# 1940 Supplement

## 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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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

through subrogation. American Surety Co. v. P., 186M588, 244NW74. See Dun. Dig. 9044.

Interest to which state is entitled on preferred claims against insolvent bank is that provided by deposit contract. American Surety Co. v. P., 186M588, 244NW74. See Dun. Dig. 824d, 2524, 4881.

Workmen's compensation is legal indebtedness upon which interest accrues from date each installment should have been made. Brown v. C., 186M540, 245NW145. See Dun. Dig. 4879, 10413.

Surety on official bond is liable for interest only from date of notice of breach thereof or demand made thereon. County Board of Education v. F., 191M9, 252NW668. See Dun. Dig. 4884, 8019.

Highest rate of interest permitted after maturity by contract in cases in which parties have agreed to pay interest before maturity is rate of interest charged before maturity. Investors Syndicate v. B., 200M461, 274NW627. See Dun. Dig. 4881.

A debtor's obligation to pay interest as damages for detention of debt is not cut off by suspension of business or receivership. Equitable Holding Co. v. E., 202M529, 279NW736. See Dun. Dig. 4879.

Reason why interest is generally disallowed in bankruptcy and other similar proceedings is that equality among general creditors as of date of insolvency is thereby attained, but where ideal of equality is served, interest is properly allowed. Id. See Dun. Dig. 4883a.

Evidence supports a finding that manager of property was not chargeable with interest on plaintiffs' balances. Patterson v. R., 199M157, 271NW336. See Dun. Dig. 4882.

Six per cent is the maximum rate of interest that may be paid on town orders. Op. Atty. Gen., June 26, 1933.

**2. Usury.**

An agreement by borrower to pay expense of title insurance and expense of a guaranty of payment of his note by a surety company is not usury. 174M241, 219NW76.

Where broker is agent of borrower, agreement by borrower to pay commission does not constitute usury. 174M241, 219NW76.

Evidence held to show conveyance and contract to repurchase was a device to cover usury. 174M204, 219NW86.

Finding that person was a trader acting for himself in the buying and selling of mortgages and was not the agent of either party, sustained. 177M491, 225NW443.

Finding of usury in mortgage held not sustained by evidence. Clausen v. S., 185M403, 241NW56. See Dun. Dig. 9982.

Mortgage note coupons representing annual interest did not show an increase of rate of interest after maturity which could be recovered by reason of having stamped on back thereof provision that certain discount would be allowed if paid at maturity. Bolstad v. H., 187M60, 244NW338. See Dun. Dig. 4881, 7462, 9991.

Where a creditor intentionally exacts or takes a note or instrument for forbearance of money, providing for payment to him of a sum greater than amount owing and $8 on $100 for one year, jury or trier of facts may find usury. Cemstone Products Co. v. G., 187M416, 245NW624. See Dun. Dig. 9973.

The corrupt intent is intent to take or receive more for forbearance of money than law permits, whether or not taker knows he is violating usury law. Cemstone Products Co. v. G., 187M416, 245NW624. See Dun. Dig. 9964.

A mere oral promise or agreement to pay a promissory note, having a fixed due date, in installments before due, is invalid, and cannot be shown to vary terms of note for purpose of showing usury, where no usury has actually been taken or received by lender. Blindman v. I., 197M93, 266NW455. See Dun. Dig. 9969.

Three elements necessary to constitute an usurious transaction are a loan or forbearance of money; an absolute agreement to return; and an agreement to pay more than legal rate of interest for its use. Bangs v. M., 200M310, 274NW184. See Dun. Dig. 9961.

Law will look behind every device or shift used in an effort to defeat statute. Id. See Dun. Dig. 9965.

Where purchaser of automobile under conditional sales contract was in default, and went to a second finance company and entered into an extension agreement under which new company paid balance due old company and modified assigned old agreement so as to increase amount in excess of highest rate allowed by statute, conditional sales contract became void for usury. Id. See Dun. Dig. 9973.

Where mortgage provided for 6% interest, an acceleration clause providing that after default all sums due should bear interest "at the highest rate permitted under the laws of this state by contract" did not unlawfully increase interest rate after maturity, because under statute the highest rate would be 6%. Investors Syndicate v. B., 200M461, 274NW627. See Dun. Dig. 9961.

Credit unions may not collect fines on delinquent payments in addition to interest. Op. Atty. Gen. (92a-28), Jan. 7, 1938.

What is usury in Minnesota? 21MinnLawRev585.

**4. Questions for jury.**

Question of usury held for jury. Cemstone Products Co. v. G., 187M416, 245NW624. See Dun. Dig. 9994.

### 7037. Usurious interest—Recovery.

E. C. Warner Co. v. W. B. Foshay Co., (CCA8), 57F(2d)656. Cert. den. 286US558, 52SCR641; note under §7038.

Purchaser under a contract for a lease was barred from recovering an alleged usurious payment where the limitation period had expired. Nitkey v. S. (USCCA8), 87F(2d)916. Cert. den., 301US697, 57SCR925. Reh. den., 58SCR5.

A bonus forfeited for usury goes in reduction of the loan as made and not in payment of it afterwards, and borrower has nothing to say as to its application. 174M68, 218NW451.

Where plaintiff in replevin alleged that he was owner and entitled to immediate possession of automobile, describing it by motor and registration number, and answer was a general denial, plaintiff could prove that defendant's sole claim of title and right of possession was based upon documents tainted with usury. Halos v. N., 196M387, 265NW26. See Dun. Dig. 9992.

