CHAPTER 334

MONEY AND RATES OF INTEREST

334.01 RATE OF INTEREST.

HISTORY. 1879 c. 66 s. 1; 1887 c. 66; G.S. 1878 Vol. 2 (1888 Supp.) c. 23 s. 1; G.S. 1894 s. 2212; 1899 c. 122; R.L. 1905 s. 2733; G.S. 1913 s. 5805; 1923 c. 70 s. 1; G.S. 1923 s. 7036; M.S. 1927 s. 7036.

1. Generally

2. Usury

1. Generally

Where a note provided for interest at rate of three per cent until maturity, and at the rate of five per cent on the principal and interest thereafter until paid, the amount recoverable is interest at three per cent until default; and as damages, the same rate on the principal until judgment. Mason v Callender, 2 M 350 (302).

The rate stipulated in a contract is the legal rate governing only until maturity; the damages allowed for a breach are the statute rate and not rate agreed on for interest before maturity. (Changing, as to rate, see Mason v Callender, 2 M 350). Talcott v Marston, 3 M 339 (238).

Where a party inserts a penal clause in a note, secures it by mortgage, and suffers a foreclosure by advertisement to be made without objection, and the mortgagee purchases the land at the full amount, including the penalty, the mortgagor cannot recover back the surplus by action at law, nor by way of counterclaim, to an action in favor of the mortgagee. Culbertson v Lennon, 4 M 51 (26).

Scrip, or other evidence of debt, bearing interest at 12 per cent, being legalized, the interest recoverable is 12 per cent until maturity, and seven per cent thereafter. McCutchen v Town of Freedom, 15 M 217 (169).

Where a note provided for payment one year from date, without interest, held, that after maturity, interest at the legal rate was allowable as damages for detention of money after due, and was not a different rate after maturity. Owsley v Greenwood, 18 M 429 (386).

Upon a settlement and accounting of sundry notes, all drawing interest at more than seven per cent per annum, and all overdue, the amount of principal and interest owing was computed according to the terms of the notes; the debtor admitted such sum to be due from him, and voluntarily gave his notes therefor. Held, he was liable for the face of such notes, and entitled to no deduction, although included therein was interest, after maturity, upon the principal of the old notes. Martin v Lennon, 19 M 67 (45).

A contract cannot bear a different rate of interest after due than before; and where a note bore no interest before maturity, and the highest legal rate after, the interest recoverable is at the legal rate. Newell v Houlton, 22 M 19.

Notes, bearing no more than the highest rate of interest allowed by law before maturity, provided that after maturity they should bear the highest rate, and attorney's fees, if placed in the hands of an attorney for collection. Held, effect of such provision is to provide for a higher rate of interest after maturity than before, and the rate should be reduced to the legal rate. White v Iltis, 24 M 43.

Interest is not allowed on interest stipulated in a contract which has fallen due. Dyar v Slingerland, 24 M 267.

Interest is recoverable upon overdue interest coupons, and the holder of such coupons, bearing interest at the legal rate, is entitled to recover the amount of them according to their terms, the stipulated interest being the same as the legal rate allowed by law as damages for default in payment of the principal. Welsh v First Div. St. P. & Pac. Ry. Co. 25 M 314.

Damages for a conversion of bonds included interest at the legal rate upon coupons from time of their maturity until judgment. City of Winona v Minn. Ry. Constr. Co. 29 M 68, 11 NW 228.

A note providing for interest at the highest legal rate from date until paid, seven per cent if paid when due, in legal effect calls for seven per cent from date until paid, the increase being a penalty, providing for a higher rate of interest after maturity than before. Smith v Crane, 33 M 144, 22 NW 633.

Where a note provides for the highest legal rate of interest after maturity, it bearing the same rate before maturity, as evidenced by coupon interest notes, interest is chargeable after maturity at the stipulated rate. As to such coupon interest notes, which by their terms are to bear interest after maturity at the highest legal rate, only the legal rate is chargeable. Holbrook v Sims, 39 M 122, 39 NW 74.

A note provided for interest at seven per cent, with the further provision that if the interest was not paid when due, the principal shall become due at once, at the option of the holder, and shall bear interest at the rate of ten per cent after maturity. The note was secured by a mortgage, providing if default in any payment of interest, the sum secured should be due at once, at the option of the owner. Held, the contract was usurious on its face, as to all interest secured thereby, and its collection cannot be enforced by the foreclosure of the mortgage. Chase v Whitten, 51 M 485, 53 NW 767.

The provision in a contract for an increase of interest after maturity works a forfeiture of the interest reserved but does not render the contract void in toto. Chase v Whitten, 62 M 498, 65 NW 84.

Where, by agreement, a contractor was to be allowed all sums expended in doing work and in addition, ten per cent of these sums for his compensation for superintending the work, it was held he could not enforce an alleged subsequent agreement for an additional ten per cent on an amount which he paid with his own money, because an agreement to pay more than the legal rate for the use of money cannot be enforced, unless it is in writing; and further, an agreement to pay more than the maximum rate allowed by law is usurious and void. Swank v G. N. Ry. Co. 63 M 258, 65 NW 452.

Where a mortgage, by its terms, draws interest at the rate of five and one-half per cent, and is foreclosed, the mortgagor to redeem must pay the sum for which the property was sold, together with interest at the legal rate from the time of the sale. Evans v Rhode Island Hosp. Trust Co. 67 M 160, 69 NW 715, 1069.

An oral agreement to pay a greater rate of interest than the legal rate cannot be enforced except to the extent of the legal rate. Staughton v Simpson, 72 M 536, 75 NW 744.

Plaintiff built an extension to defendant's street car line, furnished cars for it, and defendant, by means of its power house and power plant, operated the extension in connection with its own line. By the terms of the contract providing therefor, plaintiff was to pay a fair proportion of the interest on the investment of defendant in its power house and equipment and in car houses and equipment. Held, a reasonable interest on the investment should be paid, and not the legal rate on the indebtedness incurred in constructing such property, nor the rate the company then paid, or is now paying, on any such indebtedness. Lakeside Ry. Co. v Duluth St. Ry. Co. 78 M 129, 80 NW 831.

