612.

Where purchaser of motor truck could not be placed in status quo because seller had disposed of conditional sales contract, purchaser's measure of damages for fraud was value of what he parted with. Id.

An action in deceit lies to make a defrauded party whole on his bargain. Houchin v. B., 202M540, 279NW 370. See Dun. Dig. 3816.

In absence of special damages, recovery is allowed for difference in value of what plaintiff was induced to part with and what he got in transaction. Id. See Dun. Dig. 3841.

Liability in tort for innocent misrepresentation. 21 MinnLawRev434.

Measure of damages in an action for fraud in sale of corporate securities. 23MinnLawRev205.

11. ——Estoppel and waiver.

Answer in action for rent that defendants took assignment of lease through lessor's false representation stated no defense where it contained admission that defendants remained in possession for three years and paid rent after discovering fraud. Central Hanover Bank & Trust Co. v. P., 189M36, 248NW287. See Dun. Dig. 5477n4.

One purchasing bank stock and paying by note, held estopped to claim that condition was that depositors would reduce deposit claims 30% or that he was defrauded. Peyton v. S., 189M541, 250NW359. See Dun. Dig. 1022.

Defrauded party cannot say that he relied upon a fraudulent promissory representation which was plainly contradicted by stipulations in written agreement. Greear v. P., 192M287, 256NW190. See Dun. Dig. 3833b.

Plaintiffs were not estopped from asserting wrongful delivery of title papers to appellant; there being evidence justifying court in finding that appellant was a party to a fraudulent scheme in obtaining same. Peterson v. S., 192M315, 256NW308. See Dun. Dig. 3833b.

Where a party, since deceased, entered into an executory contract, which for more than six years he performed and benefits of which he enjoyed, an action to rescind for fraud was barred by statute of limitations before his death, and bar applies equally to a suit by his heir. Rowell v. C., 196M210, 264NW692. See Dun. Dig. 3833b.

Fraud may be waived, confirmed, or ratified, and where actionable fraud has been practiced, defrauded party may either rescind contract or he may affirm it and recover damages sustained by him, but it is his duty upon discovery of fraud to elect whether he will perform or rescind, and if he elects to perform, he thereby, in effect, make a new contract, and he cannot recover damages. Zochrison v. R., 200M383, 274NW536. See Dun. Dig. 3833b, 8612.

An uneducated widow reposing confidence in a lawyer having reputation for ability and integrity was not estopped to claim conspiracy and fraud against lawyer and corporation of which he was president because she retained stock of the corporation for some years and received dividends thereon. Scheele v. W., 200M554, 274 NW673. See Dun. Dig. 3833b.

11½. ——Pleading.

In pleading fraud, material facts constituting fraud must be specifically alleged. A general charge of fraud is unavailing. Rogers v. D., 196M16, 264NW225. See Dun. Dig. 3836.

12. ——Evidence.

Fraud affording an action for damages may be proved by circumstantial evidence. Philadelphia S. B. Co. v. K. (USCCA8), 64F(2d)834. Cert. den. 290US651, 54 SCR68. See Dun. Dig. 3839.

Instructions, held not erroneous in failing to require proof of fraud by clear and convincing evidence. Id.

Evidence held to sustain finding that lease of oil station was obtained by fraud and deceit. Phillips Petroleum Co. v. R., 186M173, 242NW629. See Dun. Dig. 5385.

A release of damages cannot be avoided for fraud or mistake unless evidence is clear and convincing. Yocum v. C., 189M397, 249NW672. See Dun. Dig. 8374.

Evidence held to sustain finding of fraudulent representations inducing plaintiff to purchase milk and cream distributing plant and to lease part of building, entitling plaintiff to damages. Perkins v. M., 190M542, 251 NW559. See Dun. Dig. 3839.

Evidence held not to establish waiver or ratification of fraud in sale. Id. See Dun. Dig. 3833b.

Mere nonperformance or denial of a promise is ordinarily not sufficient to show that it was fraudulently made; i. e., with no intention that it should be performed. McCreight v. D., 191M489, 254NW623. See Dun. Dig. 3827.

Denial or nonperformance alone is ordinarily insufficient to prove that the promise or agreement was made without intention of performance. Crosby v. C., 192M 98, 255NW853. See Dun. Dig. 1813a, 3839.

In action charging defendants with conspiracy to defraud plaintiff in trade of her Canadian lands for an apartment building in Minneapolis, verdict in favor of defendants is sustained by evidence. Greear v. P., 192 M287, 256NW190. See Dun. Dig. 3479.

In action for fraud in exchange of contract vendee's interest in building for land, plaintiff's exhibit consisting of notice of cancellation of contract after they had taken possession was properly stricken as not proper evidence against defendant. Id. See Dun. Dig. 3479.

In fraud case it is for injured party to prove that he made deal in reliance upon truthfulness of representations. Id. See Dun. Dig. 3837.

Evidence held to sustain finding that conveyances connected with exchange of property were obtained by fraud and that appellant was party thereto. Peterson v. S., 192M315, 256NW308. See Dun. Dig. 3479.

Evidence sustains verdict that appellant aided and abetted another defendant in fradulently obtaining possession of plaintiff's stock certificate in a building and loan company. Hovda v. B., 193M218, 258NW305. See Dun. Dig. 3839.

A conspiracy to defraud is ordinarily provable only by circumstantial evidence. If in end there is a completed structure of fraudulent result frame of which has been furnished piecemeal by several defendants, parts when brought together showing adaptation to each other and end accomplished, it is reasonable to draw inference of conspiracy and common intent to defraud. Scheele v. U., 200M554, 274NW673. See Dun. Dig. 3839.

Neither fraud nor undue influence is presumed, but must be proved, and burden of proof rests upon him who asserts it. Berg v. B., 201M179, 275NW836. See Dun. Dig. 1813a.

Evidence held to sustain findings that advertising contract was obtained by fraud of plaintiff's agent. Dayton-Lee, Inc. v. M., 202M656, 279NW580. See Dun. Dig. 3839.

Fraud cannot be established by equivocal evidence, equally consistent with honest intentions, nor is mere proof of suspicious circumstances adequate. Keough v. S., 285NW809. See Dun. Dig. 3839.

Where parties are in a confidential relationship, fraud is more readily found, and in some cases surrounding facts must be resorted to in order to determine whether certain specific action was fraudulent in character. Id. See Dun. Dig. 3838.

13. ——Questions for jury.

Whether radio manufacturer was guilty of actionable fraud in inducing plaintiff to enter upon an advertising and sales promotion program, and in terminating contract to plaintiff's damage, held for jury. Philadelphia S. B. Co. v. K. (USCCA8), 64F(2d)834. Cert. den. 290US 651, 54SCR68. See Dun. Dig. 3840.

Whether releases obtained from buyer of goods were obtained by deceit, held for jury in action on notes given for purchase price. Wiebke v. E., 189M102, 248NW 702. See Dun. Dig. 8374(49).

In action on notes given for goods, whether defendant had knowledge of false representations at time of executing renewal note, held for jury. Wiebke v. M., 189M107, 248NW704. See Dun. Dig. 8593a.

In order to entitle complaining party to have his case submitted to jury, evidence of fraud must be such that a reasonable man could reach a conclusion in his favor. Carney v. F., 196M1, 263NW901. See Dun. Dig. 3840.

14. Duress.

One must exercise for his own protection against duress and undue influence a resistance which would be put forth by a person of ordinary firmness, and the rule of the common law that the threat of danger must be sufficient to deprive a constant and courageous man of his free will does not now apply, the characteristics of the defrauded individual being evidentiary in determining duress. Winget v. R. (USCCA8), 69F(2d)326. See Dun. Dig. 1813a.

Whether alleged facts, pleaded as constituting duress, existed, if denied, is for the jury; whether the alleged facts are sufficient to constitute duress is a question of law. McKenzie-Hague Co. v. C. (USCCA8), 73F(2d)78. See Dun. Dig. 2849.

To constitute duress, one asserting it must have been subjected to pressure which overcame his will and coerced him to comply with demand to which he would not have yielded if he had been acting as a free agent. General Motors Acceptance Corp. v. J., 189M598, 248NW 213. See Dun. Dig. 2848.

Various payments upon notes within a period of about a year after their execution, conditions respecting lack of consideration and duress which induced their execution remaining unchanged, did not constitute ratification. Steblay v. J., 194M352, 260NW364. See Dun. Dig. 2848.

Evidence relative to threats by plaintiff to involve defendant in divorce proceedings, to have defendant arrested, and to bring suit against him for damages, justified submission to jury of question whether such threats so acted upon will of defendant as to constitute duress in obtaining note. Id. See Dun. Dig. 2848.

Duress consists in subjecting a person to a pressure which overcomes his will and coerces him to comply with demands to which he would not have yielded if he had been acting as a free agent. St. Paul Mercury Indemnity Co. v. G., 199M289, 271NW478. See Dun. Dig. 2848.

A person who has been extorted by threats to prosecute a near relative may assert duress as against one to whom he executed a promissory note, and question of guilt or innocence of relative is immaterial. Id.

It is not enough that one benefited had an opportunity to exert undue influence and motive for exercising it, as there must be undue influence exercised in fact, and it must be effective. Berg v. B., 201M179, 275NW836. See Dun. Dig. 4035.

15. Legality.

Contract between attorneys for throwing corporations into hands of receivers and splitting fees is against public policy. Anderson v. G., 183M472, 237NW9. See Dun. Dig. 1870.

Transaction whereby husband and wife executed a trust deed and put it in escrow to be delivered upon condition that wife be granted an absolute divorce did not violate the law. First Minneapolis Trust Co. v. L., 185M121, 240NW459. See Dun. Dig. 1871(28).

When the illegality of a contract appears, the court, even on its own motion and without the illegality having been pleaded, may make it the basis of a decision for defendant. Hackett v. H., 185M387, 241NW68. See Dun. Dig. 1891.

Parties cannot by stipulation decide validity or legal effect of a trust deed. Kobler v. H., 189M213, 248NW698. See Dun. Dig. 9004.

Contract whereby layman conducted health audit and advised as to diet, exercise and habits in violation of §5717 was illegal and in violation of public policy. Granger v. A., 190M23, 250NW722. See Dun. Dig. 7483.

Unlawful intent in contract will not be carried out. Wm. Lindeke Land Co. v. K., 190M601, 252NW650. See Dun. Dig. 1885.

If expressed intention in contract conflicts with recognized rights of others so as to threaten health, disturb peace or endanger safety for morals of other citizens, intention will not be carried out because against public policy. Id. See Dun. Dig. 1870.

A contract to perform an operation to sterilize a man whose wife may not have a child without grave hazard to her life is not against public policy. Christensen v. T., 192M123, 255NW620. See Dun. Dig. 1872.

The standard motion picture exhibition contract held to contain an arbitration clause whose illegality as against public policy as announced by the Sherman Anti-trust Act permeates and vitiates the whole contract. Fox Film Corp. v. M., 192M212, 255NW845. Cert. gr. 293US620, 55SCR213, dism. 293US550, 55SCR444. Cert. gr. 295US730, 55SCR924. Cert. dism. 296US207, 56SCR183. See Dun. Dig. 1881.

An agreement between an injured employee and his employer, to pay employee same wage weekly he was earning before injury, regardless of his ability to work, and employee to pay over to employer weekly compensation paid by latter's insurer, is not prohibited by statute nor against public policy; but it is invalid where its effect is to lessen employee's compensation prescribed by Workmen's Compensation Act. Ruehmann v. C., 192M596, 257NW501. See Dun. Dig. 10418.

A contract will be enforced even if it is incidentally or indirectly connected with illegal transaction, if plaintiff will not require aid of an illegal transaction to make out his case. Fryberger v. A., 194M443, 260NW625. See Dun. Dig. 1885.

If any part of a bilateral bargain is illegal, none of its legal promises can be enforced unless based upon a corresponding legal promise related or apportioned to it as consideration therefor. Simmer v. S., 195M1, 261NW481. See Dun. Dig. 1881.