When a small loan business, catering to the large class of the poor and necessitous wage earners, is so conducted that in every loan made usury statute is flagrantly and intentionally violated, and there is no adequate or effective remedy which borrowers are willing or able to use to obtain redress for violation, it constitutes a public nuisance which may be enjoined. State v. O'Neil, 286NW316. See Dun. Dig. 9991.

### 7038. Usurious contracts invalid—Exceptions.

**1. In general.**

172M126, 214NW924.

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

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

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

An agreement to "finance" plaintiff, held to contemplate lending of money, within meaning of usury laws. Fred G. Clark Co. v. E., 188M277, 247NW225. See Dun. Dig. 9961.

Where corporation engaged in business of advancing money to needy clients for purpose of paying pressing bills prevailed upon client and creditor dentist to both sign a note for $190, and then prevailed upon dentist to settle client's indebtedness by accepting $150, corporation cannot be said to have performed any service for the dentist warranting retention of $40, and note was usurious as to dentist. Adjustment Service Bureau v. B., 196M563, 265NW659. See Dun. Dig. 9978.

In replevin to recover automobile because of a default in payments under a conditional sales contract, defendants failed to established usury in making of contract by proof that consideration agreed upon between parties at time contract was entered into was less than that provided for in contract, it conclusively appearing from evidence that amount contended for by defendants to be correct sale price did not include an excessive sum as interest. Minneapolis Discount Co. v. C., 201M111, 275NW511. See Dun. Dig. 9961.

To constitute usury there must be a loan; an agreement for its return at all events; and an agreement to pay more than legal rate for use of it. Id.

A statute which applies to loans thereunder same rate of interest permitted by general statutes is not a special law regulating rate of interest. Mesaba Loan Co. v. S., 203M589, 282NW823. See Dun. Dig. 1683.

**2. Intent—Presumptions.**

It is an essential element of usury that lender must intend to receive more for loan than law allows. Wetsel v. G., 195M509, 263NW605. See Dun. Dig. 9964.

Intention of doing something which, when carried out, results in usurious compensation for loan of money, results in usury, whether or not lender, at time of making loan, considered it is usurious. Adjustment Service Bureau v. B., 196M563, 265NW659. See Dun. Dig. 9964.

Where a borrower, in consideration of $150 paid to him gives lender a note for $190, with interest thereon at the rate of 8% per annum, loan is prima facie usurious. Id. See Dun. Dig. 9993.

**4. Form not controlling.**

Court will look beyond mere form of contract. E. C. Warner Co. v. W. B. Foshay Co., (CCA8), 57F(2d)656. Cert. den. 286US558, 52SCR641.

**6. Burden of proof.**

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

If lender performed any services for borrower which entitled it to retain a sum of $40 and pay borrower only $150, burden of proving that such services were reasonably worth sum so retained rested upon lender. Adjustment Service Bureau v. B., 196M563, 265NW659. See Dun. Dig. 9993.

Burden of providing usury set up as a defense is on defendant. Minneapolis Discount Co. v. C., 201M111, 275NW511. See Dun. Dig. 9993.

**7. Degree of proof required.**

Finding that execution and delivery of mortgage and trust deed was a joint venture and that there was no

usury involved, held sustained by evidence. 175M560, 222NW278.

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

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

One who asserts usury must negative by his proof any hypothesis reasonably drawn from evidence which would render transaction lawful, but where language imports a bonus for loan of money, there is no room for a presumption that transaction was legal. Fred G. Clark Co. v. E., 188M277, 247NW225. See Dun. Dig. 9993.

Evidence held insufficient to sustain a finding that an agreement to make a loan involved a payment of a salary as fair compensation for services actually contemplated. Id. See Dun. Dig. 9971.

If bonus is paid to a lender by a third person for his own reason without knowledge of borrower, transaction will not be usurious. Id. See Dun. Dig. 9971.

**8. Effect of commission or bonus to lender.**

To be usurious, contract must be so when made, and a mortgage was not usurious when note was given for large commission, and it was payable out of six monthly payments to be paid throughout life of mortgage, amount paid for use of money over such term not exceeding legal rates, and debtor receiving the full amount of the mortgage at the time of execution thereof. Wetsel v. G., 195 M509, 263NW605. See Dun. Dig. 9977.

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

Where lender of money sold property to borrower at grossly excessive value of additional inducement to loan the transaction is usurious and void where the amount received by the lender greatly exceeded the permissible rate of interest. E. C. Warner v. W. B. Foshay Co., (CC A8), 57F(2d)656. Cert. den. 286US558, 52SCR641.

**10. Effect of collateral contract.**

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

A mere oral promise or agreement to pay a promissory note, having a fixed due date, in installments before due, is invalid, and cannot be shown to vary terms of note for purpose of showing usury, where no usury has actually been taken or received by lender. Blindman v. I., 197M 93, 266NW456. See Dun. Dig. 9969.

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

When an officer who is intrusted with management of corporation exacts or receives a bonus of any kind for loan of money made by corporation through him, its is presumed to be act of corporation, as regards usury. Fred G. Clark Co. v. E., 188M277, 247NW225. See Dun. Dig. 9968.

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

180M358, 230NW819.

Services rendered by a lender of money for purpose of getting for himself a return of more than maximum legal rate of interest on money loaned do not justify lender in retaining out of money loaned compensation for such services, in addition to lawful interest. Adjustment Service Bureau v. B., 196M563, 265NW659. See Dun. Dig. 9978.