A note dated December 12, 1888, bearing interest at rate of eight per cent until maturity, in which maker agrees to pay interest upon such interest after it matures, draws interest at the rate of eight per cent from date, upon the principal sum only. Lee v Melby, 93 M 4, 100 NW 379.

In an action for damages for fraudulent representations in a sale of a stallion, interest, as a legal incident to the demand of damages, is recoverable on the amount allowed as damages, from the time of the sale. Jones v Burgess, 124 M 265, 144 NW 954.

Where a corporation, organized in South Dakota but having its principal place of business in Minnesota, gave its notes, providing for a higher rate of interest after maturity, to a Montana corporation, and to secure payment of the notes gave a mortgage in the form of a trust deed on land in Montana, to a trust com-

pany in Minnesota, it was held, though the negotiations were had in Minnesota the notes executed and payable there, and the trust deed executed there, there being no exprssed or actual intent as to which state law should govern the transaction, to either of which it could properly be referred in part, and no attempt to evade the usury law, the court will presume that the law of the state which upholds the transaction is the law intended by the parties, and is the proper law of the contract. Green v N. W. Trust Co. 128 M 30, 150 NW 229.

Generally, usury is a question of fact, but where it appears from undisputed facts that the amount received by the maker of a note with interest computed at the highest legal rate, is less than the amount which he agreed to pay for the loan, usury is a question of law. Rantala v Haish, 132 M 323, 156 NW 666.

A provision for interest in a contract, invalid under an existing statute, may be rendered valid by a subsequent statute, as the defense of usury is not a vested right. Jenkins v Union Svgs. Ass'n, 132 M 19, 155 NW 765.

Held, where Wisconsin residents were parties to a note, bearing a greater rate of interest after maturity than before, executed and made payable in Wisconsin, and secured by a mortgage on land situated in Minnesota, that the note was a Wisconsin contract, and the interest was not forfeited. Greenfield v Taylor, 141 M 399, 170 NW 345.

The compounding of interest on policy liens is not a violation of the statute. Bean v Minn. Mut. Life Ins. Co. 151 M 41, 185 NW 946.

A note bearing the highest legal rate of interest, and providing for a five per cent collection fee if not paid when due, and a $10.00 attorney's fee if suit was commenced, is not usurious. First Nat'l Bank of Herman v Cargill Elev. Co. 155 M 30, 192 NW 111.

The effect of taking usury by national banks is fixed by congress and not by state laws, and it does not make the contract void. First Nat'l Bank of Herman v Cargill Elev. Co. 155 M 30, 192 NW 111.

The provision in a note, for an increase in the rate of interest and for reasonable attorney's fees, if not paid at maturity, does not render it non-negotiable, but does work a forfeiture of all interest. Goedhard v Folstad, 156 M 453, 195 NW 281.

Usury is a question of fact and must be left to the jury. Where there is no dispute in the testimony and the evidence shows a direct contract whereby, for a loan, the lender exacts a usurious bonus or excessive interest, the intent to evade the law is presumed, and usury becomes a question of law. Strickland v First State Bank of Balaton, 162 M 235, 202 NW 727.

Provision in a note for a higher rate of interest after maturity than before, works a forfeiture of the interest, but does not render the note non-negotiable as to the principal sum. Allen v Cooling, 161 M 10, 200 NW 849.

The burden is upon the party alleging the charge of usury to negative by competent proof every fact which, if true, would render the transaction lawful. Hobart v Michaud, 167 M 1, 208 NW 19, 209 NW 39.

Plaintiff sent drafts in the amount of $5,872.20, drawn on a grain company, to defendant, the W. State Bank, for collection; being unable to pay them when presented, in return for the drafts the grain company gave its check to defendant for their amount, drawn on a Mankato bank in which it had on deposit $1,000, and forwarded to the Mankato bank checks and drafts for deposit to be specially applied to payment of the check, which the Mankato bank refused to credit to the grain company until collected, whereupon it was agreed between the Mankato bank, the grain company, and defendant, that the Mankato bank should proceed to collect them, placing the proceeds to the credit balance of the grain company and when it was sufficient, pay the check. One of the checks, on the W. National Bank, was sent to defendant for collection, which defendant collected, retaining the money in its possesion. Subsequent to the agreement a receiver was appointed for the grain company, who claimed the funds collected by the Mankato bank and the defendant. In an action by plaintiff for the face value of the drafts, the Mankato bank and the receiver were made defendants. Held, defendant had a lien on the money in its and the Mankato bank's possession; but it was error for the lower court to charge the Mankato bank interest on the money in the possession of defendant, and award it to defendant, as the Mankato bank never had the use

of the money, or had it in its keeping or under its control. Mchts. Nat'l Bank of St. Paul v State Bank of Worthington, 172 M 24, 214 NW 750.

Residents in Iowa executed their notes, secured by a mortgage on a farm in Minnesota, for money loaned to them by plaintiff, residing in Wisconsin. The notes provided for interest at five per cent before maturity, and eight per cent thereafter, and were on Iowa forms on which the provision for payment at an Iowa bank was stricken and a provision for payment at a bank in Minnesota inserted. In an action to foreclose the mortgage because of default, held, where there is a conflict of law, the general rule that a contract is to be governed by the law of the place of performance, must yield to the presumption that the parties intended to contract with reference to the law of the state in which the contract would be valid. Mueller v Ober, 172 M 349, 215 NW 781.

Where an agreement to pay interest is found, but the testimony does not show the rate agreed upon, the rate of interest is the legal rate fixed by statute. Klaseus v Meester, 173 M 468, 217 NW 593.

Notes signed by makers and guarantors in Minnesota, sent to and payable in Chicago, are governed, as to interest and usury, by the laws of Illinois. Gilbert v Fosston Mfg. Co. 174 M 68, 216 NW 778, 218 NW 451.