Contract of injured employee of interstate railroad to sue only in state where injury was received was valid in absence of concealment or fraud. Detwiler v. L., 198M185, 269NW367. See Dun. Dig. 10105.

Presumption that parties intend their contract to be legal and binding operates to make applicable to contract those provisions of law which render contract valid. Investors Syndicate v. B., 200M461, 274NW627. See Dun. Dig. 1818.

Policy announced by Mason's Code, tit. 12, §1467(e), prohibiting persons obtaining loan from Home Owners' Loan Corporation to contract to pay difference between market value of Home Owners' Loan bonds and face value, is binding upon state court. Pye v. G., 201M191, 275NW615, 276NW221. See Dun. Dig. 1870.

Contract of borrower from Home Owners' Loan Corporation to pay mortgagee difference between par value and market value of Home Owners' Loan bonds is void ab initio and unenforceable. Id. See Dun. Dig. 1873.

A contract that on its face requires an illegal act, either of contractor or a third person, no more imposes a liability to damages for nonperformance than it creates an equity to compel contractor to perform. Id. See Dun. Dig. 1885.

Contracts that obviously and directly tend in a marked degree to bring about results that law seeks to prevent cannot be made ground of a successful suit. Id.

Where a contract is illegal only in part, and illegal part is severable, remainder will be enforced. Hartford Accident & Indemnity Co. v. D., 202M410, 278NW591. See Dun. Dig. 1881.

Provision in contract of indemnity given by sheriff to surety on his official bond waiving all statutory exemptions, if void, was separable from remainder of contract and did not affect right of surety to recover amount it was required to pay by reason of failure on sheriff's part properly to discharge his official duty. Id. See Dun. Dig. 1881.

Courts should not look for excuses or loopholes to avoid contracts fairly and deliberately made whether by individuals or corporations. Equitable Holding Co. v. E., 202M529, 279NW736. See Dun. Dig. 1890.

A contract is not void as against public policy unless it is injurious to interests of public or contravenes some established interest of society, and it is of paramount public policy not lightly to interfere with freedom of contract. Id. See Dun. Dig. 1870 (9, 11, 12).

Mere mental weakness does not incapacitate a person from contracting, if he has enough mental capacity to understand, to a reasonable extent, nature and effect of what he is doing. Timm v. S., 203M1, 279NW754. See Dun. Dig. 4519.

Contracts may be made stipulating a limited time within which an action may be brought thereon provided such stipulated time is not unreasonable under the circumstances. Hayfield Farmers E. & M. Co. v. N., 203M522, 282NW265. See Dun. Dig. 5600(24).

Minneapolis Board of Education has no legal right to delegate its discretionary power to an arbitration committee in a labor dispute, but may appoint a committee to confer with a labor union to make proposals of adjustment. Op. Atty. Gen. (270d-9), March 23, 1939.

Validity of lobbying contracts. 14MinnLawRev163.

Effect of non-compliance with statute regulating use of trade names. 15MinnLawRev824.

Closed shop contracts as affecting right of labor union to restrict membership arbitrarily. 23MinnLawRev236.

16. ——Penalty or liquidated damages.

An investment installment contract providing for forfeiture on failure to pay installments held to provide a penalty and not liquidated damages. Goodell v. A., 185M213, 240NW534. See Dun. Dig. 2537(13).

Deposit by sublessee held penalty and recoverable in full, less rent due, though lessee had also made deposit with lessor which was also penalty. Palace Theatre v. N., 186M548, 243NW849. See Dun. Dig. 2536.

Provision in contract between distributor and exhibitor of motion films that distributor would be entitled to damages in amount of advance guaranty and also certain percentage of average daily gross receipts during 30 days' period if exhibitor did not run film was valid and enforceable, it being expressly stipulated that it would be impossible for distributor to minimize or reduce its damages by attempting to dispose of rights or licenses to other parties. Associated Cinemas v. W., 201M94, 276NW7. See Dun. Dig.1797a.

Where positive testimony of witnesses is uncontradicted and unimpeached, either by other positive testimony or by circumstantial evidence, either extrinsic or intrinsic, of its falsity, a jury has no right to disregard it, but a jury is not bound to accept testimony as true if improbable, or where surrounding facts and circumstances or what is developed on cross examination furnished reasonable grounds for doubting its credibility. Osbon v. H., 201M347, 276NW270. See Dun. Dig. 9707(93).

Sum fixed as security for performance of stipulations of varying importance. 16MinnLawRev593.

17. ——Champerty and maintenance.

An agreement compromising claim for money advanced under champertous agreement is also void. Haskett v. H., 185M387, 241NW68. See Dun. Dig. 1522.

An agreement, under which one not interested otherwise in the subject-matter of litigation advances money to one of the litigants, and is to be repaid tenfold in case of victory, but nothing in defeat, is champertous and void. Hackett v. H., 185M387, 241NW68. See Dun. Dig. 1416.

17½.——Pleading.

Where suit is brought on illegal contract, defense of illegality can be raised under a general denial or by the court on its own motion. Vos v. A., 191M197, 253NW549. See Dun. Dig. 7572.

18. Construction.

It is duty of court to construe all written instruments where true meaning of words, viewed in light of ascertained surrounding circumstances, are made clear. Ewing v. V. (USCCA8), 76F(2d)177.

It is only where there is doubt as to meaning of terms used or where writing is silent or incomplete in some regard that a court interpreting a contract will resort to practical construction which parties have placed upon

it. Millers' Mut. Fire Ins. Ass'n v. W., (CCA8), 94F(2d) 741.

In determining whether letter written by deceased, expressing an intention to give certain mortgages to plaintiffs, constituted a declaration of trust the whole paper must be construed together, and all of its provisions considered in their entirety. Bingen v. F., (DC-Minn), 23FSupp958. Rev'd on other grounds, (CCA8), 103F(2d) 260.

Law of creator's domicile is controlling as to construction of trust instrument. Id.

In interpreting a contract the court cannot read into the contract something which it does not contain, either expressly or by implication. Fabian v. P. (DC-Minn), 5FSupp806. See Dun. Dig. 1835a.

When a contract is embodied in a writing ambiguous or uncertain in language and arrangement, it will be construed most strongly against the one whose language and arrangement are used. Geib v. H., 185M295, 240 NW907. See Dun. Dig. 1832.

Contract should be so construed as to square its terms with fairness and reasonableness rather than to apply a construction which will result in an unjust loss to a party thereto. Burnett v. H., 187M7, 244NW254. See Dun. Dig. 1824.

Where annual fee by holder of gas franchise was dependent upon ambiguous proviso in ordinance, court rightly adopted practical construction placed by parties upon contract for more than 20 years. City of South St. Paul v. N., 189M26, 248NW288. See Dun. Dig. 1820.

Intention of parties to contract should govern. Wm. Lindeke Land Co. v. K., 190M601, 252NW650. See Dun. Dig. 1816.

Contract must be construed as of date of delivery and as parties understood it under the surrounding circumstances. Id. See Dun. Dig. 1817a.

Separate writings as part of same transaction must be construed together. Id. See Dun. Dig. 1831.

Words in a written contract are to be construed according to their ordinary and popularly accepted meaning. Id. See Dun. Dig. 1825.

The expression in a contract of one or more things of a class implies exclusion of all not expressed. Id. See Dun. Dig. 1838.

Existing statutes and settled law of land at time a contract is made becomes part of it and must be read into it except where contract discloses an intention to depart therefrom. Id. See Dun. Dig. 1818.

Language of a contract should be construed so as to subserve and not subvert general intention of parties. Id. See Dun. Dig. 1816.

Manager, in contract between manager and prize fighter, having brought action for breach of contract and having recovered judgment, could not later bring action on the contract, the contract being one of joint enterprise or adventure and not one of employment, and not being severable. Safro v. L., 191M532, 255NW94. See Dun. Dig. 2914, 5170.

Grading yardage in excess of estimate held not extra and additional work requiring written order signed by engineer. Thornton Bros. Co. v. M., 192M249, 256NW53. See Dun. Dig. 1859.

While an existing statute becomes a part of contract as a general rule, an unconstitutional statute does not Hammon v. H., 192M259, 256NW94. See Dun. Dig. 1818.

A contract is to receive a reasonable construction that will effectuate its object as disclosed by instrument as a whole, taking into consideration circumstances under which it was made. Stevens v. D., 193M146, 258NW147. See Dun. Dig. 1827.

Where under a contract both employer and employee join in submitting a controversy to arbitration, there is a practical construction of contract which prevents employer from denying later that controversy was one to be submitted to arbitration under contract, interpretation thereby given latter being one which could have been adopted by a reasonable person. Mueller v. C., 194 M83, 259NW798. See Dun. Dig. 1820.

A practical construction can be invoked only in case of ambiguity and where construction is one which is open to adoption by a reasonable mind. Wicker v. M., 194M447, 261NW441. See Dun. Dig. 1820.

A contract must be construed as a whole, and all its language given effect according to its terms where possible. Id. See Dun. Dig. 1823.

A writing must be construed in light of surrounding circumstances and purpose for which it was executed. Taylor v. M., 195M448, 263NW537. See Dun. Dig. 1817a.

Meaning should be given to every portion of a document or statute. State v. Goodrich, 195M644, 264NW234. See Dun. Dig. 1823.

Where there is ambiguity, whole instrument or document should be considered in construction. Id.

A written instrument is to be considered as an entirety, and all language used therein must be given force and effect if that can consistently be done; and, whenever possible, a contract should be so construed as to give it effect rather than to nullify it. Youngers v. S., 196M147, 264NW794. See Dun. Dig. 1822.

Intention of parties is to be gathered from whole instrument, not from isolated clauses. Id. See Dun. Dig. 1823.

Where terms of a contract are ambiguous and their meaning must be determined from extrinsic evidence as well as writing which comprises contract, construction thereof is a question of fact for court to determine sitting as a fact-finding body. Wiseth v. G., 197M261, 266NW850. See Dun. Dig. 1841.

Language of contract should be construed so as to subserve and not subvert general intention of parties. Mead v. S., 198M476, 270NW563. See Dun. Dig. 1816.

Object of construction of contract is to ascertain and give effect to intention of parties, as expressed in language used. Id.

So far as reasonably possible, a construction is to be avoided which would lead to absurd or unjust results. Id. See Dun. Dig. 1824.

Practical construction which parties have placed upon a contract claimed to be doubtful will be followed by courts. Investors Syndicate v. B., 200M461, 274NW627. See Dun. Dig. 1820.

Paragraphs in a contract containing recitals of purposes and intentions of parties thereto are not, strictly speaking, parts of contract unless adopted as such by reference thereto, and only purpose thereof is to define or limit obligations which parties have taken upon themselves where extent thereof is uncertain, or to aid in interpreting any ambiguous language used in expressing such obligation. Berg v. B., 201M179, 275NW836. See Dun. Dig. 1819.

It is duty of court when reasonably possible so to construe a contract as to give it effect rather than to nullify it. Associated Cinemas v. W., 201M94, 276NW7. See Dun. Dig. 1822(32).

The definite and precise prevails over the indefinite. Id. See Dun. Dig. 1828(53).

If a contract is partly written and partly printed, written part controls, if two are inconsistent. Id. See Dun. Dig. 1829(55).

Contention that person should be relieved from any notice or information provided by small printed words in an instrument of such character that a person of ordinary prudence could not determine their effect was without application in absence of evidence that there was a failure to notice the printed matter or to comprehend the meaning. Lee v. P., 201M266, 276NW214. See Dun. Dig. 1735.

Object of construction is to ascertain and give effect to intention of parties, as expressed in language used, and secret, unexpressed intention of parties is not sought. Grimes v. T., 201M541, 277NW236. See Dun. Dig. 1816.

Courts may not take liberties with unambiguous contractual language to reduce liabilities clearly assumed. Id. See Dun. Dig. 1817(18, 19).