**15. Payment of interest in advance.**

Retention of interest for one year in advance at 8% was not usurious. Blindman v. I., 194M462, 260NW867. See Dun. Dig. 9967.

Acceleration clause in note does not make loans usurious though interest was deducted at time loan was made. Mesaba Loan Co. v. S., 203M589, 282NW823. See Dun. Dig. 9967.

**19. Extensions.**

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

**20. Who may assail.**

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

**22. Bona fide purchasers.**

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

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

**25. Conflict of laws.**

Loan to Delaware corporation under Minnesota contract, held governed by Minnesota law with respect to usury, though Delaware law precluded corporation from interposing of usury. E. C. Warner Co. v. W. B. Foshay Co. (CCA8), 57F(2d)656. Cert. den. 286US558, 52SCR641.

**27. Evidence.**

Evidence required finding that plaintiff was a party to alleged usurious contract. Fred G. Clark Co. v. E., 188M277, 247NW225. See Dun. Dig. 9996.

Evidence required a finding that certain corporate stock, which plaintiff claims was exacted and given as a bonus for loan of money at time of transaction, was reasonably worth at least par. Id. See Dun. Dig. 9971, 9996.

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

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

### 7039. Offenders to answer on oath.

State v. O'Neil, 286NW316; note under §7040.

### 7040. Usurious contracts—cancellation.

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

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

Where plaintiff in replevin alleged that he was owner and entitled to immediate possession of automobile, describing it by motor and registration number, and answer was a general denial, plaintiff could prove that defendant's sole claim of title and right of possession was based upon documents tainted with usury. Halos v. N., 196M 387, 265NW26. See Dun. Dig. 9963.

A contract valid in its inception is not rendered usurious by lender's exercise of option to accelerate maturity of loan upon borrower's default, and where interest has been paid in advance the only question involved is how interest should be applied. Mesaba Loan Co. v. S., 203M 589, 282NW823. See Dun. Dig. 9961.

In action to enjoin violation of usury statute by small loan business court did not err in retaining receiver in custody of evidence, notes and documents pertaining to defendant's usury business pending outcome of trial. State v. O'Neil, 286NW316. See Dun. Dig. 9989.

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

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

Building and loan associations are exempt from operation of usury statutes. Northern Building & Loan Ass'n v. W., 286NW397. See Dun. Dig. 1169.

### 7042, 7043. [Repealed Feb. 15, 1939, c. 12, §24, post §7774-64, Eff. June 1, 1939.]

#### ANNOTATIONS UNDER REPEALED SECTIONS

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

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

This section is applicable only to certain corporations doing business in cities of the first class and is not applicable to the person or corporation doing business in city of Alexandria, but industrial loan and thrift companies are authorized under Mason's Supp. 1934, §§7774-25 to 7774-35. Op. Atty. Gen. (53a-15), Dec. 11, 1934.

## TITLE I.—NEGOTIABLE INSTRUMENTS IN GENERAL

The Uniform Negotiable Instruments Law has been adopted by: District of Columbia, Hawaii, Philippine Islands, Puerto Rico and all the states.

## ARTICLE I. FORM AND INTERPRETATION.

### 7044. Form of negotiable instrument.

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

**1. Unconditional promise or order.**

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

Evidence held to justify a finding that note sued upon was delivered conditionally. First Nat. Bank of Amboy v. O., 188M87, 246NW542. See Dun. Dig. 879.

In action on promissory note by payee, defendant could testify and defend on ground that it was orally agreed that diamond for which note was given could be returned if not satisfactory to woman. Hendrickson v. B., 194M528, 261NW189. See Dun. Dig. 3377.

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

Effect of acceleration clauses on negotiability. 16Minn LawRev302.

Reference to extrinsic agreement as destroying negotiability of bonds. 16MinnLawRev309.

Negotiability of note payable in foreign money. 19Minn LawRev700.

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

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

**5. Signature.**

A note sued on is prima facie proof of its execution so as to make it admissible in evidence where answer is a verified general denial with no specific denial of execution by oath or affidavit. Christianson v. L., 203M533, 282 NW273. See Dun. Dig. 1039.

**10. Mental competency.**

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

**7045. *Certainty as to sum—What constitutes.***

(5).

Provision for attorney's fees does not affect its negotiability. Op. Atty. Gen. (616d-16), June 15, 1934.

Interpretation of provisions for attorneys' fees. 23 MinnLawRev218.

**7046. When promise is unconditional.**

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

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

**7048. Additional provisions not affecting negotiability.**

This section in no way conflicts with §9414 which authorizes entry of judgment by confession. Keyes v. P., 194M361, 260NW518. See Dun. Dig. 4973.

**7050. When payable on demand.**

Where demand note provided for interest payable annually, and nothing was then paid, under La Due v. First Nat. Bank, 31 Minn. 33, 16 N. W. 426, and First Nat. Bank v. Forsyth, 67 Minn. 257, 69 N. W. 909, 64 Am. St. Rep. 415, paper was dishonored and subsequent payment of interest could not restore its negotiability. Mills v. C., 201M167, 275NW609. See Dun. Dig. 881.

A note which does not fix due date, but reads "after date, for value received, we promise to pay," etc. is a negotiable instrument payable on demand. Id.

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

(1) A payee who is not maker, drawer, or drawee; or

(2) The drawer or maker; or

(3) The drawee; or

(4) Two or more payees jointly; or

(5) One or more of several payees; or

(6) The holder of an office for the time being.