A partner contributing more than his share of the partnership funds, is not entitled to interest on the excess unless there is an agreement to that effect. Riebel v Mueller, 177 M 602, 225 NW 924.

A note bearing a greater rate of interest after maturity than before, payable in Wisconsin, is governed by the laws of that state; under Minnesota law, the interest would be forfeited. Moller v Sybilrud, 180 M 326, 230 NW 812.

A surety company, through subrogation, having the rights of the state against an insolvent bank, is entitled to interest on a preferred claim, at the contract rate, after default as well as before, and not the legal rate. American Surety Co. v Peyton, 186 M 588, 244 NW 74.

Workmen's compensation liability arises from the contract of employment; unpaid instalments bear interest at the legal rate from the date when they should have been paid. Brown v City of Pipestone, 186 M 540, 245 NW 145.

Where a creditor intentionally exacts or takes a note or instrument for the forbearance of money, providing for the payment to him of a sum greater than the amount owing and $8.00 on $100.00 for one year, the jury or trier of facts may find usury. Cemstone Products Co. v Gersbach, 187 M 416, 245 NW 624.

A surety on an official bond is liable for interest only from the date of notice of a breach thereof, or demand made thereon. County Bd. of Education v Fogarty, 191 M 9, 252 NW 668.

A surety on an official bond is liable for interest only from the date of notice of a breach thereof, or demand made thereon. County Bd. of Education v Fogarty, 191 M 9, 252 NW 668.

Where a borrower, in consideration of $150.00 paid to him, gives the lender a note for $190.00, with interest thereon at the rate of eight per cent per annum, the loan is prima facie usurious; and if the lender performed any services for the borrower which entitled him to retain the sum of $40.00, the burden of proving that such services were reasonably worth the sum so retained, rested upon the lender. Adjustment Service Bureau, Inc. v Buelow, 196 M 563, 265 NW 659.

Where a manager of plaintiffs' farm invested surplus moneys as soon as good investments were available, and was under no duty to remit as he collected the money, he was not chargeable with interest on funds not invested. Patterson v Roth, 199 M 157, 271 NW 336.

Where a mortgage provided for interest at six per cent, an acceleration clause providing that after default, all sums due should bear interest at the highest rate permitted under the laws of this state, did not increase interest rate after maturity, because under statute, the highest rate would be six per cent. Investors Syndicate v Baskerville Bros. Holding Co. 200 M 461, 274 NW 627.

The reason 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 the ideal of equality is served, interest is properly allowed. Equitable Hold. Co. v Equitable B. & L. Ass'n, 202 M 529, 279 NW 736.

A debtor's obligation to pay interest as damages for detention of the debt is not cut off by suspension of business or receivership. Equitable Hold. Co. v Equitable B. & L. Ass'n, 202 M 529, 279 NW 736.

Where a note, executed and payable in Wisconsin, by a resident of Minnesota, was secured by a chattel mortgage on property then in Wisconsin, and such note was valid in Wisconsin, though usurious in Minnesota, the law to be applied in determining the questioned validity of the mortgage is that intended by the parties; and in the absence of evidence of express intent, it will be presumed that the parties intended to be applied, either the law of the place of performance of the contract questioned, or the law of that one of the states having contacts vital to the transaction, which would make the contract enforceable. State v Rivers, 206 M 85, 287 NW 790.

The imposition of the legal rate of interest is, under our statute, in lieu of all other damages. State v Tri-State Tel. & Tel. Co. 209 M 86, 295 NW 511.

A note, payable in 18 months, providing for interest for first six months at four per cent, the second six months at five per cent, and the last six months at six per cent per annum, and after maturity, the highest rate enforecable under the statute, does not stipulate for a higher rate of interest after maturity than before so as to forfeit all interest; nor was there found any agreement for such increase made after the delivery of the note. Myhre v Severson, 211 M 189, 300 NW 605.

Where a trustee fails to pay over to the beneficiary property or funds, the court may, upon equitable principles, award the beneficiary interest as compensation to make him whole. Griffin v First National, 218 M 206, 15 NW(2d) 590.

Where the deed tendered did not comply with the contract, and an action was brought to enforce specific performance, the failure of the defendant to comply with the contract on demand, tolled the interest as to plaintiff's payments. Pettyjohn v Bowler, 219 M 55, 17 NW(2d) 83.

Where, by an agreement, a bank paid a railroad company one-fourth per cent interest on money deposited with it in a checking account, and the bank wrongfully set off money so deposited against unmatured bonds of the railroad company held by the bank, as to such money, the bank was required to pay the legal six per cent rate of interest, and not the one-fourth, because the agreement related to money in the checking account, and not to money deducted therefrom. Lowden v N. W. Nat'l Bank & Trust Co. 86 F(2d) 376.

Whether the retention of $25,000, to cover commissions, etc., rendered bonds and coupons payable in Minnesota usurious, was governed by the laws of Minnesota. Amer. Clearing Co. v Walkill Stock Farms, 293 Fed. 58.

Six per cent is the maximum rate of interest that may be paid on town orders. 1934 OAG 864, June 26, 1933 (442b-5).

Credit unions cannot collect fines on delinquent payments, in addition to interest. 1938 OAG 183, Jan. 7, 1938 (92a-28).

Interest; option to pay lower rate as affecting negotiability. 2 MLR 385.

Conflict of laws as to contracts. 13 MLR 544.

2. Usury

It matters not what device or shift is used, or what is the form of the transaction, if there is in fact a loan and an illegal rate of interest reserved, there is usury. State Bank of Northfield v N. W. Sec. Co. 159 M 508, 199 NW 240.

To constitute usury, there must be a loan, with an agreement to repay with greater than legal interest. State Bank of Northfield v N. W. Sec. Co. 159 M 508, 199 NW 240.