When language used by parties is plain and unambiguous there is no room for construction. Id. See Dun. Dig. 1817.

Question of practical construction does not become involved unless meaning of a contract is doubtful or susceptible of two constructions. Davis v. N., 203M295, 281NW272. See Dun. Dig. 1820.

Where language of a contract is unambiguous there is not room for construction, but where there are inconsistencies caused by clauses in apparent conflict instrument must be construed as a whole to ascertain its real meaning, and absurd and unjust results are to be avoided, and whenever reasonably possible, it should be so construed as to make it effective rather than to nullify it. Oleson v. B., 204M450, 283NW770. See Dun. Dig. 1817, 1822, 1823, 1824.

When one intention appears in one clause in an instrument, and a different, conflicting intention appears in another clause in same instrument, that intention should be given effect which appears in principal and more important clause. Id. See Dun. Dig. 1823.

Effect of express stipulation that laws of another state shall govern. 20MinnLawRev309.

19. Rescission and cancellation.

Where a party desires to rescind a contract upon ground of mistake or fraud, he must announce his intention upon discovery of facts, or he will be held to have waived objection and will be conclusively bound by contract. Josten Mfg. Co. v. M. (USCCA8), 73F(2d)259. See Dun. Dig. 1810.

Not every breach of contract justifies rescission. United Cigar Stores Co. v. H., 185M534, 242NW3. See Dun. Dig. 1808.

Whether seller of stock repudiates his contract so as to give purchaser right of rescission and right to recover payments made, held for jury. Bradford v. D. 186M18, 242NW339. See Dun. Dig. 1808.

Where plaintiffs deposited note and mortgage upon their homestead running to a third party, to be delivered by bank upon receipt of consideration, but no consideration was paid, assignment by mortgagee named to bank passed no title and plaintiffs are entitled to cancellation of note and mortgage and vacation of foreclosure sale. Stibal v. F., 190M1, 250NW718. See Dun. Dig. 3153.

Right to disaffirm a contract for fraud is lost where, after discovery of fraud by victim, he continues his unquestioning performance of contract, in this case a lease, for nearly a year. Shell Petroleum Corp. v. A., 191M275, 253NW885. See Dun. Dig. 1814.

An action for rescission for fraud must be brought promptly after discovering the fraud. Burzinski v. K., 192M335, 256NW233. See Dun. Dig. 1815a.

In action to rescind purchase of an interest in a promissory note, secured by a farm mortgage on ground that character of farm was misrepresented, evidence

justified finding that there was no fraud or misrepresentation. Id. See Dun. Dig. 1815a.

Court properly refused to grant rescission of purchase of an interest in a promissory note where plaintiff was guilty of such long delay, coupled with conduct which induced seller to extend time and money in foreclosing mortgage security and managing farm for benefit of holders of note. Id. See Dun. Dig. 1815a.

Ordinarily where a contract has been entered into in reliance upon representations regarding subject-matter of contract which are not true, party deceived is entitled to rescission, and it is not essential to show that misrepresentation caused loss or damage, it being enough if they were material, so that party complaining did not receive by contract substantially what he would have received had representations been true. E. E. Atkinson & Co. v. N., 193M175, 258NW151. See Dun. Dig. 1815a.

On evidence, court was justified in finding that contracts for purchase of stock were disaffirmed within a reasonable time after reaching majority. Gislason v. H., 194M476, 260NW883. See Dun. Dig. 4446.

Mere silence on part of infant after reaching majority will constitute a confirmation of a contract after lapse of a reasonable time. Kelly v. F., 194M465, 261NW460. See Dun. Dig. 4445.

Fact that plaintiff did not know of his right to disaffirm contract until long after he reached his majority was immaterial on question whether he disaffirmed within a reasonable time. Id. See Dun. Dig. 4446.

Where a contract, voidable by an infant, is fully executed, infant must disaffirm within a reasonable time after reaching majority or not at all, and what constitutes a reasonable time is ordinarily a question for the jury. Id.

Where both parties have fully performed for half 10-year term of a contract of a city providing electricity for its inhabitants and city has permitted other party to put itself to expense in performance, which will result in substantial loss if contract is set aside, city is estopped to question contract. City of Staples v. M., 196M303, 265 NW58. See Dun. Dig. 1887.

Where money was deposited both as consideration for option to purchase considerable amount of stock and also with right to accept stock equivalent to amount of deposit, and depositor elected to take smaller amount of stock just after death of other party, there existed no right to rescind and recover amount of money deposited by reason of delay in appointment of administrator. Miller's Estate, 196M543, 265NW333. See Dun. Dig. 1749a.

A release of liability on lump sum settlement of total disability liability under life policy, and judgment of dismissal based thereon, could not be set aside on ground of mistake in that all parties to agreement believed that insured was only temporarily disabled, there being no liability in absence of permanent total disability. Rusch v. P., 197M81, 266NW86. See Dun. Dig. 1192.

Where defendants settled with plaintiff's husband with view of quieting all possible claims arising out of accident, and did not have plaintiff examined nor consult her to determine whether she had suffered injuries, release signed by plaintiff cannot be set aside on ground that there was mutual mistake as to unknown injuries. Hanson v. N., 198M24, 268NW642. See Dun. Dig. 1192.

Under a provision in monthly trade journal contract by which either party could cancel by giving "three full calendar months'" notice in writing, and notice was mailed July 29, 1931, acknowledge by letter dated July 31, 1931, there could be no recovery for advertisements published after October 31, 1931. Sitterly v. G., 199M475, 272NW387. See Dun. Dig. 1729(78).

Where a contract ceases to exist, there can be no rights predicated upon it. Houchin v. B., 202M540, 279NW370. See Dun. Dig. 1805a.

The then existing statutory rule that women attain majority for all purposes at the age of 18 years was not changed by Rev. Laws 1905, §3636. The age of majority for both sexes is now 21 years. Vlasak v. V., 204M 331, 283NW489. See Dun. Dig. 4431.

If a contract is supported by a valid consideration, and there is no other good reason why it should not be specifically enforced except want of mutuality of remedy, it will be enforced, want of mutuality of remedy being addressed only to discretion of court. Peterson v. J., 204 M300, 283NW561. See Dun. Dig. 8774.

Where confidential relations exists between parties and one of them by means of the relation secures from the other an inequitable advantage, equity will set aside the transaction. Claggett v. C., 204M568, 284NW363. See Dun. Dig. 1191.

A divisible contract can be affirmed in part and rescinded in part, and whether or not it is divisible depends on the intent of the parties. E. Edelman & Co. v. Q., 284NW838. See Dun. Dig. 1808.

Mistake of fact as ground for relief from compromise and settlement. 20MinnLawRev230.

20. ——Placing in status quo.

If a contractor, induced by the fraud of the other party to enter into the contract, makes prompt demand for a rescission and tenders a restoration of the status quo when such restoration can be had, but is prevented only by the refusal of the perpetrator of the fraud to permit it, the latter cannot thereafter object to a rescission because through mere lapse of time restoration of the status quo has become impossible. Proper v. P., 183M481, 237NW178. See Dun. Dig. 1810.

Where one dealing with an infant is guilty of fraud or bad faith, infant may recover back all he had paid without making restitution, except to extent to which he still retained in specie what he had received; in this case certificates of stock. Gislason v. H., 194M476, 260 NW883. See Dun. Dig. 4443.

In cases where no fraud is present an infant seeking to avoid a contract must restore what he has received under the contract to the extent of the benefits actually derived by him. Kelly v. F., 194M465, 261NW460. See Dun. Dig. 4443.

If a wrongdoer who has obtained property by fraud has made expenditures upon it enhancing its value, he has no claim for these expenditures against one who, by reason of fraud practiced upon him, is entitled to demand its restitution, and who himself restores all which he has received, or tenders restoration of it, when he rescinds contract. Gaetke v. E., 195M393, 263NW448. See Dun. Dig. 1810.

Contracts for care and support of a person are regarded differently than ordinary commercial contracts and restoration of property transferred is permitted in order to afford relief consonant with equities of situation. Allen v. A., 204M395, 283NW558. See Dun. Dig. 1810.

21. Performance or breach.

Generally, combining a lawful demand for performance with one not required by a contract renders the former insufficient. Ewing v. V. (USCCA8), 76F(2d)177.

Performance of agreements of second mortgagee to pay interest on first mortgage if foreclosure was withheld, held not excused by reason of contract of first mortgagee with third person concerning possession of premises. Bankers' Life Co. v. F., 188M349, 247NW239. See Dun. Dig. 6260.

Under an investment contract which permitted investor to discontinue payments at any time but preserving right to make payments later without forfeiture except postponement of maturity of contract, investor could not recover amount of payments made with interest where he had not paid minimum installments required for a paid up certificate to take effect. Aasland v. I., 192M141, 255NW630.

In action by grading contractor for balance due, evidence held to show that certain yardage had not been paid for. Thornton Bros. Co. v. M., 192M249, 256NW53. See Dun. Dig. 1866b.

If, for same wrong, one is liable both for breach of contract and conversion, injured party may elect his remedy. If he sues for tort, and there have been successive and distinct conversions, he has right to sue upon them separately as independent causes of action. Lloyd v. F., 197M387, 267NW204. See Dun. Dig. 5167.

Actual tender under a contract is unnecessary where it will amount to nothing more than a useless gesture. Schultz v. U., 199M131, 271NW249. See Dun. Dig. 9612.

Where one party repudiates contract, other party has an election to pursue one of three remedies: treat contract as rescinded and avail himself of remedies based on a rescission; treat contract as still binding and wait until time arrives for its performance and then sue under contract; treat renunciation as immediate breach and sue at once for damages. Walsh v. M., 201M58, 275NW 377. See Dun. Dig. 1805a.

A breach of contract occurs when a party renounces his liability under it, or by his own act makes it impossible that he perform, or totally or partially fails to perform. Associated Cinemas v. W., 201M94, 276NW7. See Dun. Dig. 1790, 1791, 1798.

It is competent for parties to a contract to provide for its annulment or discharge, either by subsequent valid agreement or by incorporating therein provisions and conditions to that end; and they may thus limit and determine rights and liabilities of each in event of failure of performance. Id. See Dun. Dig. 1797a.

Paying money into court is normal mode for keeping a tender good after an action is brought. First Nat. Bank v. S., 201M359, 276NW290. See Dun. Dig. 9618.

Whether covenants are dependent so that performance by one party is conditioned upon performance by the other, or independent, so that performance is not so conditioned, is a matter of intention. Gilloley v. S., 203M 233, 281NW3. See Dun. Dig. 1801.

A covenant on one part is independent of covenant on other part for payment of money for performance of a contract if day appointed for such payment is to happen, or may happen before performance of such covenant. Id.

Most important element in determining dependency of covenants is relative order of performances fixed by contract. Id.

Non-performance of an independent covenant merely raises a cause of action for its breach and does not constitute a bar to right of party making it to recover for breach of promise made to him. Id.

Waiver is a voluntary relinquishment of a known right, result of an intentional relinquishment of a known right or estoppel from enforcing it, must be based on full knowledge of the fact, and both intent and knowledge, actual or constructive, are essential elements. Davis v. N., 203M295, 281NW272. See Dun. Dig. 10134.

A waiver by plaintiff of his right to enforce contract does not appear as a matter of law where no detriment to defendant, who placed a different interpretation upon it, is apparent so as to give rise to an estoppel, and an

intention on part of plaintiff to abandon contract does not conclusively appear. Id. See Dun. Dig. 10134.

A waiver is a voluntary act, and there must be an intent to waive a known right before it becomes of binding effect, expressed directly or inferred from conduct or declarations. Hayfield Farmers E. & M. Co. v. N., 203M522, 282NW265. See Dun. Dig. 4679(85).

Where performance of a contract depends upon continued existence of any particular person or thing, if there is no warranty of such continued existence, performance is excused if before a breach of contract its performance becomes impossible by reason of death or destruction of such person or thing. Smith v. Z., 203M 535, 282NW269. See Dun. Dig. 1729.