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

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

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

**7052. When payable to bearer.**

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

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

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

Finding sustained that there was an unconditional delivery of check. 181M487, 233NW7. See Dun. Dig. 990.

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

**7060. Construction where instrument is ambiguous.**

Where a person signs a promissory note in lower left-hand corner thereof, and two makers sign in lower right-hand corner, below whose signatures there is a vacant line, and mortgage securing note recites that note is signed by two makers who signed in lower right-hand corner, there is an ambiguity and parol evidence is admissible to show whether he signed as a maker. Union Cent. Life Ins. Co. v. F., 196M260, 264NW786. See Dun. Dig. 1013.

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

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

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

*A co-owner of a farm who signed to a note names of* all owners as a company, without authority, knowledge, or consent of other co-owners, will be held to have signed note in a name assumed by him, and he is personally liable thereon, as affecting right of set-off. Campbell v. S., 194M502, 261NW1. See Dun. Dig. 874.

Bank suing co-owners of a farm as partners on a note purporting to be signed by them as a partnership was not thereafter estopped in a suit by a third party to claim that there was no partnership and that certain co-owner was alone liable on theory of having signed under an assumed name, first action being settled and there being no findings or judgment. Id.

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

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

A partnership is not liable on a note given, without authority or consent of copartners, by one member of a firm for funds for his individual purposes, where payee plaintiff knew that he was borrowing money for such purposes. Security State Bank of Hibbing v. R., 201M472, 276NW743. See Dun. Dig. 7363.

**7066. Forged signature—Effect of.**

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

Where plaintiff purchased stock of a corporation and put up stock of another corporation as collateral assigned in blank and a stock seller sold collateral to corporation issuing stock and received check payable to plaintiff and forged plaintiff's name to check, checks could not be recovered by plaintiff from corporation issuing them or from bank honoring them where he took no action for four years either to notify maker of check or bank of forgery. Theelke v. N., 192M330, 256NW236. See Dun. Dig. 787a, 999.

Where a drawer of a check negligently delivers it to a person other than payee, drawer is not precluded by his negligence from asserting that indorsement of payee is a forgery, if it is not proved that person indorsing as payee was one to whom check was delivered, and if it is not proved also that check was cashed by indorsee in *belief that indorser was payee. Montgomery Ward &* Co. v. C., 201M425, 276NW731. See Dun. Dig. 988.

Money paid out by bank on forged check may be recovered from bank. Op. Atty. Gen. (29a-11), Dec. 4, 1935.

ARTICLE II. CONSIDERATION

**7067. Presumption of consideration.**

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

Note given to take up prior notes and granting a reduction on principal and lowering rate of interest held supported by consideration as to third party signing. Erickson v. H., 191M177, 253NW361. See Dun. Dig. 869.

In action on note, burden of proof rested on defendant to prove want of consideration. Id. See Dun. Dig. 1040.

Evidence held to sustain finding that note was not unconditionally delivered to and accepted by plaintiffs before defendant signed it. Id. See Dun. Dig. 879.

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. Steblay v. J., 194M352, 260NW364. See Dun. Dig. 1813a(51), 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. Id. See Dun. Dig. 869, 1813a, 2848.

Where it was shown that a person appearing to be one of makers of a note received no consideration and was not an accommodation party, plaintiff had burden of proving himself a holder in due course, and his acquiescence in an instruction that if plaintiff could not recover against her made instruction law of case, it not conclusively appearing that defendant was not entitled to prevail. Parkin v. S., 203M249, 280NW849. See Dun. Dig. 1040.

**7068. Consideration, what constitutes.**

Finding that note was executed without consideration and through mistake sustained. 173M491, 496, 217NW595.

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

Lack of consideration in note given for work to be subsequently done, held not shown. 177M477, 225NW388.

Preexisting debts was ample consideration for notes and mortgages. 179M612, 225NW908.

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

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

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

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

Note given for corporate stock held supported by sufficient consideration. Edson v. O., 190M444, 252NW217. See Dun. Dig. 869, 2061(36).

Where president of corporation loaned money to defendants who purchased stock of corporation therewith and gave plaintiff note for money borrowed, fact that sale of stock was violation of Blue Sky Law furnished no defense to action on note. Id. See Dun. Dig. 1125a.

Charge of the court on the question of consideration for signing of note by defendant was sufficiently clear and correct. Erickson v. H., 191M177, 253NW361. See Dun. Dig. 869.

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.

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, 260NW 364. See Dun. Dig. 869.

Where it was shown that a person appearing to be one of makers of a note received no consideration and was not an accommodation party, plaintiff had burden of proving himself a holder in due course, and his acquiescence in an instruction that if plaintiff could not recover against her made instruction law of case, it conclusively appearing that defendant was not entitled to prevail. Parkin v. S., 203M249, 280NW849. See Dun. Dig. 1040.

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, abstinence, or promise. Becker County Nat. Bank v. D., 204M603, 284 NW789. See Dun. Dig. 869.

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

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

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

**7072. Liability of accommodation party.**

180M326, 230NW218.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where at request of her father, an officer of a bank, and to aid bank, defendant gave her promissory note to bank and bank issued to her its shares of capital stock for agreed price thereof, pursuant to an understanding that bank would sell stock and apply it on note, that bank would not sell note, nor require her to pay it, and stock was held by father for her, and part thereof sold and applied on note, and the note was renewed from time to time for a period of ten years, note was not an accommodation note, but was given for value, she being estopped from claiming that either note in suit is an accommodation note. Searing v. H., 193M391, 258NW558. See Dun. Dig. 969, 976.