A mere discount or sale of commercial paper, though the buyer makes more than the legal rate, is not usurious; but a transaction in the form of a sale or discount, at a rate greater than the legal rate of interest, if in fact a loan, is usurious. State Bank of Northfield v N. W. Sec. Co. 159 M 508, 199 NW 240.

Evidence sustains the finding that a transaction in which the attorney for a borrower received a check for $1,500, and gave back a check for $100.00, to be paid out of the money so received, was usurious. Keifer v Nash, 161 M 525, 201 NW 442.

It is not usury to pay excessive interest for the past use of money. Strickland v First State Bank of Balaton, 162 M 235, 202 NW 727.

Unless there is a loan, or a contract, which is usurious at its inception, usury does not exist. Strickland v First State Bank of Balaton, 162 M 235, 202 NW 727.

Where an obligation to take over and pay the face amounts of notes, with interest, was limited to $11,000, and could not accrue for at least a year after the date of the contract, interest was not allowable from the date of the contract. Breher v Beiseker, 163 M 76, 203 NW 518.

Evidence sustains the verdict that a loan was usurious, and that it was exacted by the bank. Citizens State Bank of St. Paul v Wade, 165 M 396, 206 NW 728.

Where a mortgage was made to a third person, without consideration, and assigned in blank, and several months later, the names of assignees were filled in who paid a sum that would make the transaction usurious if it was a loan, the finding is sustained that the transaction was a bona fide purchase of the mortgage. Pleason Realty & Inv. Co. v Kleinman, 165 M 342, 206 NW 645.

A sum retained by the lender, from the amount of a loan, was held a reasonable charge and made in good faith for his services in examining and placing a security value on land, mortgaged as security for the loan, and did not render the transaction usurious. Hobart v Michaud, 167 M 1, 208 NW 191, 209 NW 39.

Payment of a commission to the agent of the borrower, by the lender, does not render a loan usurious. Hobart v Michaud, 167 M 1, 208 NW 191, 209 NW 39.

The retaining by the lender, with the assent of the borrower, of a sum out of the amount loaned, for services rendered by the lender to the borrower, and not for the use of the money, does not render the transaction usurious. Hobart v Michaud, 167 M 1, 208 NW 191, 209 NW 39.

The selling of a note at a usurious discount does not relieve the makers from their obligation, if they were not parties to the usury, but received full value for their obligation. Lake St. Sash & Door Co. v Verin, 169 M 332, 211 NW 161.

Where a contract provided for ten per cent for all money advanced, and five per cent of the gross receipts, finding is sustained that the amount paid above the legal rate of interest, on the money advanced, was a reasonable compensation for aid and services rendered in carrying out the terms of the contract. Bowman v Kohlhase, 170 M 8, 211 NW 828.

An agreement by the borrower, to pay the expense of title insurance, and guaranty of payment of his notes by a surety company, is not usury. Hatcher v Union Trust Co. of Maryland, 174 M 241, 219 NW 76.

Where a broker is the agent of the borrower, an agreement to pay a commission does not constitute usury. Hatcher v Union Trust Co. of Maryland, 174 M 241, 219 NW 76.

A conveyance of land and a contract by which the seller was to repurchase at a sum in excess of the purchase price, was held a device to cover usury. Schrump v Jennrich, 174 M 204, 219 NW 86.

Evidence sustains finding that one who sold accommodation paper, without disclosing its true character and at a discount sufficient to constitute usury, was a trader acting for himself, and not the agent of either party. Martin v Hallen, 177 M 491, 225 NW 443.

Where after deducting the expenses of title insurance, guaranty of notes by a surety company, and trustees' fees, the return on the loan to the lender is less than eight per cent, there is no usury. Palmer v First Mpls. Trust Co. 179 M 381, 230 NW 257, 258.

It is not usury to include in a note a reasonable sum in payment of past services; evidence held insufficient to show any intent to exact usury. Clausen v Salhus, 185 M 403, 241 NW 56.

Mortgage note coupons, representing an annual interest of $825.00, bore a provision, stamped on the back, that if paid at maturity, $750.00 would be accepted for each; held, they did not show an increase of the rate of interest after maturity. Bolstad v Hovland, 187 M 60, 244 NW 338.

To constitute usury, there must be a corrupt intent on the part of the lender, or one who grants credit or forbearance. Such corrupt intent consists in the intent

to take or receive more for the forbearance of money than the law permits, whether or not the taker knows he is violating the usury law. Cemstone Products Co. v Gersbach, 187 M 416, 245 NW 624.

To the defense of usury, where as various payments were made on the principal and interest of a note, new notes were executed for the remaining balances, one of which bore interest at one-half per cent more than the original, and another one-half per cent less, a demurrer was sustained. Northwestern Nat'l Bank v Chas. H. Wood Co. 195 M 98, 262 NW 161.

The intent to do something, which when carried out results in usurious compensation for the loan of money, results in usury, whether or not the lender at the time of making the loan, considered it usury. Adjustment Service Bureau v Buelow, 196 M 563, 265 NW 659.

Courts look to the substance and effect of transactions. There is no shift or device on the part of the lender to evade the law under or behind which the law will not look to ascertain the real nature and object of the transaction. Adjustment Service Bureau v Buelow, 196 M 563, 265 NW 659.

An oral promise or agreement to pay a promissory note, having a fixed due date, in instalments before due, is invalid and cannot be shown to vary the terms of the note for the purpose of showing usury, where no usury has actually been taken or received by the lender. Blindman v Industrial L. & T. Corp., 197 M 93, 266 NW 455, 267 NW 143.

Where a purchaser of an automobile, under a conditional sales contract which was assigned to a finance company, was in default, and entered into an agreement with a second finance company, whereby the second company paid the $316.00 balance due the first company, and the assigned contract was modified so that $420.00 was payable in 18 months; held, the contract was void because usurious. Bangs v Midland Loan & Finance Co. 200 M 310, 274 NW 184.