Law looks with disfavor upon any attempt to avoid consequences of a contract deliberately made to accomplish a lawful purpose. Peterson v. J., 204M300, 283NW 561. See Dun. Dig. 1812.

Insolvency of a promisor is not always an anticipatory breach, and his bankruptcy does not necessarily have all the effects of such breach. Id. See Dun. Dig 1799.

Where a contract is entire the remedies of rescission and recovery of consequential damages are considered to be mutually exclusive for reason that former negates contract while the latter presupposes that contract has been affirmed. E. Edelman & Co. v. Q., 284NW838. See Dun. Dig. 1805a.

Where the contractor's breach of a building or construction contract is wilful, that is, in bad faith, he is not entitled to benefit of equitable doctrine of substantial performance. Groves v. J., 286NW235. See Dun. Dig. 1850.

Floods in Ohio valley constituted act of God excusing failure to supply coal under contract with state. Op. Atty. Gen. (980b-7), Jan. 27, 1937.

Prospective inability in the law of contracts. 20Minn LawRev380.

Liability for loss or extras caused by defects in plans and specifications. 21MinnLawRev70.

Prevention of performance by adversary party. 23 MinnLawRev89.

22. ——Damages.

Damages for breach of contract are such as arise naturally from the breach itself, or such as may reasonably be supposed to have been within the contemplation of the parties at the time of making the contract as a probable result of a breach. Kaercher v. Citizens' Nat. Bank, (USCCA8), 57F(2d)58. See Dun. Dig. 2559, 2560.

The damages contemplated by the parties for the breach of a contract to indemnify on who had signed an accommodation note would be the cost of defending a suit, including attorney's fees. Id. See Dun. Dig. 4336.

Where corporation with contract to purchase power from electrical plant of city for distribution to rural customers of the corporation, transferred its distribution lines, evidence held not to show a conspiracy to breach the contract, and if the contract (void for uncertainty and lack of mutuality) had been enforceable, damages would be so speculative no finding in excess of nominal damages could be sustained. Owatonna v. I., (USDC-Minn), 18FSupp6.

Contract held severable, and as to item therein for which a definite quantity and price were agfeed upon, plaintiff is entitled to recover damages. Wilhelm Lubrication Co. v. B., 197M626, 268NW634. See Dun. Dig. 8496.

Under particular facts and circumstances, proper measure of damages for breach of contract held to be difference between entire cost of goods to seller and the price defendant agreed to pay under contract. Id. See Dun. Dig. 8629.

Equitable doctrine of part performance is inapplicable to an action for damages for breach of contract as distinguished from one for specific performance. Hatlestad v. M., 197M640, 268NW665. See Dun. Dig. 8885.

A party who is subjected or exposed to injury from a breach of contract is under legal duty and obligation to minimize and lessen his loss, and can recover only such damages as he could not with reasonable diligence and good faith have prevented. Thoen v. F., 199M47, 271 NW111. See Dun. Dig. 2532.

A contractor owes contractee a duty to use due care in performance of contract, and, although he delegates performance to an independent subcontractor, his duty to use due care still subsists so as to subject him to liability for harm to contractee caused by negligent performance of subcontractor. Pacific Fire Ins. Co. v. K., 201M500, 277NW226. See Dun. Dig. 1866.

Recovery of damages for breach of a contract of employment must be limited to amount established by findings of fact plus that admitted, if any, by pleadings. Hosford v. B., 203M138, 280NW859. See Dun. Dig. 2559.

Agreement between attorneys for mutual service in furtherance of a common cause and divide equally profits to be derived therefrom did not create relationship of attorney and client, and amount of damages for breach of contract was division of fees called for in contract. Clark v. Q., 203M452, 281NW815. See Dun. Dig. 2561(2).

To render a party liable for special damages for breach of contract there must be some special facts or circumstances out of which they naturally proceed, known to person sought to be held liable, under which it can be inferred from whole transaction that such damage was in contemplation of parties at time of breach, and that party sought to be charged consented to become liable for it, following Liljengren F. & L. Co. v. Mead, 42Minn 420, 44NW306. Dickinson & Gillespie v. K., 204M401, 283 NW725. See Dun. Dig. 2560.

Damages may be recovered for delay in construction of a house under a contract, but there can be no recovery of special damages for rent of an appartment and for storage and moving expense during period of delay in absence of proof tending to show that such damages were within contemplation of parties at time they made contract. Id. See Dun. Dig. 2560.

Owner's or employer's damages for a wilful breach of a construction contract are to be measured, not in respect to value of land to be improved, but by reasonable cost of doing that which contractor promised to do and which he left undone. Groves v. J., 286NW235. See Dun. Dig. 2561, 2565.

Rule that law does not require damages to be measured by a method necessitating "economic waste" applies only so as not to cause wrecking of a structure already erected, and has nothing whatever to do with value of real estate. Id. See Dun. Dig. 2565.

Where lessee of land containing gravel wilfully breached contract to leave property level and on a certain grade, measure of damages to lessor was not difference between value of land as it was left and value of land as it would have if contract was complied with, but cost of making land comply with contract, notwithstanding that such cost would far exceed value of land. Id. See Dun. Dig. 2567a.

Counsel fees, and other expenses of litigation as an element of damages. 15MinnLawRev619.

Damages—loss of profits caused by breach of contract —proof of certainty. 17MinnLawRev194.

Contemplation rule as limitation upon damages for breach of contract. 19MinnLawRev497.

Duty of injured parties to accept offer from defaulter to diminish damages. 20MinnLawRev300.

23. Agency.

A principal is entitled to rescind a contract which was negotiated by an agent who secretly represented the adverse party. Winget v. R. (USCCA8), 69F(2d)326. See Dun. Dig. 211.

Evidence held to sustain finding that bank held stock certificates as agent for purchaser of real estate, stock being part of consideration for the land. Small v. F., 187M563, 246NW252. See Dun. Dig. 145.

A sheriff normally is not agent of either party but acts as an officer of the law. Donaldson v. M., 190M231, 251NW272. See Dun. Dig. 8740.

A farm may be owned and operated by wife, her husband functioning only as her agent. Durgin v. S., 192M 526, 257NW338. See Dun. Dig. 145, 4262.

While an agency is not a trust, yet, if an agent is intrusted with title to property of his principal, he is a trustee of that property. Minneapolis Fire & Marine Ins. Co. v. B., 193M14, 257NW510. See Dun. Dig. 192.

A finding of agency by estoppel or holding out cannot be based upon circumstances which, at time of transaction in question, were unknown to party claiming agency. Karon v. K., 195M134, 261NW861. See Dun. Dig. 150.

Where assignment of rents by mortgagor to secure payment of past due interest was executed in form to a company acting as agent for mortgagee, latter was real party in interest who could sue thereon. Prudential Ins. Co. v. E., 195M583, 264NW576. See Dun. Dig. 236.

Where defendant company conducted arrangements for sale of its real estate in such a manner as to permit of no other conclusion than that agent who dealt with plaintiff could make no agreement binding upon it without its approval, and the only approved agreement to pay plaintiff commissions for finding of a purchaser for a certain farm was a conditional one, plaintiff could not recover balance of commission agreed upon in absence of a showing that such condition was fulfilled. Murphy v. J., 198M458, 270NW136. See Dun. Dig. 163.

Evidence that decedent had paid claimant interest on money held to show that money was loaned to decedent and that he was not merely an agent of claimant for purpose of investment. Jache's Estate, 199M177, 271NW 452. See Dun. Dig. 149.

Marital relation alone did not constitute wife agent of husband to surrender lease and make a new one for him. Hildebrandt v. N., 199M319, 272NW257. See Dun. Dig. 4262a.

Agency is relationship which results from manifestation of consent by one person to another that other shall act on his behalf and subject to his consent by other so to act. Lee v. P., 201M266, 276NW214. See Dun. Dig. 141.

An agency may exist and liability be imposed upon an undisclosed principal by his agent acting in his own name. Id. See Dun. Dig. 216.

Where a mortgagee turns over entire amount of mortgage loan to a broker through whom loan has been negotiated, mortgagee thereby constitutes broker his agent for purpose of taking up a prior mortgage, as affecting rights between different mortgagees and borrower on embezzlement by broker. Dehnhoff v. H., 202M 295, 278NW351. See Dun. Dig. 145.

Relationship between loan broker and borrower held that of principal and agent. Id. See Dun. Dig. 6262.

No one can become agent except by will of principal either express or implied from particular circumstances. Id. See Dun. Dig. 141.

No one can become the agent of another except by the will of the principal, either express or implied from the

particular circumstances. Ziegler v. D., 204M156, 283NW 134. See Dun. Dig. 141.

Where two or more principals employ same agent, whether as a means of dealing with one another or to protect their common interests, one cannot charge other not actually at fault with misconduct of common agent. Murphy v. K., 204M269, 283NW389. See Dun. Dig. 212.

In action to recover damages for fraudulent concealment of approval of an exclusive agency contract by other necessary party, resulting in an improvident sale of property, there could be no recovery in absence of evidence sufficient to establish such approval. Gans v. C., 284NW844. See Dun. Dig. 205.

Right to terminate agency of indefinite duration. 20 MinnLawRev222.

24. ——Evidence.

Agency may be proved circumstantially, or by evidence which justifies a fair influence of relationship. McDermott v. R., 188M501, 247NW683. See Dun. Dig. 149.

Rule excluding testimony of the declarations of an assumed agent to show his agency does not touch the competency of testimony of agent, otherwise admissible, to establish agency. Pesis v. B., 190M563, 252NW454. See Dun. Dig. 149(77).

An inference that husband is acting as agent or servant of his wife in driving her in his automobile to a doctor for medical attention does not arise from fact of marital relation alone, nor from fact that husband acts at wife's request. Olson v. K., 199M493, 272NW381. See Dun. Dig. 4262.

As a general rule, the fact of agency cannot be established by proof of acts of professed agent in absence of evidence tending to show principal's knowledge of such acts, or assent to them; yet when acts are of such a character and so continued as to justify a reasonable inference that principal had knowledge of them, and would not have permitted them if unauthorized, acts themselves are competent evidence of agency. Ziegler v. D., 204M156, 283NW134. See Dun. Dig. 151.

On question of authority of an agent of a business concern, party dealing with him may prove course and manner of business in that concern as connected with such agent, from which actual authority may be implied. Id. See Dun. Dig. 154.

In replevin against tenant upon half crop sharing plan to recover seed grown and threshed, evidence held to show that plaintiff's agent in charge of farming operations had authority to contract with tenant with respect to plowing land. McDowell v. H., 204M349, 283NW537. See Dun. Dig. 166.

Purpose of rule that presumption of continuance of an agency once shown to have existed is to attribute to a party responsibility for acts of his alleged agent where another has justifiably acted in reliance on such an agency, and it is doubtful whether agency of an officer or agent of a foreign corporation will be presumed to continue after lapse of six years during which corporation was absent from state. Garber v. B., 285NW723. See Dun. Dig. 168.

Agency in fact may be found in conduct of principal as distinguished from that of agent. Schlick v. B., 286 NW356. See Dun. Dig. 150.

With evidence of agency in record, declarations of agent in course of principal's business become admissible against latter as part of res gestae. Id. See Dun. Dig. 151.

25. ——Scope and extent of authority.

Agent authorized to sell personal property in principal's name was guilty of conversion in selling it in its own name. Nygaard v. M., 183M388, 237NW7. See Dun. Dig. 201(98), 1935(26).

Evidence held to sustain finding that sales manager of a corporation acted within the scope of his authority in selling a refrigerator. Frigidaire Sales Corp. v. P., 185M161, 240NW119. See Dun. Dig. 158.

Where an insurer under the Workmen's Compensation Act had its agent request immediate surrender of its policy, but such request was made to an employee of insured, whose officers never knew of request, and no authority in employee to accept cancellation is shown, there was no cancellation of policy by agreement. Byers v. E., 190M253, 251NW267. See Dun. Dig. 4659a.