Issues of note being accommodation note and of defendant's making agreement to hold plaintiff harmless were for jury and not court. Cashman v. B., 195M195, 262 NW216. See Dun. Dig. 969.

It was not error to instruct that plaintiff could recover, even though there was no proof of fraud or of a fraudulent intention not to perform agreement to hold harmless, if jury found that plaintiff signed accommodation note in reliance upon defendant's promise to hold plaintiff harmless, and breach thereof. Id.

Where it was shown that a person appearing to be one of makers of a note received no consideration and was not an accommodation party, plaintiff had burden of proving himself a holder in due course, and his acquiescence in an instruction that if plaintiff could not recover against her made instruction law of case, it not conclusively appearing that defendant was not entitled to prevail. Parkin v. S., 203M249, 280NW849. See Dun. Dig. 1040.

ARTICLE III. NEGOTIATION

**7073. What constitutes negotiation.**

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

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

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

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

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

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

Promissory note having been negotiated by indorsement of the holder and completed by delivery to plaintiff, its continued possession from then on necessarily invested it with authority to collect and discharge the obligation. Northwestern Nat. Bank & Tr. Co. v. H., 286NW717. See Dun. Dig. 933.

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

The words "to draw 7 per cent interest from 3-5-1920," following a special endorsement on the back of a 6 per cent note was surplusage and without legal sig-

nificance between the endorsee and the maker, and was not of such character as to place the endorsee upon inquiry. 175M287, 221NW10.

*Action on a bill or note payable to bearer, or endorsed* in blank, may be maintained in name of nominal holder, possession being prima facie evidence of his right to sue, and cannot be rebutted by proof that plaintiff has no beneficial interest, or that others are interested in the proceeds, or by anything else but proof of mala fides. Northwestern Nat. Bank & Tr. Co. v. H., 286NW717. See Dun. Dig. 1034.

**7079. When indorsement restrictive.**

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

Where at request of her father, an officer of a bank, and to aid bank, defendant gave her promissory note to bank and bank issued to her its shares of capital stock for agreed price thereof, pursuant to an understanding that bank would sell stock and apply it on note, that *bank would not sell note, nor require her to pay it, and* stock was held by father for her, and part thereof sold and applied on note, and the note was renewed from time to time for a period of ten years, note was not an accommodation note, but was given for value, she being estopped from claiming that either note in suit is an accommodation note. Searing v. H., 193M391, 258NW558. See Dun. Dig. 969, 976.

**7080. Effect of restricting endorsement—Rights of endorsee.**

An endorsee "for collection" of a negotiable instrument is real party in interest who may bring action. Farmers Nat. Bank v. B., 198M195, 269NW409. See Dun. Dig. 1034.

**7081. Qualified indorsement.**

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

Parol evidence is inadmissible to show that indorsement on negotiable instrument was intended to be "without recourse." Johnson Hardware Co. v. K., 188M 109, 246NW663. See Dun. Dig. 1012, 3368.

**7091. Striking out endorsement.**

Endorsee for collection of note could remove all intervening endorsements as not necessary to title. Farmers Nat. Bank v. B., 198M195, 269NW409. See Dun. Dig. 936.

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

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

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

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

ARTICLE IV. RIGHTS OF THE HOLDER

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

One receiving stolen bonds as collateral security has burden of proving that he gave value. Paine v. St. Paul Union Stockyards Co., (USCCA8), 28F(2d)463.

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

Endorsement of promissory notes carried mortgage with it. Jefferson County Bank v. E., 188M354, 247NW 245. See Dun. Dig. 575, 6276.

*An endorsee "for collection" of a negotiable instrument* is real party in interest who may bring action. Farmers Nat. Bank v. B., 198M195, 269NW409. See Dun. Dig. 1034.

Original note being valid, a renewal thereof to endorsee was likewise valid. Becker County Nat. Bank v. D., 204M603, 284NW789. See Dun. Dig. 950.

Action on a bill or note payable to bearer, or endorsed in blank, may be maintained in name of nominal holder, possession being prima facie evidence of his right to sue, and cannot be rebutted by proof that plaintiff has no beneficial interest, or that others are interested in the proceeds, or by anything else but proof of mala fides. Northwestern Nat. Bank & Tr. Co. v. H., 286NW717. See Dun. Dig. 1034.

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

Rights of remitters and other owners not within the tenor of negotiable instruments. 12MinnLawRev584.

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

176M52, 222NW340; note under §7098.
180M326, 230NW812.

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

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

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

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

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

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

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

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

*Where at request of her father, an officer of a bank,* and to aid bank, defendant gave her promissory note to bank and bank issued to her its shares of capital stock for agreed price thereof, pursuant to an understanding that bank would sell stock and apply it on note, that bank would not sell note, nor require her to pay it, and stock was held by father for her, and part thereof sold and applied on note, and the note was renewed from time to time for a period of ten years, note was not an accommodation note, but was given for value, she being estopped from claiming that either note in suit is an accommodation note. Searing v. H., *193M391, 258NW588.* See Dun. Dig. 969, 976.

Purchase of series of notes after maturity of one. 15 MinnLawRev585.

Notice of infirmity in instrument or defective title—*negligence. 19MinnLawRev795.*

(4).