There are three elements necessary to constitute a usurious transaction: (1) loan or forbearance of money; (2) an absolute agreement to return; (3) and an agreement to pay more than the legal rate of interest for its use. Bangs v Midland Loan & Finance Co. 200 M 310, 274 NW 184.

Under the federal farm loan act, mortgages received by defendant must contain provisions for an increase in interest rate to eight per cent per annum after default in payment of any instalment. Such increase in interest after default may not be held unlawful or usurious. The state usury statutes are not applicable to notes or mortgages executed under the federal farm loan act. McGovern v Fed. Land Bank, 209 M 403, 296 NW 473.

Usury is the receiving, securing, or taking of a greater sum or value for the loan or forbearance of money, goods, or things in action than is allowed by law. The test is whether the contract, if performed, would result in producing to the lender a rate of interest greater than is allowed by law, and that such result was intended. A sale of personal property can only be within the usury law if such sale is a device to evade the law. Seebold v Eustermann, 216 M 566, 13 NW(2d) 739.

What law determines usurious character of contract. 12 MLR 72.

Usury. 21 MLR 585.

What is usury in Minnesota. 21 MLR 586.

Regulation of business and trade; small loans. 24 MLR 255.

Conflict of laws; usury. 24 MLR 410.

334.02 USURIOUS INTEREST; RECOVERY.

HISTORY. 1877 c. 15 s. 2; G.S. 1878 c. 23 s. 3; 1879 c. 66 s. 2; G.S. 1894 s. 2213; R.L. 1905 s. 2734; G.S. 1913 s. 5806; G.S. 1923 s. 7037; M.S. 1927 s. 7037.

A borrower who has voluntarily paid to the lender any part of the principal loaned, or who has so paid interest, but not exceeding the rate of ten per cent a year, cannot compel the repayment of the same. Anderson v Scandia Bank, 53 M 191, 54 NW 1062.

Transactions in the building and operation of a hotel did not show usury, because there was no exaction of, or agreement to pay, any sum beyond the legal

rate of interest for the loan or forbearance of money. Healy v Breen, 167 M 319, 209 NW 21.

The selling of a promissory note at a usurious discount, does not relieve the makers from their obligation if in fact they were not parties to the usury, but received full value for their obligation. Lake St. Sash & Door Co. v Verin, 169 M 332, 211 NW 161.

It is immaterial that parties have neither thought, nor actual intent, as to what state law should govern a transaction, for if a contract would be a nullity in Minnesota, but valid and enforceable according to its express purpose in Illinois, it must be presumed that the parties contracted with reference to the law of the state where their contract would be enforceable according to its terms. Gilbert v Fosston Mfg. Co. 174 M 68, 216 NW 778, 218 NW 451.

Mortgage note coupons, representing the amount of annual interest, bore a provision, stamped on the back, that if paid at maturity, a lesser amount would be accepted; held, they did not show an increase of the rate of interest after maturity, recoverable under the statute, if paid. Bolstad v Hovland, 187 M 60, 244 NW 338.

Where plaintiff in replevin alleged that he was the owner and entitled to the immediate possession of a Ford automobile, describing it by motor and registration number, and the answer was a general denial, plaintiff could prove that defendant's sole claim of title and right of possession was based upon a note and conditional sales contract, illegal and void for usury. Halos v Nachbar, 196 M 387, 265 NW 26.

Where an oral agreement to pay a usurious interest remains unexecuted, it cannot be shown to vary the terms of a note. Blindman v Industrial Loan & Thrift Corp., 197 M 93, 266 NW 455, 267 NW 143.

Where a note for a loan, by its terms, was payable four months after date, with interest at six per cent, and the lender retained eight per cent of the amount loaned, an oral promise or agreement to pay the loan in four instalments, before due, cannot be enforced, and cannot be shown to vary the terms of the note for the purpose of showing usury, where no usury has actually been taken or received by the lender. Blindman v Industrial L. & T. Corp., 197 M 93, 266 NW 455, 267 NW 143.

Injunctive relief may be granted when a loan business is so conducted that, in every loan made, the usury statute is flagrantly and intentionally violated. State ex rel v O'Neil, 205 M 366, 286 NW 316.

Usury laws, which allow the borrower to recover back more than the amount of usurious interest paid, are an example of a private party's permission to recover a penalty, imposed for the violation of some law. Mayes v Byers, 214 M 54, 7 NW(2d) 403.

State court's decisions, based on state statutes, are binding on federal courts. E. C. Warner Co. v W. B. Foshay Co. 57 F(2d) 656.

Where notes involved were made and payable in Minnesota, they were Minnesota contracts, and Minnesota statutory provisions regarding interest were written into them. E. C. Warner Co. v W. B. Foshay Co. 57 F(2d) 656.

Courts will look beyond form of transaction, to its substance, in determining whether there is usury. E. C. Warner Co. v W. B. Foshay Co. 57 F(2d) 656.

Delaware statutes providing corporation shall not interpose defense of usury, held inapplicable in action in Minnesota against Delaware corporation, on Minnesota contracts. E. C. Warner Co. v W. B. Foshay Co. 57 F(2d) 656.

Where the lender, in addition to seven per cent interest on a $500,000 loan, required the borrower to purchase a residence property for $378,000 which was worth only $250,000, and $80,000 of worthless stock, the transaction was held usurious. E. C. Warner Co. v W. B. Foshay Co., 57 F(2d) 656.

Suit could not be maintained in equity to recover money paid by way of usury, after remedy at law was barred by statute of limitations. Nitkey v S. T. McKnight Co. 87 F(2d) 917.

Admissibility of parol evidence to show usurious oral agreement. 21 MLR 470.

Receivers; appointment ex parte as a method of abating a public nuisance. 23 MLR 843.

334.03 USURIOUS CONTRACTS INVALID; EXCEPTIONS.

HISTORY. 1879 c. 66 s. 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 23 s. 4; G.S. 1894 s. 2214; R.L. 1905 s. 2735; G.S. 1913 s. 5807; 1923 c. 283 s. 1; G.S. 1923 s. 7038; M.S. 1927 s. 7038.