A clause in a contract, to effect that any representations of plaintiff's agent not included in contract were not binding, is ineffectual to preclude one who has been fraudulently induced to enter contract from asserting fraud. National Equipment Corp. v. V., 190M596, 252NW 444. See Dun. Dig. 169, 8589.

Apparent power of an agent is to be determined by conduct of principal rather than by that of agent. Mulligan v. F., 194M451, 260NW630. See Dun. Dig. 150.

While attorney was acting as a collector for mortgagor, his failure to collect and pay mortgagee was not chargeable to mortgagee, though such attorney subsequently represented mortgagee in foreclosure of mortgage, as affecting wrongfulness of foreclosure. Hayward Farms Co. v. U., 194M473, 260NW868. See Dun. Dig. 209.

Evidence supports a finding that mortgagor made payment to mortgagee's authorized general agent for purposes of receiving same. Granberg v. P., 195M137, 262 NW166. See Dun. Dig. 161.

Where a general agency exists, apparent authority thereby created is not terminated by termination of agent's authority unless third person who has had prior dealings with agent and who thereafter deals with him has notice of termination. Id. See Dun. Dig. 234b.

Finding that one who, in name of contractor, accepted in writing order from subcontractor to pay to plaintiff bank money coming on an estimate for work done on a highway contract, had authority so to do, is sustained by evidence. Farmers State Bank v. A., 195M475, 263NW 443. See Dun. Dig. 152.

Evidence that bank advised lessee of one of its farms to sell corn raised on farm was not sufficient to show that tenant was agent of bank in sale so as to render bank liable for damages for breach of contract of sale. Welcome Nat. Bank v. H., 195M518, 263NW544. See Dun. Dig. 156.

Express authority in law of agency is that which principal directly grants to his agent, and this includes by implication, unless restricted, all such powers as are proper and necessary as a means of effectuating purpose of agency. Dimond v. D., 196M52, 264NW125. See Dun. Dig. 152.

Cattle buyer drawing draft on commission firm in purchase of cattle was not an agent of commission house, and it was not liable for reasonable value of cattle shipped. Lee v. P., 201M266, 276NW214. See Dun. Dig. 149.

In order to establish liability on theory of apparent authority, it must be shown that facts claimed to establish such authority were known to and relied upon by person dealing with alleged apparent agent. Id. See Dun. Dig. 156.

Evidence of authority of an agent to pay and release a claim which was not valid against principal must be definite, as affecting accounting between principal and agent. Stark v. S., 201M491, 276NW820. See Dun. Dig. 205a.

An agent cannot create in himself an authority to do a particular act merely by its performance. Dehnhoff v. H., 202M295, 278NW351. See Dun. Dig. 151.

Extent of authority of an agent depends upon will of principal, and latter will be bound by acts of former only to extent of authority, actual or apparent, which has been conferred upon agent. Id. See Dun. Dig. 152.

An agent may not create in himself authority to do a particular act merely by its performance. Ziegler v. D., 204M156, 283NW134. See Dun. Dig. 151.

Before any question of actual or apparent authority arises there must be determined first the relationship itself. Id. See Dun. Dig. 152.

Extent of authority of an agent depends upon will of principal, and the latter will be bound by acts of former only to extent of authority, actual or apparent, which he has conferred upon agent. Id. See Dun. Dig. 152.

Though general manager of oil station and distribution of products within a certain district was not authorized by written contract with employer to occupy or control another service station, his occupancy and control of such station in such a continuous manner as to justify reasonable inference that employer had knowledge of them and would not have permitted them if unauthorized, justified the finding that employer was occupying station. Noetzelman v. W., 204M26, 283NW481. See Dun. Dig. 155.

26. ——Notice to agent.

If a third person acts in collusion with agent to defraud principal, latter will not be chargeable with any information which agent receives pertaining to transaction. Steigerwalt v. W., 186M558, 244NW412. See Dun. Dig. 215.

That branch manager was without authority to make settlement of salesman's claim, did not prevent notice to him of dissatisfaction being notice to employer. Leighton v. B., 192M223, 255NW848. See Dun. Dig. 215.

A corporation is not chargeable with notice when character or circumstances of agent's knowledge are such as to make it improbable that he would communicate it to his principal, as when he is dealing with corporation in his own interest, or where for any reason his interest is adverse. Swenson v. G., 200M354, 274NW222. See Dun. Dig. 2118(37, 38), 2119.

27. ——Ratification and waiver.

Owner of foxes held not to have waived his right to have defendant fur farm sell his foxes in plaintiff's name. Nygaard v. M., 183M388, 237NW7. See Dun. Dig. 205.

Owner of foxes held not to have ratified act of fur farm in selling plaintiff's foxes under its own name. Nygaard v. M., 183M388, 237NW7. See Dun. Dig. 190.

Application of payments made in manner directed by debtor is final and will not be set aside at the direction of a third party claiming an equity of which creditor had no notice. Anderson v. N., 184M200, 238NW164. See Dun. Dig. 7457.

A contract made for one's benefit by an unauthorized agent was adopted and ratified by a demand for an accounting and the bringing of a suit. Bringgold v. G., 185M142, 240NW120. See Dun. Dig. 184a.

Seller of land who insists upon keeping benefits of bargain induced by fraudulent representations of his agents is liable for money paid on rescission by purchaser. McDermott v. R., 188M501, 247NW683. See Dun. Dig. 184.

A criminal complaint charging embezzlement is not a ratification of an attorney's forged indorsement of his client's name on a check payable to them both. Rosacker v. C., 191M553, 254NW824. See Dun. Dig. 176, 693.

To ratify is to give sanction and validity to something done without authority, while estoppel is inducement to another to act to his prejudice. State Bank of Loretto v. L., 198M222, 269NW399. See Dun. Dig. 177.

An entire contract cannot be ratified in part. Id. See Dun. Dig. 182, 1889.

Ratification must be made with full and complete knowledge of all material facts. Keough v. S., 285NW 809. See Dun. Dig. 2116.

28. ——Liability of agent.

One acting as disclosed agent of named principals, to whom no credit has been extended by plaintiff, is under no personal liability to latter. Lamson v. T., 187M368, 245NW627. See Dun. Dig. 217.

Loan broker was not liable, quasi ex contractu, because borrower wrongfully diverted money from association. Lamson v. T., 187M368, 245NW627. See Dun. Dig. 217.

When a principal employs competent attorneys to defend an action brought by a third party against agent and principal for alleged false representations in a business deal, transacted by agent for principal, agent is not entitled to reimbursement for amounts paid or incurred to additional attorneys hired by agent to protect him in litigation; there being no showing of antagonistic defenses or of a failure of attorneys employed by principal to make a proper defense for agent. Adams v. N., 191M55, 253NW3. See Dun. Dig. 207.

If principal extends credit generally to an agent, relationship disappears and is superseded by that of debtor and creditor. Minneapolis Fire & Marine Ins. Co. v. B., 193M14, 257NW510. See Dun. Dig. 192.

Where one sent money for deposit in bank instead purchased bonds and sent them to plaintiff with promise to take them over at any time if they were not wanted, there was no rescission or estoppel as to the guaranty because on request of guilty party plaintiff pledged them as security for a loan and later surrendered them to a bondholder's committee, and plaintiff could recover on the guaranty agreement. Wigdale v. A., 193M384, 258N W726. See Dun. Dig. 1807, 3210.

Evidence supports a finding that manager of property was not chargeable with interest on plaintiffs' balances. Patterson v. R., 199M157, 271NW336. See Dun. Dig. 144a.

Account books kept by wife even if considered books of defendant do not conclusively impeach his testimony so as to compel findings according to all entries therein. Id. See Dun. Dig. 206.

Entry of judgment against agent as an election barring subsequent suit against undisclosed principal. 19Minn LawRev813.

28½. Payment.

Payment to school district by a judgment debtor should be applied first to interest on judgment debt, then to principal, as regards liability of surety on treasurer's bond. County Board of Education v. F., 191M9, 252NW 668. See Dun. Dig. 4885, 8019, 8679.

Where a mortgagee, knowing that mortgagors have made a special deposit of money in bank where mortgage is payable, to pay and satisfy it in full, delivers satisfaction, and for his own convenience accepts cashier's checks instead of money, debt is paid, and bank is substituted as debtor of mortgagee instead of mortgagors. Vogel v. Z., 191M20, 252NW664. See Dun. Dig. 7445.

A promissory note given for an antecedent debt does not discharge debt unless expressly given and received as absolute payment; and burden of proof is upon party asserting such fact to show that it was so given and received; presumption being to contrary. The same rule applies where a third party joins in execution of new note. Taking a new mortgage does not discharge old debt unless such was intention of parties. Hirleman v. N., 193M51, 258NW13. See Dun. Dig. 6264, 7444.

Payee in check could not, by striking out words "in full," change offer or make payment one upon account. Ball v. T., 193M469, 258NW831. See Dun. Dig. 42.

A promissory note does not act as payment to discharge a debt unless agreed to be so given and received, and burden is upon party asserting it to establish that note was so taken. Wetsel v. G., 195M509, 263NW605. See Dun. Dig. 7444.

Where plaintiff held a mortgage, and an assignment of rents given it in consideration of an extension of time on past-due interest and that to become due during extension, price bid upon foreclosure sale is to be applied by equity, first upon indebtedness for which creditor held but a single security, leaving interest secured by assignment as a still existing debt protected by such assignment. Prudential Ins. Co. v. E., 195M583, 264NW576. See Dun. Dig. 7457.

Evidence held to sustain finding that assignment to cover amounts due on contract for deed was absolute and not intended to be merely a security transaction in nature of a chattel mortgage. Killmer v. N., 196M420, 265 NW293. See Dun. Dig. 7438.

Finding that purchases by retailer corporation constituted but one continuing account upon which payments made were directed to be applied to earliest maturing obligations held supported by evidence. Martin Brothers Co. v. L., 198M321, 270NW10. See Dun. Dig. 7457.

A debtor has right to direct upon which part of an indebtedness any specific payment is to be applied, or if debtor makes no such seasonable manifestation then creditor may, within a reasonable time, apply it as best suits his interests. Id.

The doctrine of voluntary payment has no application to an unauthorized payment of public funds. Normania Tp. v. Y., 286NW881. See Dun. Dig. 7461.

The retention by a debtor of a part of a debt due a creditor, even with his knowledge, is in no sense a voluntary payment of the amount retained. Id. See Dun. Dig. 7461.

A municipal or public corporation may recover back from payee unauthorized payments of its funds whether payee be another public corporation or an individual. Id. See Dun. Dig. 7465.

A promissory note taken for amount of debt does not operate as payment and discharge thereof unless expressly so given and received, and burden of proof to that effect is upon party asserting it. Penn Anthracite Mining Co. v. C., 287NW15. See Dun. Dig. 7444.

Evidence inconsistent with continued existence of a debt is evidence of payment. Vorlicky v. M., 287NW109. See Dun. Dig. 7438.

29. Release.

Evidence held insufficient as matter of law to show contractor signed release under duress, and he could not recover in an action for deceit or for breach of warranties, as the release was broad enough to cover false representations of fact giving rise to either cause of action. McKenzie-Hague Co. v. C. (USCCA8), 73F(2d)78. See Dun. Dig. 8374.

A wife who joins her husband in releasing both their claims against a common defendant for injuries and expenses due to alleged negligence cannot be relieved from her contract because the husband appropriated the entire consideration or because, in computing the amount to be paid in settlement of both claims, only items were included for which the husband alone was entitled to recover. West v. K., 184M494, 239NW157. See Dun. Dig. 8370.

That defendant represented to plaintiff that she would recover sooner than she did does not amount to fraud justifying the setting aside of a release where the character of plaintiff's injuries was known to both. West v. K., 184M494, 239NW157. See Dun. Dig. 8374.