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

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

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

*Where demand note provided for interest payable an*nually, and nothing was then paid, under La Due v. First Nat. Bank, 31 Minn. 33, 16 N. W. 426, and First Nat. Bank v. Forsyth, 67 Minn. 257, 69 N. W. 909, 64 Am. St. Rep. 415, paper was dishonored and subsequent payment of interest could not restore its negotiability. Mills v. C., 201M167, 275NW609. See Dun. Dig. 951.

Where defendant signed note sued upon as accommodation maker after its delivery to payee and without consideration or prior arrangement, as against a holder not in due course, she may set up defense of want of consideration. Id. See Dun. Dig. 967.

**7098. When title defective.**

First Nat. Bank v. F., 191M318, 254NW8; note under §7678.

*One receiving stolen bonds as collateral security has* burden of proving that he gave value. Paine v. St. Paul Union Stockyards Co., (USCCA8), 28F(2d)463, modified (USCCA8), 35F(2d)624.

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

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

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

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

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

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

It being shown that promissory note was procured under conditions making title defective, burden was on holder to prove that he was a holder for value in due course. Chamberlin v. T., 195M58, 261NW577. See Dun. Dig. 956.

Mortgagor in mortgage for $1500 was entitled to enjoin foreclosure for more than $400 she obtained from mortgagee, and assignee of mortgage, took it subject to equities between original parties, even though a holder in due course of note. Id. See Dun. Dig. 6284.

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

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

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

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

Where a purchaser of negotiable paper takes it without actual knowledge of vendor's defective title, but with knowledge of facts which would deter a commercially honest person from acquiring title without investigation, his acquisition is tainted with bad faith. Bergheim v. M., 190M571, 252NW833. See Dun. Dig. 953.

Evidence held to show that purchaser of note and mortgage should have known that assignor was only trustee. Id.

Notice of infirmity in instrument or defective title—negligence. 19MinnLawRev795.

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

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

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

It being shown that promissory note was procured under conditions making title defective, burden was on holder to prove that he was a holder for value in due course. Chamberlin v. T., 195M58, 261NW577. See Dun. Dig. 957.

Where it was shown that a person appearing to be one of makers of a note received no consideration and was not an accommodation party, plaintiff had burden of proving himself a holder in due course, and his acquiescence in an instruction that if defendant received no consideration plaintiff could not recover against her made instruction law of case, it not conclusively appearing that defendant was not entitled to prevail. Parkin v. S., 203M249, 280NW849. See Dun. Dig. 1040.

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

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

Evidence held not to show duress in obtaining check to cover indebtedness of son. General Motors Acceptance Corp. v. J., 188M598, 248NW213. See Dun. Dig. 2848.

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

One receiving stolen bonds as collateral security has burden of proving that he gave value. Paine v. St. Paul Union Stockyards Co., (USCCA8), 28F(2d)463.

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

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

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

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

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

Where defense to note is based on actual or common-law fraud merely consisting of misrepresentations as to merchandise sold, proof of absence of negligence is not essential as in case of note obtained by fraudulent trick or artifice. M & M Securities Co. v. D., 190M57, 250NW 801. See Dun. Dig. 1018.

Where a purchaser of negotiable paper takes it without actual knowledge of vendor's defective title, but with knowledge of facts which would deter a commercially honest person from acquiring title without investigation, his acquisition is tainted with bad faith. Bergheim v. M., 190M571, 252NW833. See Dun. Dig. 953.

Where it was shown that a person appearing to be one of makers of a note received no consideration and was not an accommodation party, plaintiff had burden of proving himself a holder in due course, and his acquiescence in an instruction that if defendant received no consideration plaintiff could not recover against her made instruction law of case, it not conclusively appearing that defendant was not entitled to prevail. Parkin v. S., 203M 249, 280NW849. See Dun. Dig. 1040.

ARTICLE V. LIABILITIES OF PARTIES

**7103. Liability of maker.**

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

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

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

Uniform Negotiable Instruments Act does not control rights of principals and sureties arising from conveyance of mortgaged premises wherein vendees assume and agree to pay mortgage debt. Jefferson County Bank v. E., 188M354, 247NW245. See Dun. Dig. 6295.

Under a note reading "I promise to pay" etc., there is a several obligation, and a several judgment could be entered against person signing for partnership. Campbell v. S., 194M502, 261NW1. See Dun. Dig. 874.

**7105. Liability of acceptor.**

Equitable assignment resulting from drawing of draft and conduct of drawee is not nullified simply because draft, which is but part of proof, is surrendered for cancellation, where a new draft is immediately issued in its place and for same fund. *Baird v. S., 193M79, 258NW 570.* See Dun. Dig. 896.

While a draft, drawn generally, will not of itself operate as assignment of anything in hands of the drawee, yet, if latter is given notice that draft was intended to vest in payee an interest in, or a right to receive, funds coming into his hands from designated goods, and with such notice drawee takes goods and sells them, he is liable to payee; latter being an equitable assignee of that portion of fund called for by draft. Id.

**7106. When person deemed indorser.**

Participant in transaction on purchaser's side from beginning to end, but who did not sign contract and only indorsed note, could be liable only as an indorser and not co-maker. Allen v. C., 204M295, 283NW490. See Dun. Dig. 941.

Acceptance of bills of exchange by conduct. 12Minn LawRev129.

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

In action to recover damages for loss sustained because of false representations in sale of note and chattel mortgage and for breach of a warranty to collect the *same, evidence held to support verdict for plaintiff.* Eidem v. D., 185M163, 240NW531. See Dun. Dig. 941(32).