1. Generally

A contract to pay interest is a contract to pay a compensation for the future use of money. Daniels v Wilson, 21 M 530.

A note given as extra interest to avoid the threatened foreclosure of a mortgage, already bearing the highest legal rate of interest, and sold in the due course of business to a purchaser with no knowledge of the consideration, was held a contract to pay a compensation for the past use of money, and not a contract to pay interest. It was therefore not invalid under the statute, as stipulating for interest in excess of the legal rate; also held, the purchaser, as endorsee for value before maturity, and without notice of any infirmity, was entitled to recover the full amount of the note. Daniels v Wilson, 21 M 530.

Where a lender authorized his agent to loan money, at the rate of interest allowed by law, and was to pay him nothing for his services, but authorized him to collect a reasonable compensation for his services from the borrower, and the agent made a loan bearing the interest allowed by law and retained $50.00 from the amount of the loan, either as a bonus, or a part bonus and part reasonable compensation, it was held that so far as the $50.00 was a bonus, it was unauthorized and never sanctioned by the lender receiving any part of it, and the taking was not usury on the part of the lender. Held, also, that so far as any part of the $50.00 was a reasonable compensation for services in making the loan, the taking, though authorized, was not usury. Acheson v Chase, 28 M 211, 9 NW 734.

Usury is the taking of a greater rate of interest for the loan or forbearance of money, goods, or things in action than is allowed by law. Acheson v Chase, 28 M 211, 9 NW 734.

A chattel mortgage conditioned for payment of a named sum, according to a certain note of even date, and by a clerical mistake bearing a usurious rate of

interest, where the note bore a legal rate, was held valid, as the security which the statute avoids for usury is one which, in fact, reserves or secures a usurious rate of interest, and not one which merely appears upon its face to do so. Ward v Anderberg, 31 M 304, 17 NW 630.

A stipulation in a note, for payment of an attorney's fee in case of suit, is not usurious. Harris Mfg. Co. v Anfinson, 31 M 182, 17 NW 274.

Where a lender retained a sum from the amount to be loaned, with no more reason or explanation than that shown in the evidence, the question of usury should have been submitted to a jury. Egbert v Peters, 35 M 312, 29 NW 134.

An agent who had full authority from the lender to act in the premises, and by agreement was to receive no compensation for his services, but was to make what he could of it, made a loan evidenced by a note for the amount of $125.00, for one month, retaining interest for one month, at the highest legal rate, and the sum of $6.46 as a commission; held, there being no services rendered to the borrower, or to his principal, for which a commission of $6.46 was not unreasonably large, the charge and deduction of the so-called commission were a cover for usury, and made the note and transaction evidenced by it, usurious in law. Avery v Creigh, 35 M 456, 29 NW 154.

Where the payee of a usurious note, pretending to refuse to renew it, referred the borrower to a person from whom the money to pay the note could be borrowed, and such person pretending to make the loan, took a note from the borrower, running to himself, secured by a chattel mortgage, giving him a check, which the borrower endorsed to the payee of the first note, receiving in exchange merely the old note, it was held, the new note, in fact belonging to the payee of the first note, and taken by his agent, as a substitution of the first one, the borrower could recover the value of property taken on the chattel mortgage executed to secure the new note, on the ground that it was usurious although at the time of its execution he was ignorant of that fact and supposed that it was made to secure an actual loan. It was immaterial that there was no intent on the part of the borrower to pay usury, and no knowledge that the new note was usurious. Lukens v Hazlett, 37 M 441, 35 NW 265.

A transfer by a creditor to the wife of a debtor, of property of the debtor, held as security for a usurious debt, and the taking of mortgage security from the debtor and his wife, upon the same property, to secure the same debt, does not remove the taint of usury. Exley v Berryhill, 37 M 182, 33 NW 567.

Usury laws are enacted to protect the weak and necessitous from oppression. Lukens v Hazlett, 37 M 441, 35 NW 265.

A note given for a sum agreed to be paid the payee for his services in securing a loan, by a third party, to the maker, the amount not being found to be unreasonable, was held not a cover for usury. Thomas v Miller, 39 M 339, 40 NW 358.

The fact that securities bear interest from their date, and during a reasonable interval in which an abstract is examined and approved, does not make them usurious when there is no intent to pay or exact an unlawful rate of interest. Daley v Minn. Loan & Investment Co., 43 M 517, 45 NW 1100.

A charge, made in good faith, of a reasonable amount, to cover expenses for examining a title and preparing papers necessary to secure a sum loaned, is not usurious. Daley v Minn. Loan & Investment Co., 43 M 517, 45 NW 1100.

Where notes for a loan included a usurious bonus, and after some years they were renewed for an amount including, as a bonus, compound interest on the prior indebtedness, it was held there could be no recovery as to the amount of the bonus, as it was without consideration, or usurious. Simpson v Evans, 44 M 419, 46 NW 908.

Where the general agent of a lender made a loan at the highest legal rate of interest, and by a written agreement with the borrower was to receive compensation for the loan when made, and also for each and every month after maturity, and the agent rendered no other services to the borrower for the extensions than to endorse them on the note with a rubber stamp, it was held competent to prove an oral agreement at the time of the original loan, for extensions of the note upon payment of a commission in order to determine whether there was an attempt to evade the usury law. Stein v Swensen, 46 M 360, 49 NW 55.

Statute makes no difference in the effect of reserving a larger or smaller excess above the permitted rate, and evidence was held to sustain a finding that a sum, included in a renewal note, was a part of the consideration for the renewal, and usurious. Cowles v Canfield, 49 M 496, 52 NW 135.

Finding sustained that a sum of money retained by the lender was for services rendered to the borrower, in previous transactions, and not for use of the money loaned. Held, not usurious. Swanstrom v Balstad, 51 M 276, 53 NW 648.