Settlement and release of cause of action against defendants' own agent discharged same cause of action asserted against plaintiffs for damages for misrepresentations. Martin v. S., 184M457, 239NW219. See Dun. Dig. 8373.

One who accepts satisfaction for a wrong done, from whatever source, and releases his cause of action, cannot recover thereafter from any one for the same injury, or any part of it. Smith v. M., 184M485, 239NW223. See Dun. Dig. 8373.

Where injured person effected a settlement and gave a general release to those causing the injuries, such settlement constituted a bar to an action against surgeon for malpractice aggravating damages. Smith v. M., 184M485, 239NW223. See Dun. Dig. 8373.

Where a joint tort-feasor by compromise and settlement of tort liability supersedes it by a contract obligation to injured party, tort liability is waived and released, and other joint tort-feasors are thereby released. De Cock v. O., 188M228, 246NW885. See Dun. Dig. 8373.

Effect of a release held limited to obligations arising from the transaction to which the document was self-restricted. Hopkins v. H., 189M322, 249NW584. See Dun. Dig. 8371.

Release of damages by railroad employee held not avoidable on ground of mutual mistakes as to extent of injuries. Yocum v. C., 189M397, 249NW672. See Dun. Dig. 8375.

Where there were two executory contracts between the same parties, and a settlement and discharge of one by written release was expressly limited to the one contract therein mentioned, it was properly decided that no claim outstanding under the other contract was affected by the release. Leighton v. B., 192M223, 255NW 848. See Dun. Dig. 8371.

Waiver is a voluntary relinquishment of a known right. Voluntary choice is of its very essence. It must be the result of an intentional relinquishment of a known right or an estoppel from enforcing it. It is largely matter of intention. It must be based on full knowledge of the facts. State v. Tupa, 194M488, 260NW875. See Dun. Dig. 10134.

A release of liability on lump sum settlement of total disability liability under life policy, and judgment of dismissal based thereon, could not be set aside on ground of mistake in that all parties to agreement believed that insured was only temporarily disabled, there being no liability in absence of permanent total disability. Rusch v. P., 197M81, 266NW86. See Dun. Dig. 8375.

Fact that plaintiff's son, driver of his automobile, paid for repair of plaintiff's car, for payment of which he was not legally liable, did not inure to benefit of defendants. Lavelle v. A., 197M169, 266NW445. See Dun. Dig. 8373.

Where plaintiff made a contract releasing her claims in return for defendant's paying to her husband a substantial sum for damages incurred to his property and person, there was consideration for plaintiff's release as a matter of law. Hanson v. N., 198M24, 268NW642. See Dun. Dig. 8370.

Where defendants settled with plaintiff's husband with view of quieting all possible claims arising out of accident, and did not have plaintiff examined nor consult her

to determine whether she had suffered injuries, release signed by plaintiff cannot be set aside on ground that there was mutual mistake as to unknown injuries. Id. See Dun. Dig. 8375.

A waiver is defined as a voluntary relinquishment of a known right, but it may be implied. Le Pak v. C., 198M134, 269NW89. See Dun. Dig. 4676, 10134.

If, in obtaining signature of an illiterate employee to a release, employer undertakes to explain it to him, employer must so do fully, and so that employee understands it. Marino v. N., 199M369, 272NW267. See Dun. Dig. 3823, 3825, 8374.

After oral agreement as to terms of settlement, presentation of a written release for signature is a representation that it is in effect same as oral agreement. Id. See Dun. Dig. 3832, 8374.

Release of claim for damages cannot be defeated by proof that claim was not a valid or meritorious one. Ahlsted v. H., 201M82, 275NW404. See Dun. Dig. 8370.

Paragraphs stricken from plaintiff's replies were palpably sham and frivolous, presenting no grounds for avoiding release. Id. See Dun. Dig. 8375.

Fraud may be shown in a legal action to defeat effect of a release interposed defensively. Serr v. B., 202M165, 278NW355. See Dun. Dig. 8374.

A valid release or exoneration of servant releases master, latter's liability for a tort committed in scope of employment being derivative only. Id. See Dun. Dig. 5833, 8373.

A valid release of one joint tort-feasor is a release of all others jointly liable. Id. See Dun. Dig. 8373.

Unknown and unexpected consequences of a known injury will not bring a case within rule permitting avoidance of a release on ground of mutual mistake. Id. See Dun. Dig. 1192, 8375.

Where purported release also contained agreement of indemnity, and both were integral parts of same transaction, and release was invalid, indemnity provision therein necessarily fell with it. Id. See Dun. Dig. 8375.

Evidence held to sustain verdict that release was not a contract to buy peace, but was in fact a settlement for known injuries only. Id. See Dun. Dig. 8368.

Where plaintiff was injured through negligence of servant, and plaintiff and servant later entered into purported settlement whereby both servant and master were by its terms relieved of liability, and, thereafter, plaintiff sued master for servant's negligence, plaintiff could plead and prove existence of mutual mistake at time of making of release in avoidance thereof, although servant was not party to suit, as master's liability was derivative only, and, as such, release was subject to direct attack; defense being dependent upon validity of instrument. Id. See Dun. Dig. 8375.

A party is not bound to return or tender bank money received under a void or voidable release where adverse party pleads and relies upon release as a defense. Id. See Dun. Dig. 8375.

A written agreement of settlement for known injuries does not bar a later action for existing but unknown injuries, there being mutuality of mistake as to the latter, but where release expressly so provides, subsequently discovered unknown injuries will not support a suit for its avoidance. Id. See Dun. Dig. 8375.

The operation of a release is simply to extinguish the cause of action and so discharge those liable thereon, and it has no effect on another distinct cause of action. Mantz v. S., 203M412, 281NW764. See Dun. Dig. 8371.

Release of one joint tort-feasor as a bar to right of action against others—judgments. 22MinnLawRev692.

29½. Account stated.

In suit on account stated, evidence justified finding that account stated was not a valid contract in that defendants never agreed thereto, but in fact protested at time of its alleged making. Murray v. M., 193M93, 257 NW809. See Dun. Dig. 50.

Evidence supports findings of no accounts stated between plaintiffs and defendant. Patterson v. R., 199M 157, 271NW336. See Dun. Dig. 50.

Because the obligation to pay gross earnings taxes is imposed by statute and an account stated has the effect of creating a new cause of action independently of its original subject matter, taxpayer cannot have benefit of discharge as on an account stated because of payment of a sum, erroneously computed and less than amount actually due, even though it be accepted by tax commission as in full discharge of obligation. State v. Illinois Cent. R. Co., 200M583, 275NW854. See Dun. Dig. 50.

In action on running account evidence held to support verdict for plaintiff. McCarthy v. F., 204M99, 282NW657. See Dun. Dig. 64a.

30. Accord and satisfaction, and compromise and settlement.

Law of state to which letter containing check was addressed governed matter of accord and satisfaction. Wunderlich v. N., (DC-Minn), 24FSupp640.

The receipt and cashing of a check labeled "in full up to date," held not to constitute an accord and satisfaction. Bashaw Bros. Co. v. C., 187M621, 246NW358. See Dun. Dig. 42.

As regards accord and satisfaction or compromise and settlement, a demand is not liquidated unless it appears how much is due, but is unliquidated when there is substantial and honest controversy as to amount. Addison Miller v. A., 189M336, 249NW795. See Dun. Dig. 40, 1518.

Settlement of fire loss held complete accord and satisfaction, notwithstanding insurers denied liability on one item of substantial amount and included nothing therefor in amount paid. Id. See Dun. Dig 42.

At least three elements must be present before there is an accord and satisfaction; (a) check must be offered in full settlement; (b) of unliquidated claim concerning which there is a bona fide dispute; (c) for a sufficient consideration. Dwyer v. L., 190M616, 252NW837. See Dun. Dig. 34.

Where debt is either of two fixed amounts, acceptance of a check for smaller amount which both parties admit to be due does not constitute an accord and satisfaction because there is no consideration for such an agreement. Id. See Dun. Dig. 42.

Payments made by debtor to creditor on a claim, the amount of which is in dispute, and accepted by the creditor, will not operate as accord and satisfaction unless made upon condition that they shall have that effect. Leighton v. B., 192M223, 255NW848. See Dun. Dig. 34.

Jury's special findings that there was no settlement or adjustment of plaintiff's cause of action by acceptance of promissory notes are sustained by evidence. Stebbins v. F., 193M446, 258NW824. See Dun. Dig. 49, 1527.

Payee in check could not, by striking out words "in full," change offer or make payment one upon account. Ball v. T., 193M469, 258NW831. See Dun. Dig. 42.

Where parties concerned with application for an order extending period for redemption from mortgage foreclosure made a settlement in regard to extension by agreeing that period of redemption should be extended to a certain date and that petitioner should have right to receive and retain rents from that date and receive a certain sum for a mechanical stoker, the agreement was a binding settlement of the litigation, notwithstanding terms had not been incorporated in a written stipulation or memorial of the completed settlement, and the agreement was not vitiated under the statute of frauds or otherwise by reason of inclusion of transfer of personal property or fixtures. State v. District Court, 194M32, 259 NW542. See Dun. Dig. 1524a.

Court did not err in refusing to strike out all evidence as to an accord and satisfaction. Pettersen v. F., 194M 265, 260NW225. See Dun. Dig. 34.

In suit upon promissory notes claimed to have been executed in settlement of damages sustained by plaintiff because of alleged acts of adultery committed with his wife, defense of lack of consideration was, under evidence relative to whether acts had been committed, a question of fact for jury. Steblay v. J., 194M352, 260NW364. See Dun. Dig. 1520.

Various payments upon notes within a period of about a year after their execution, conditions respecting lack of consideration and duress which induced their execution remaining unchanged, did not constitute ratification. Id. See Dun. Dig. 1520.

A claim asserted upon reasonable grounds and in good faith is proper subject for contract of compromise. Mulligan v. F., 194M451, 260NW630. See Dun. Dig. 1518.

Where settlement contract was entered into by competent persons and is unobjectionable in its nature and circumstances surrounding making thereof, specific performance should be granted. Schultz v. B., 195M301, 262 NW877. See Dun. Dig. 1520.

To sustain a compromise and settlement, it must appear that claim or controversy settled, though not in fact valid in law, was presented and demanded in good faith and upon reasonable grounds for inducing belief that it was enforceable. Id. See Dun. Dig. 1522.

Evidence supports findings that settlement was founded upon a valid consideration and its execution was not procured by means of duress or other unlawful practices. Id. See Dun. Dig. 1527.

Evidence held to sustain finding that plaintiff had not promised to make a will or execute any other instrument that property she should receive from defendants under settlement was to go back to them or their heirs upon plaintiff's death. Id.

Evidence held to sustain findings that promissory notes owned by defendant and transferred by him to assignor of plaintiff were accepted by said assignor in full payment of defendant's indebtedness to it. Conoco Oil Co. v. G., 195M383, 263NW91. See Dun. Dig. 49.

Second mortgagee compromising and satisfying his mortgage was not estopped to purchase land from first mortgagee after foreclosure and expiration of period of redemption. Newgard v. F., 196M548, 265NW425. See Dun. Dig. 1524.

A municipality may, unless forbidden by statute or charter, compromise claims against it without specific express authority, such power being implied from its capacity to sue and to be sued, and ordinarily power to compromise claims is inherent in the common council as a representative of the municipality. If it makes such a compromise in good faith, and not as a gift in the guise of a compromise, the settlement is valid and does not depend upon the ultimate decision that might have been made by a court for or against the validity of the claim. Snyder v. C., 197M308, 267NW249. See Dun. Dig. 1521.

Where claim is unliquidated, or if liquidated, is doubtful in fact or in law, a sum received in satisfaction will

legally satisfy claim. Oien v. S., 198M363, 270NW1. See Dun. Dig. 39.

Rule that acceptance of a smaller sum for a debt presently due, though agreed and expressed to be payment in full, is not a good accord and satisfaction, did not apply where there was a long continued acceptance of check in full payment of amount due for each semi-monthly period of work. Id. See Dun. Dig. 42.