**7109. Liability of general indorser.**

173M325, 217NW381.

Where a person steals a certificate of deposit and forges the payee's indorsement thereon and cashes it at the bank which in turn delivers it to the issuing bank and receives the amount thereof, both banks are liable to the payee in an action for conversion. Moler v. S., 176M449, 123NW780.

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

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. 947.

As between owner of stock pledged by borrower without knowledge of owner and person signing as surety before delivery of note, such surety held not partner of borrower, as affecting primary liability on note, and right to exoneration of stock pledged. Stewart v. B., 195M543, 263NW618. See Dun. Dig. 944.

Pledgor of stock and endorsers held cosureties and each entitled to contribution. Id.

Where plaintiff in action on note failed to plead that note had been presented for payment, dishonored, and that notice of dishonor had been given to indorser, or that there had been a waiver of presentment and notice of dishonor, or other circumstances showing that presentment and notice was not required, it was enough for indorser to stand upon his general denial. Allen v. C., 204M295, 283NW490. See Dun. Dig. 1038.

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. 943a.

Effect of an assignment indorsed on the back of commercial paper—liability of transferor. 16MinnLawRev 702.

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

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

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

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

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

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

ARTICLE VI. PRESENTMENT FOR PAYMENT

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

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

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

173M83, 216NW531; note under §7113.

**7116. Place of presentment.**

Restatement of conflict of laws as to domicile and Minnesota decisions compared. 15MinnLawRev668.

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

173M83, 216NW531; note under §7113.

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

173M325, 217NW381.

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

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

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

ARTICLE VII. NOTICE OF DISHONOR

**7139. Form of notice.**

Oral notice of presentment and dishonor is enough. Allen v. C., 204M295, 283NW490. See Dun. Dig. 920.

**7152. Waiver of notice.**

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

Presentment and notice may be waived. Allen v. C., 204M295, 283NW490. See Dun. Dig. 897.

**7153. Whom affected by waiver.**

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

**7158. When notice need not be given to indorser.**

Presentment to and dishonor by indorser is enough. Allen v. C., 204M295, 283NW490. See Dun. Dig. 897a.

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

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

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

ARTICLE VIII. DISCHARGE OF NEGOTIABLE INSTRUMENTS

**7162. Instrument—How discharged.**

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

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

Giving of note is conditional payment of old note only, in absence of express agreement. First Nat. Bank v. O., 188M87, 247NW387. See Dun. Dig. 7444.

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.

Equitable assignment resulting from drawing of draft and conduct of drawee is not nullified simply because draft, which is but part of proof, is surrendered for cancellation, where a new draft is immediately issued in its place and for same fund. Baird v. S., 193M79, 258NW570. See Dun. Dig. 896.

In an action on a note evidence held sufficient to sustain judgment for defendant on a counterclaim for merchandise furnished plaintiff. Kubat v. Z., 193M522, 259 NW1. See Dun. Dig. 7611.

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

Transfer of note to maker as collateral security as constituting a discharge. 20MinnLawRev308.

**7163. When person secondarily liable on, discharged.**

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

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

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

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.

**7165. Renunciation by holder.**

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. 941, 1765, 1768.

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

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

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 chattel mortgage not being a negotiable instrument, effect of alteration is not controlled by negotiable instrument law. Hannah v. S., 195M54, 261NW583. See Dun. Dig. 259.

TITLE II. BILLS OF EXCHANGE

ARTICLE I. FORM AND INTERPRETATION

**7169. Bill of exchange defined.**

173M83, 216NW531; note under §7113.

Op. Atty. Gen., Nov. 18, 1931; note under §7161.

A check is not money within meaning of §§4439, 4440. Op. Atty. Gen. (349h), Jan. 5, 1935.

**7170. Bill not an assignment of funds in hands of drawee.**

Equitable assignment resulting from drawing of draft and conduct of drawee is not nullified simply because draft, which is but part of proof, is surrendered for cancellation, where a new draft is immediately issued in its place and for same fund. Baird v. S., 193M79, 258NW570. See Dun. Dig. 896.

While a draft, drawn generally, will not of itself operate as assignment of anything in hands of the drawee, yet, if latter is given notice that draft was intended to vest in payee an interest in, or a right to receive, funds coming into his hands from designated goods, and with such notice drawee takes goods and sells them, he is liable to payee; latter being an equitable assignee of that portion of fund called for by draft. Id.

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

173M83, 216NW531; note under §7113.

Op. Atty. Gen., Nov. 18, 1931; note under §7161.

ARTICLE IV. PROTEST

**7202. When protest dispensed with.**

Whether farmer living 7½ miles from town presented a check for payment within reasonable time, held for jury. 181M104, 231NW789.

## TITLE III. PROMISSORY NOTES AND CHECKS

ARTICLE I.

**7227. Promissory note defined.**

A written agreement for the extension of a loan secured by a mortgage does not supplant the original note as the primary evidence of debt to the extent that its possession by a broker is any evidence of authority to collect on behalf of the mortgagee. 176M399, 223NW459.

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

In action on note evidence held insufficient to establish agreement to extend time for payment. Northwestern Nat. Bank v. C., 195M98, 262NW161. See Dun. Dig. 902.

**7228. Check defined.**

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

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

A check is not money within meaning of §§4439, 4440. Op. Atty. Gen. (349h), Jan. 5, 1935.

Identification of the holder and tender of receipt on the counter-presentation of checks. 13MinnLawRev281.