Where the maker of a loan drew a note, bearing interest, secured by a chattel mortgage, made the name of the payee other than his own, signed a guaranty of payment on the back, as agent, retained a sum from the amount of the loan as payment for his services, and after the note was due, accepted sums, in addition to interest, for his services in procuring extensions, there being no appearance of any person as the payee named, it was held, evidence sustained finding that the alleged agency was a subterfuge to evade the statute, the mortgage was usurious and void, and the mortgagor could recover the value of mortgaged property taken under a writ of replevin. Dade v Spalding, 52 M 356, 54 NW 591.

Where property is sold on a usurious mortgage, one who purchases at the foreclosure sale, and pays his money, without any notice of the usurious character of the mortgage, is protected as a bona fide purchaser of the property; and the same is true where, after the foreclosure sale, and before the expiration of the time of redemption, a person buys the interest or estate of the mortgagee, who bid in the property at such sale. Holmes v State Bank of Duluth, 53 M 350, 55 NW 555.

Where one buys an accommodation note of the payee, not knowing that it was accommodation paper, but supposing that it was already a valid subsisting security in the hands of the payee, the transaction is not usurious, although he bought the paper at a discount greater than the legal rate of interest. Holmes v State Bank of Duluth, 53 M 350, 55 NW 555.

Provision for attorney's fees in a contract does not make it usurious. Duluth Loan & Land Co. v. Klovdahl, 55 M 341, 56 NW 1119.

Where no times for the payment of bonuses are agreed upon, and they are made for the entire loan, it is assumed they are paid when the sum is made up by the various instalments. Smith v Parsons, 55 M 520, 57 NW 311.

Where a lender, who was requested to estimate and pay the amount needed to pay off a lien, interest on certificates, and back taxes on land, took a note for the amount he figured necessary, and included in the amount taxes for that year, though not due when the note was made, and he actually paid more than the amount of the note, it was held there was no usury. Rugland v Thompson, 55 M 466, 57 NW 205.

Where a bonus is exacted by a lender, as a consideration for making a loan, in computing interest for the purpose of determining usury, the bonus is to be deducted from the principal as of the date when it is payable, and the remainder, or what the borrower receives and retains, is to be taken as the basis for computation. Smith v Parsons, 55 M 520, 57 NW 311.

To be usurious, a contract must be so when it is made, and the test is, will it, if performed, result in securing to the lender a greater rate of interest than is permitted by law. Smith v Parsons, 55 M 520, 57 NW 311.

With an application for a loan, a borrower sent his notes, bearing interest, and a mortgage securing them, dated October 1, 1883. By agreement, February 21, 1884, the loan was accepted, to be made as of the date of the application, and paid in deferred instalments. The borrower, in addition to interest on the notes, paid a commission of $1,000 on November 4, 1884, and performed services of the value of $500.00 in soliciting life insurance. Four of the notes were sold, before maturity, to a purchaser who in good faith paid face value for them. In an action of foreclosure, it was held, the mortgage was usurious and void, but the purchaser of the notes, as a bona fide purchaser of negotiable paper, was excepted from the operation of the usury law. Smith v Parsons, 55 M 520, 57 NW 311.

For a loan of $9,000, ten notes were given for $1,620 each, bearing no interest, but providing for payment of $13.50 of the principal on the last day of each month, for ten years. The notes and mortgage securing them, provided that if the borrower should die within ten years from date, the notes remaining unpaid,

and mortgage, should be surrendered and canceled. Held, where there is a loan of money, the mere fact that the contract for its repayment is in form contingent will not exempt the transaction from the taint of usury, if the contingency thereof is not real, but colorable, and a mere device to evade the statute. Missouri, Kansas & Texas Trust Co. v McLachlan, 59 M 468, 61 NW 560.

The essential elements of usury are (1) a loan, (2) that the money is to be returned at all events, and (3) that more than lawful interest is stipulated to be paid for the use of it. Missouri, Kansas & Texas Trust Co. v McLachland, 59 M 468, 61 NW 560.

If a note and mortgage are not originally usurious, they cannot be made so by a subsequent agreement to extend the time of payment, in consideration of a payment of, or a promise to pay, usurious interest. Morse v Wellcome, 68 M 210, 70 NW 978.

Evidence sustains findings that a lender, whose son acted as her agent in the loaning of her money, intrusted money to a loan agent, to be loaned in her name, with interest at eight per cent, and the loan agent guaranteed payment of the loans. $7,000 of her money was so loaned, evidenced by seven notes of $1,000 each, with securities taken in the name of the lender. By an agreement with the loan agent, unknown to his mother, the son was to, and for some time did, receive a usurious rate of interest on all money furnished the agent, for loan. Upon an accounting, there was a settlement whereby the lender, in consideration of the notes, assigned the securities to the loan agent, and surrendered the contract of guaranty. In an action on one of the notes, it was held the transaction was free from usury, as to the loan agent, as the notes were given for an assignment of the securities, even though the lender's son, as agent, had exacted the usurious contract. Babcock v Murray, 69 M 199, 71 NW 913.

Where a borrower agreed to pay the lender a sum for his trouble and expenses in procuring a loan, and the note was drawn so that it incorrectly stated that the sum was to be paid for the use of the principal, making it appear usurious, instead of stating the actual agreement, the mortgage was held valid. Stevens v Staples, 69 M 178, 71 NW 929.

A loan for which the borrower paid the maximum interest, and in addition, paid the mortgage registry tax upon the mortgage given as security, held not usurious. Lassman v Jacobson, 125 M 218, 146 NW 350.

A mortgage is not usurious because it provides for the highest legal rate of interest, payable semiannually, nor because of providing for a collection and attorney fee. First Nat'l Bank of Herman v Cargill Elev. Co., 155 M 30, 192 NW 111.