It is a generally recognized rule that one seeking settlement and release has right to buy peace from all future contention on then existing claims of every character; and a valid release clearly evincing such purpose extinguishes all such obligations. Moffat v. W., 203M47, 279NW732. See Dun. Dig. 1515.

Where dispute is over which of two fixed sums represents debt, and party offering check in full settlement thereof tenders no more than smaller amount which he admits is due, there is no consideration for alleged accord and satisfaction, and offeree is at liberty to accept tendered check. Davis v. N., 203M295, 281NW272. See Dun Dig. 37.

A new contract between payee, maker and indorsee of a promissory note, under which the payee parted therewith and indorsee took it on faith of maker's assumption of an obligation different in substance from that expressed by the note, held, supported by consideration. Rye v. P., 203M567, 282NW459. See Dun. Dig. 39.

Rule discarded that a promise of creditor to accept and of debtor to pay something less than sum due on a liquidated debt is not binding for want of consideration, even though promise is performed and debtor formally released. Id. See Dun. Dig. 39.

Confirmation of a composition in bankruptcy discharges the bankrupt from his debts by operation of law by preventing a remedy against him and leaving the debt as an unenforceable legal obligation, and it does not affect the liability of the bankrupt's endorsers on notes, but renunciation by the holder of a negotiable instrument of his rights under the instrument by giving referee a receipt in full discharges endorsers. Northern Drug Co. v. A., 284NW881. See Dun. Dig. 1516b.

One who, upon a claim made or a position taken in good faith and upon reasonable grounds, has made a contract of compromise, is entitled to its protection. Walgren v. P., 285NW525. See Dun. Dig. 1520.

Where there was a fact issue as to whether insured died as a result of heart disease or accidentally from heat exhaustion, there existed a case susceptible of compromise of double indemnity feature of life insurance policy, and a compromise was binding on beneficiary, as against contention that insurer's obligations for accidental death benefit was liquidated. Id. See Dun. Dig. 1520.

Mistake of fact as ground for relief from compromise and settlement. 20MinnLawRev230.

Agreement to accept part payment as payment in full. 23MinnLawRev223.

31. Gifts.

Writing expressing intention to give certain mortgages to plaintiff and that such writing effected a transfer thereof, but that writer would retain possession in order to make collections, held declaration of trust in gift of such mortgages. Bingen v. F., (CCA8), 103F(2d)260, rev'g (DC-Minn), 23FSupp958.

A gift can be established only by clear and convincing evidence. Quarfot v. S., 189M451, 249NW668. See Dun. Dig. 4038.

An actual or constructive delivery is necessary to a gift. Id. See Dun. Dig. 4024.

A voluntary payment by a parent to a child, unexplained, in absence of fraud or undue influence, will be presumed to be a gift, but that presumption may be overcome by proof that it was not intention of parent to make a gift. Stahn v. S., 192M278, 256NW137. See Dun. Dig. 4037.

If direction for an accumulation is not a condition precedent to vesting of gift, provision for accumulation does not render gift invalid, but where accumulation is a condition precedent to vesting of gift in charity, and period of accumulations transgresses rule against remoteness, gift is void ab initio. City of Canby v. B., 192M571, 257NW520. See Dun. Dig. 9886b.

A life insurance policy is subject of a gift inter vivos, and transferable by delivery without written assignment. Redden v. P., 193M228, 258NW300. See Dun. Dig. 4029, 4693.

Complete and absolute surrender of all power and dominion over life insurance policy was clearly shown by delivery of key to receptacle containing policy, with intention of insured to part absolutely with all title to the policy. Id. See Dun. Dig. 4026, 4693.

Trust deposit is valid unless disaffirmed by depositor in his lifetime or set aside for fraud or incompetency. Coughlin v. F., 199M102, 272NW166. See Dun. Dig. 9886a.

Before any inference of undue influence may be drawn from fact that donee is spouse of donor, it must also appear that such donee stood in a relation other than ordinary intimate, or even affectionate, relation existing between them, and it must be shown, in addition, that donee occupied a position to dominate donor, or exert an influence over him, by virtue of being intrusted with donor's business affairs. Berg v. B., 201M179, 275NW836. See Dun. Dig. 4035.

Evidence held to show no undue influence in gift of property to wife in accordance with or in modification of an antenuptial agreement, as affecting right of children of a prior marriage. Id. See Dun. Dig. 4251, 4285.

Evidence that decedent delivered keys of automobile and safety deposit box to claimant prior to his death held too uncertain and ambiguous to warrant a conclusion of delivery of title to automobile and contents of safety deposit box. Roberts' Estate, 202M217, 277NW549. See Dun. Dig. 4026.

Is there any reason why a person should be prevented from making an executed gift of incorporeal as well as corporeal property? Rye v. P., 203M567, 282NW459. See Dun. Dig. 4029.

A receipt in full for entire debt may be taken in a proper case as sufficient evidence of an executed gift of unpaid portion of debt. Id. See Dun. Dig. 4039.

In action by mother against son for relief from breach of promise to care for and support her in consideration of assignment of a note and mortgage, evidence held to sustain finding that assignment was not a gift. Allen v. A., 204M395, 283NW558. See Dun. Dig. 4038.

Court will scrutinize carefully circumstances connected with a gift from a parent to a child; presumption is in favor of its validity; in order to set it aside on ground of undue influence court must be satisfied that it was not voluntary act of donor. Claggett v. C., 204M568, 284 NW363. See Dun. Dig. 4035.

Where confidential relation exists between a mother and son, a transfer of property to son's wife will be closely scrutinized for fraud and undue influence. Id. See Dun. Dig. 4035.

Like any other chose in action, a policy of life insurance may be the subject of a gift. Peel v. R., 286NW 345. See Dun. Dig. 4029.

Enforcement of charitable subscriptions. 12MinnLaw Rev643.

32. Suretyship.

Fidelity bonds, see §3710.

Where bank knew that funds deposited by treasurer of common school district belonged to district and it was agreed that money should be withdrawn on checks signed by treasurer in his name with designation "Treas." and bank permitted funds to be withdrawn by checks signed in treasurer's name individually for purposes other than school district purposes, corporate surety of treasurer which paid school district amount of misappropriation can recover amount from bank. Watson v. M., 190M374, 251NW906. See Dun. Dig. 783, n. 14.

Without equality of equity, there can be no contribution between sureties. Hartford Accident & I. Co. v. A., 192M200, 256NW185. See Dun. Dig. 1921, 9090.

Owner of lost corporate certificate who secured duplicate certificate upon filing proof of ownership and bond with transfer agent, held not liable to surety reserving right to secure its discharge "in the absence or default of the principal," which purchased and surrendered lost certificate upon its reappearance in absence of proof by surety that holder of lost certificate had title thereto so that principle on bond was liable to indemnify transfer agent on failure to acquire and surrender it to transfer agent. American Surety Co. v. C., 200M566, 275NW1. See Dun. Dig. 1896, 9108.

Evidence that holder of lost certificate of stock was innocent purchaser for value without notice held insufficient to establish title of holder under common-law rule which applies in absence of proof of law of situs of lost certificate at time of its transfer to prior holders. Id.

Respective equities and rights under building contractor's bond. 19MinnLawRev454.

33. ——Subrogation.

Indemnity Ins. Co. v. M., 191M576, 254NW913; note under §7699-1.

A surety who pays obligation of his principal is subrogated to remedies of obligee and may pursue them until met by equal or superior equities in one sued. National Surety Co. v. W., 185M50, 244NW290. See Dun. Dig. 9045.

An obligation is implied on part of principal that he will indemnify surety for any payment latter may make under contract. Hartford Accident & Indemnity Co. v. D., 202M410, 278NW591. See Dun. Dig. 9045.

If a party is obliged to defend against act of another, against whom he has a remedy over, and defends solely and exclusively act of such other party, and is compelled to defend no misfeasance of his own, he may notify such party of pendency of suit and may call upon him to defend it, and if the latter fails to defend, then, if liable over, he is liable not only for amount of damages recovered, but for all reasonable and necessary expenses incurred in such defense. Id. See Dun. Dig. 9045.

Creditor's rights in securities held by surety. 22Minn LawRev316.

34. ——Discharge.

In the case of a compensated surety a technical departure from the strict terms of the surety contract does not discharge the surety unless he has suffered injury. Hartford A. & I. Co. v. F., (USCCA8), 59F(2d)950. See Dun. Dig. 9093.

A surety on each of a series of bonds which, by their terms and terms of a trust deed or mortgage referred to therein, authorized trustee upon default in payment of interest or principal of any of bonds to declare all bonds immediately due and payable, is not released when, upon default occurring in payment of interest, trustee accelerated maturity date of bonds remaining unpaid.

First Minneapolis Trust Co. v. N., 192M108, 256NW240, See Dun. Dig. 9107.

Surety on bonds of a building company secured by a trust deed were not released from liability because trustee as trustee of another trust cancelled underlying ground lease, and such liability included rents under lease. Id. See Dun. Dig. 9107.

Why release of security discharges a surety. 14Minn LawRev725.

Effect of release of one surety upon liability of co-surety. 19MinnLawRev814.

35. ——Actions.

In an action by the obligee in a bond against the surety the denial of a motion by defendant to abate the action unless the receiver of the obligee be required to intervene, held not error. Hartford A. & I. Co. v. F., (USCCA8), 59F(2d)950. See Dun. Dig. 9107e.

In action by wholesaler against retailer and sureties where facts pleaded in complaint were admitted by principal defendant, burden of proof was upon sureties on their allegation that plaintiff and principal defendant were engaged in selling drugs in violation of statute. W. T. Rawleigh Co. v. S., 192M483, 257NW102. See Dun. Dig. 9112a.

A judgment against principal named in a bond is evidence against surety apprised of pendency of action with notice and opportunity to defend. Gilloley v. S., 203M233, 281NW3. See Dun. Dig. 9100.

A judgment recovered against a principal in a bond for a breach of its conditions, in an action in which surety is not a party, is not evidence against surety of any fact except its rendition. Id.

35½. Guaranty.

Trustee signing personal guaranty of eight-year lease, held not to be personally bound beyond three-year period. Wm. Lindeke Land Co. v. K., 190M601, 252NW650. See Dun. Dig. 9928a.

Guarantors of payment of interest and principal of bonds secured by trust deed were liable for payment of interest at all times, but were not liable for principal under an acceleration clause where their contract gave them twelve months from "date of maturity within which to pay the principal amount" of the note. Sneve v. F., 192M355, 256NW730. See Dun. Dig. 4070.

Where one receiving money for deposit in bank invested it in bonds and sent bonds to person sending money with statement that he would guarantee such bonds and would take them over any time on request, guaranty was supported by a sufficient consideration, in view of conversion. Wigdale v. A., 193M384, 258NW726. See Dun. Dig. 1772, 4071.

Where one sent money for deposit in bank instead purchased bonds and sent them to plaintiff with promise to take them over at any time if they were not wanted, there was no rescission or estoppel as to guaranty because on request of guilty party plaintiff pledged them as security for a loan and later surrendered them to a bondholder's committee, and plaintiff could recover on the guaranty agreement. Id. See Dun. Dig. 1807, 3210.

An absolute guarantor may be joined as defendant in the same action with principal obligor. Townsend v. M., 194M423, 260NW525. See Dun. Dig. 4093a(60).

In action by bank against indorser of note evidence held insufficient to raise issue for jury question whether there were items not covered by guaranty represented by an indorsement of note. Welcome Nat. Bank v. H., 195M518, 263NW544. See Dun. Dig. 4076.

Guaranty made by directors of corporation of payment of loan held unconditional. Northwestern Nat. Bank v. F., 196M96, 264NW570. See Dun. Dig. 4072.

Liberal rule applied in matter of performance of building and construction contract does not apply to a guaranty contract whereby individuals guaranteed to pay deficiency that might result after proper liquidation of a large number of bills receivable. State Bank of Monticello v. L., 198M98, 268NW918. See Dun. Dig. 4073.