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

173M83, 216NW531; note under §7113.

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

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

Whether farmer living 7½ miles from town presented a check for payment within reasonable time, held for jury. 181M104, 231NW789.

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

**Delay in presentment of check as payment of debt. 16 MinnLawRev701.**

Death of a drawer of a check. 14MinnLawRev124.

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

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

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

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

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

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

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

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

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

When does a check operate as an assignment? 14MinnLawRev157.

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

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

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

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

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

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

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

The Federal Reserve Bank of Minneapolis, under Regulation J. Series 1920, of the Federal Reserve Board, and its own Circular 228, and the custom of the region in which it operated, was authorized to forward in its district, for payment and return of proceeds, checks sent it by another federal reserve bank or directly by a member bank. It was not required to exact currency in payment. It might accept exchange. Osage Nat. Bank v. F., 184M111, 238NW44. See Dun. Dig. 7446.

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

Where a check made to A was, through error or otherwise, received by B, and C endorsed check as receiver of A, and C was in fact receiver of B and had no connection with A, and gave check to defendant bank for collection, and check was subsequently collected and paid by defendant bank to C as receiver of B, as a matter of law bank had knowledge that B, whom it knew C to represent, was not the payee, and was guilty of conversion. Northwestern Upholstering Co. v. F., 193M333, 258NW724. See Dun. Dig. 794.

A bank in which a check drawn on another bank is deposited is only a collecting agent, and such agency is revoked where bank goes into hands of commissioner before check is collected, and commissioner has no authority to collect the check, and having done so the money does not become an asset of the bank but belongs to the depositor, who is entitled to a preferred claim, which he does not lose through election of remedy by filing only general claims under advice of the department. Bethesda Old People's Home v. B., 193M589, 259NW384. See Dun. Dig. 794.

A bank forwarding a draft for collection to a properly selected correspondent bank is not liable to drawer upon collection until it has had an opportunity to withdraw funds collected by its correspondent bank and credited to it. Such withdrawal, however, must be accomplished as quickly as a draft could be collected in ordinary course of business had collection been remitted by draft instead of being credited to forwarding bank's account. Bay State Milling Co. v. H., 193M517, 259NW4. See Dun. Dig. 794.

Sending check directly to drawee bank by mail. 12 MinnLawRev744.

**Right of insolvent depositary bank to set-off against claim of insolvent correspondent. 18MinnLawRev792.**

## TITLE IV. GENERAL PROVISIONS

ARTICLE I.

**7235. Definitions and meaning of terms.**

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

An endorsee "for collection" of a negotiable instrument is real party in interest who may bring action. Farmers Nat. Bank v. B., 198M195, 269NW409. See Dun. Dig. 1034.

Action on a bill or note payable to bearer, or endorsed in blank, may be maintained in name of nominal holder, possession being prima facie evidence of his right to sue, and cannot be rebutted by proof that plaintiff has no beneficial interest, or that others are interested in the proceeds, or by anything else but proof of mala fides. Northwestern Nat. Bank & Tr. Co. v. H., 286NW717. See Dun. Dig. 1034.

**7237. Reasonable time, what constitutes.**

Whether farmer living 7½ miles from town presented a check for payment within reasonable time, held for jury. 181M104, 231NW789.

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

**7239. Application of act.**

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

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

MISCELLANEOUS PROVISIONS

**7242. Contracts due on holidays, etc.**

Public business transacted on a legal holiday is legal in case of necessity, existence of which will be presumed in absence of a showing to contrary. Ingelson v. O., 199 M422, 272NW270. See Dun. Dig. 3433, 3436, 9064.

**7243. Following day deemed holiday, when.**

Where memorial day falls on Sunday, custom of observing following day as memorial day does not warrant treasurer in accepting payment of first half of taxes without penalty on June 1st. Op. Atty. Gen (276f), May 26, 1937.

**7247. Instrument obtained by fraud.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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# CHAPTER 52

## Partition Fences

**7248. Fence viewers.**

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

County board may compel construction of party line fences in territory where townships have been dissolved. Op. Atty. Gen. (434a-4), Sept. 24, 1936.

Provisions relating to partition fences do not apply to land forfeited to state for taxes. Op. Atty. Gen. (631h), May 23, 1938.

**7249. One barbed wire permitted with woven wire as a legal fence.**

Where owner of land fences parts of three sides, adjoining owner on fourth side is required to erect and maintain a similar fence of like character and quality for distance of one-half of fourth side. Op. Atty. Gen. (631f), June 27, 1938.

**7250. Occupants to maintain.**

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

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

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

Right to fence on a section line depends upon whether or not a roadway legally exists. Op. Atty. Gen. (631h), July 18, 1939.

**7266. Viewers in counties not divided.**

County board may compel construction of party line fences in territory where townships have been dissolved. Op. Atty. Gen. (434a-4), Sept. 24, 1936.

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# CHAPTER 53

## Estrays and Beasts Doing Damage

BEASTS DOING DAMAGE

**7274. Who may distrain.**

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

**7275. Notice to owner.**

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

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

MISCHIEVOUS DOGS

**7284. Owners or keepers of dogs liable for damage done.**

Liability of owners or keepers of animals. 22MinnLaw Rev1042.

**7285. Keeping after notice.**

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

Section is a criminal statute and may be enforced in justice court. Op. Atty. Gen. (146f), Dec. 9, 1936.

**7286. Dogs worrying livestock or poultry.**

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

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