Evidence did not require finding that there was a novation substituting plaintiff bank as debtor and releasing bank taken over from liability on savings accounts. Id. See Dun. Dig. 4077.

Guaranty held not a simple, absolute guaranty of payment of a definite sum or particular note or debt, but only a guaranty to pay any deficiency that might result after proper liquidation of a large number of bills receivable. Id.

That plaintiff bank failed to pay savings accounts of another which, in a contract between plaintiff bank and other bank, plaintiff had agreed to pay, was a material and substantial breach by plaintiff of such contract and was a defense to a suit brought by the plaintiff against individual defendants who had guaranteed to plaintiff to pay a certain deficiency which might arise in the liquidation of certain bills receivable sold and transferred to plaintiff. Id. See Dun. Dig. 4084.

Promise of seller of goods under an executory written contract is sufficient consideration without more for promise made by sureties of purchaser to guarantee performance by him. W. T. Rawleigh Co. v. F., 200M236, 273 NW665. See Dun. Dig. 4071.

35¾. Indemnity.

Indemnity Ins. Co. v. M., 191M576, 254NW913; note under §7699-1.

Provisions in contract for roofing repairs in a business building that contractor should examine site and determine for himself conditions surrounding work and protect owner from liability did not relieve owner of liability for death of roofer caused by negligent maintenance of elevator and approach. Gross v. G., 194M23, 259NW557. See Dun. Dig. 7041a.

Provision in contract of indemnity given by sheriff to surety on his official bond waiving all statutory exemptions, if void, was separable from remainder of contract and did not affect right of surety to recover amount it was required to pay by reason of failure on sheriff's part properly to discharge his official duty. Hartford Accident & Indemnity Co. v. D., 202M410, 278NW591. See Dun. Dig. 1881.

36. Estoppel.

Acceptance of benefits from contract with knowledge of facts and rights creates estoppel. Bacich v. N., 185 M654, 242NW379. See Dun. Dig. 3204a.

Acceptance of reduced wages by employee did not estop him from claiming that he was working under original contract of employment at greater wage. Dormady v. H., 188M121, 246NW521. See Dun. Dig. 3204a.

Mortgagee was not estopped to assert lien of mortgage by receipt of proceeds of sales of lots upon which mortgage was a lien. Peterson v. C., 188M309, 247NW1. See Dun. Dig. 6270.

Knowledge of facts prevent assertion of estoppel. Merchants' & Farmers' State Bank v. O., 189M528, 250NW366. See Dun. Dig. 3210.

Other necessary elements of an equitable estoppel being present, officer of corporation who negotiates and executes a contract for corporation, is estopped to deny truth or representations made, although he signs contract only in his official name. Wiedemann v. B., 190M33, 250NW724. See Dun. Dig. 3187.

Holding on that point in Kern v. Chalfant, 7 Minn. 487 (Gil. 393), was, in effect, overruled in North Star Land Co. v. Taylor, 129Minn438, 152NW837. Id.

Two of elements necessary to an equitable estoppel, or an estoppel in pais, are that party to whom representations are made must have been without knowledge of true facts, and must have relied upon or acted upon such representations to his prejudice. Id. See Dun. Dig. 3189, 3191.

Without prejudice to it shown by bank after discovery by payee that his forged indorsement had been honored by it, payee is not estopped from recovery from it on account of forgery. Rosacker v. C., 191M553, 254NW824. See Dun. Dig. 3192.

A defense of estoppel was not sustained because the facts upon which it was predicated were equally known to both parties. Leighton v. B., 192M223, 255NW848. See Dun. Dig. 3189.

Where the complaint tendered issue that blanks in conditional sale contract were not filled pursuant to agreement, and defendant did not by answer or proof attempt to establish that it was an innocent assignee of vendor, it is not in position to invoke estoppel against plaintiff. Saunders v. C., 192M272, 256NW142. See Dun. Dig. 3210.

Where one sent money for deposit in bank instead purchased bonds and sent them to plaintiff with promise to take them over at any time if they were not wanted, there was no rescission or estoppel as to the guaranty because on request of guilty party plaintiff pledged them as security for a loan and later surrendered them to a bondholder's committee, and plaintiff could recover on the guaranty agreement. Wigdale v. A., 193M384, 258 NW726. See Dun. Dig. 1807, 3210.

Farmer held not estopped from asserting claim for cost of service line under oral agreement with agent of power company by reason of fact that he was charged a reduced rate as service charge. Bjornstad v. N., 195M 439, 263NW289. See Dun. Dig. 1730a.

Estoppel must be grounded on some conduct of party against whom it is invoked. Town of Hagen v. T., 197 M507, 267NW484. See Dun. Dig. 3185.

To ratify is to give sanction and validity to something done without authority, while estoppel is inducement to another to act to his prejudice. State Bank of Loretto v. L., 198M222, 269NW399. See Dun. Dig. 3185.

36. Estoppel.

Estoppel cannot be pleaded against person ignorant of facts, knowledge of which is prerequisite to an intelligent election. Scheele v. U., 200M554, 274NW673. See Dun. Dig. 3193.

In levy and imposition of taxes state acts in its sovereign capacity and hence, in an action for collection thereof, cannot be subjected to an equitable estoppel. State v. Illinois Cent. R. Co., 200M583, 274NW828. See Dun. Dig. 9116.

One cannot claim an estoppel based upon apparent ownership unless he was prejudiced by showing that he acted and parted with value upon faith of same. Bolton-Swanby Co. v. O., 201M162, 275NW855. See Dun. Dig. 3177, 3204.

Owner of automobile was not estopped to claim ownership of car because it invested bailee with possession and indicia of ownership by way of registration. Id.

Substance of an estoppel is reasonable reliance by one party upon representation of another which will injure first party if that other is permitted to assert existence of a state of facts at variance with those represented. Exsted v. E., 202M521, 279NW554. See Dun. Dig. 3191.

One cannot invoke doctrine of estoppel unless he was ignorant of true situation when he acted, and he cannot claim ignorance when law charges him with knowl-

edge. Davis v. N., 203M295, 281NW272. See Dun. Dig. 3193.

Equitable estoppel is effect of voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right either of property, contract or remedy. Clover v. P., 203M337, 281 NW275. See Dun. Dig. 3185.

Doctrine of estoppel in pais is founded in justice and good conscience, and is a favorite of the law, and arises when one, by his acts or representations, or by his silence when he ought to speak, intentionally, or through culpable negligence, induces another to believe certain facts to exist, and such other rightfully acts on the belief so induced in such manner that if the former is permitted to deny the existence of such facts, it will prejudice the latter. Id. See Dun. Dig. 3187.

Estoppel in pais can only be invoked to prevent fraud and injustice, and is never carried further than is necessary than to prevent one person from being injured by his reliance on acts or declarations of another, and its object is to prevent unjust assertion of rights existing independent of estoppel. Beier's Estate, 284NW833. See Dun Dig. 3186.

Equitable estoppel is the effect of voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquired some corresponding right either of property, of contract, or of remedy. Id. See Dun. Dig. 3185 (2).

37. Patents.

Patentee's right is in nature of an intangible, incorporeal right, a title which continues to exist in him until divested by voluntary grant or other legal means of divestment, and such right is property personal to inventor with its situs with individual possessing it. Grob v. C., 204M459, 283NW774. See Dun. Dig. 7417.

Protection of plans, designs, inventions, and other products of plaintiff's effort made at his expense. 14MinnLaw Rev537.

CHAPTER 50

Weights and Measures

7025. Standard weight of bushel, etc.—In contracts for the sale of any of the following articles, the term "bushel" shall mean the number of pounds avoirdupois herein stated:

Corn, in ear, 70; beans, (except lima beans, scarlet runner pole beans and white runner pole beans, and broad windsor beans) smooth peas, wheat, clover seed, Irish potatoes and alfalfa, 60; broom corn seed and sorghum seed, 57; shelled corn, (except sweet corn), rye, lima beans, flaxseed and wrinkled peas, 56; sweet potatoes and turnips 55; onions and rutabagas, 52; buckwheat, hempseed, rapeseed, beets, (GREEN APPLES), walnuts, rhubarb, hickory nuts, chestnuts, tomatoes, scarlet runner pole beans and white runner pole beans, 50; barley, millet, Hungarian grass seed, sweet corn, cucumbers and peaches, 48; broad windsor beans, 47; carrots, timothy seed and pears, 45; Parsnips, 42; spelt or spilts, 40; cranberries, 36; oats and bottom onion-sets, 32; dried apples, dried peaches and top onion-sets, 28; peanuts, 22; blue grass, orchard grass and red-top seed, 14; plastering hair, unwashed, 8; plastering hair, washed, 4; lime, 80; but if sold by the barrel the weight shall be 200 pounds. In contracts for the sale of green apples, the term "bushel" shall mean 2150.42 cubic inches. (R. L. '05, §2728; '13, c. 560, §4; G. S. '13, §5794; Apr. 24, 1935, c. 270.)

7026. Standard measurement of wood.

Cord as defined in this section governs in sale of cord wood by private parties. Op. Atty. Gen., Dec. 4, 1933.

7031. Variations—Duty of railroad and warehouse commission.

Statutory provisions relative to weighing supersede any charter or ordinance provisions on same subject. Op. Atty. Gen. (495), Dec. 27, 1935.

7035–1. Weight of bread, etc.

Bread cannot be sold in lesser weights than as provided herein. Op. Atty. Gen. (495), Apr. 16, 1934.

7035-2. Bread to be wrapped.—Each loaf or twin loaf of bread sold within this state shall be wrapped in a clean wrapper and/or clean wrapping paper in such manner as to completely protect the bread from dust, dirt, vermin or other contamination, said wrapping to be done in the bakery where made at any time prior to or at the time of sale of such bread, provided, however, that where three or more loaves of bread are sold and delivered at the bakery for personal use, then and in that case said bread may be wrapped in bulk.

Every loaf or twin loaf of bread sold within this state shall have affixed on said loaf or on the outside of the wrapper in a plain statement the weight of the loaf or twin loaf of bread, together with the name and address of the manufacturer. ('27, c. 351, §2; Apr. 24, 1931, c. 322, §1.)

Amendment (Laws 1931, c. 322) held invalid because in violation of Const., Art. 4, §27, by embracing more than one subject. Egekvist Bakeries v. B., 186M520, 243NW853. See Dun. Dig. 8921.

Bread sold to civilian conservation camps must be labeled in compliance with this section. Op. Atty. Gen., Dec. 28, 1933.

7035-3. To be net weight.—The weights herein specified shall be construed to mean net weights within a period of 24 hours after baking. A variation at the rate of one ounce per pound over or one ounce per pound under the specified weight of each individual loaf shall not be a violation of this law, providing that the total weight of 25 loaves of bread of a given variety shall in no case fall below 25 times the unit weight. ('27, c. 351, §3; Apr. 24, 1931, c. 322, §2.)

CHAPTER 51

Interest and Negotiable Instruments

INTEREST

7036. Rate of interest.

1. In general.

172M349, 215NW781.

Where bank which was depository and bondholder of railway petitioning for reorganization wrongfully deducted debt of railway from deposit, it was obligated to pay legal rate of interest as against contention agreement with railroad for a lower rate of interest presented such obligation. Lowden v. N., (USCCA8), 86F(2d)376, den'g petition to mod. 84F(2d)847, 31AmB(NS)655, which rev'd 11FSupp929.

It was error to charge a bank with interest on money under control of another bank. 172M24, 214NW750.

Notes made by makers and guarantors in Minnesota and delivered to payees in Chicago, where payable, were governed with respect to interest and usury by the laws of Illinois. 174M68, 216NW778.

Where a partner contributes more than his share of partnership funds, he is not entitled to interest on the excess in the absence of an agreement to that effect. 177M602, 225NW924.

Rate after maturity. 180M326, 230NW812.

State is entitled to interest on preferred claims against insolvent bank in favor of surety claiming