Where an action replevining an automobile, sold on a conditional sales contract, was based not on the original contract and note for the balance of the purchase price, but on a second subsequent contract where for a sum, in addition to the interest on the note, an extension of time was granted; it was held, there was no error in submitting as the sole issue, whether the maker of the note had proven the last contract void for usury, nor was there error in refusing to direct a verdict for the seller, based on the proposition that usury in the extensions did not invalidate the original sales contract. I. J. Bartlett Co. v Ness, 156 M 407, 195 NW 39.

If the original debt and security is free from usury, any extension of time by a substituted usurious security does not preclude the holder of the debt from resorting to the original security. I. J. Bartlett Co. v Ness, 156 M 407, 195 NW 39.

A note executed by a mine company, providing for payment, with interest, out of the first clean-up made by it, and agreeing to issue and deliver stock as soon as it shall be authorized by another state to issue its capital stock, was held payable only on a contingency, and not usurious; also held, that money paid on the note could not be recovered. Ordway v W. T. Price, 156 M 160, 194 NW 321.

Where corporate stock, listed and salable on any business day, was in form, sold at a price in excess of its market value, and a note, bearing the highest legal rate of interest, was taken for the purchase price, with pledged securities, it was held the evidence sustained the finding that the transaction was in fact a loan, and usurious; also held that the borrower may have affirmative relief under our statute, which makes a usurious transaction void, and provides for a can-

celation, without restoring the money received, as a condition to relief. Trauernicht v Kingston, 156 M 442, 195 NW 278.

The transactions in the building and operation of a hotel were held to show no usury, because there was no exacting of, or agreement to pay, any sum beyond the legal rate of interest, for the loan or forbearance of money. Healy v Breen, 167 M 319, 209 NW 21.

The acceptance of a note, secured by a mortgage, at a discount in excess of the maximum legal rate of interest, for the release of a mechanic's lien, was not usury, as a matter of law; nor was there usury as to the makers of the note, who received full value for their obligation. Lake St. Sash & Door Co. v Verin, 169 M 332, 211 NW 161.

By reason of statute, the promise of a negotiable instrument is not made conditional, and its negotiability is not destroyed, by a statement of the transaction which gives rise to the instrument. Heller v Cuddy, 172 M 126, 214 NW 924.

A note, tainted with usury, was held purged thereof, by the compromise and settlement. King v Smith, 173 M 524, 218 NW 102.

Notes signed by makers and guarantors in Minnesota, sent to and payable in Chicago, are governed as to interest and usury, by the laws of Illinois. Gilbert v Fosston Mfg. Co., 174 M 68, 216 NW 778, 218 NW 451.

Evidence sustained finding that there was no usurious loan to a borrower, but instead, a purchase of the security, at a discount, in good faith, from a third party. Francis v Christensen, 175 M 468, 221 NW 720.

A mortgage, containing an acceleration clause, was given to secure a note, with attached coupons, bearing interest at rate of five and one-half per cent; stamped on the back of the coupons, which represented an annual interest of $825.00, was a provision that if it paid at maturity, $750.00 would be accepted for each; held, they did not show an increase of the rate of interest after maturity, which if paid, was recoverable under the statute. Bolstad v Hovland, 187 M 60, 244 NW 338.

Notes, executed under an agreement by which the lender was to finance a corporation, and loan it, as needed, to carry on its business, under an arrangement whereby the lender would receive interest on all money loaned, half the salary of an officer of the corporation as long as the money was loaned, 25½ per cent of the common stock of the parent corporation, and the son of the lender was to be made a director and treasurer of the corporation, were held usurious. Fred G. Clark Co. v E. C. Warner Co., 188 M 277, 247 NW 225.

The sole question in usury is whether the lender intended to, and would, receive more than lawful interest, and the borrower agreed to pay such, regardless of whether the lender knew it was illegal; in other words, will the performance of the agreement, as made, result in the lender getting more than lawful interest from the borrower. Fred G. Clark Co. v E. C. Warner Co., 188 M 277, 247 NW 225.

Usury must be determined by the agreement, and intent, of the parties, as of the time the agreement was made. Fred G. Clark Co. v E. C. Warner Co., 188 M 277, 247 NW 225.

Where a corporation engaged in the business of advancing money to needy clients for the purpose of paying pressing bills, required a client as a condition for advancing money to pay a dentist's bill of $190.00, to give a note, signed by the dentist, for the full amount, with interest at eight per cent, and induced the dentist to accept $150.00 as payment for his claim, it was held, the lender had rendered no services which justified his retaining $40.00 from the amount of the loan, and as to the dentist, the note was usurious, and void. Adjustment Service Bureau, Inc. v. Buelow, 196 M 563, 265 NW 659.

An oral agreement to pay a note, which has a fixed due date, in instalments before due, is unenforceable and invalid, and cannot be shown to vary the terms of the note for the purpose of showing usury, where no usury has actually been taken or received by the lender. Blindman v Industrial L. & T. Corp., 197 M 93, 266 NW 455, 267 NW 143.

In an action of replevin for possession of an automobile, under default in a conditional sales contract, the defendants contended that the purchase price, inserted in the contract, after it had been signed in blank, was greater than the

sum agreed upon, and that the excess amount represented a usurious charge for interest; it was held that defendants failed to prove the defense of usury, because they attempted to show, not that the sum they agreed to pay included an illegal interest charge, but that the instrument, as drawn, did not in fact, represent the true agreement between the parties. Mpls. Discount Co. v Croff, 201 M 111, 275 NW 511.

Notes, given for loans made under the so-called Morris Plan, were held not usurious. Mesaba Loan Co. v. Sher, 203 M 589, 282 NW 823.

A statute which applies to loans thereunder, the same rate of interest permitted by the general statutes, is not a special law regulating the rate of interest. Mesaba Loan Co. v Sher, 203 M 589, 282 NW 823.

When a loan company, catering to a large class of necessitous wage earners, so conducts its business that in every loan made, the usury statute is intentionally violated, it constitutes a public nuisance, and injunctive relief may be granted. State ex rel v O'Neil, 205 M 366, 286 NW 316.

The amount of usurious interest which is more than he paid, which a borrower may recover back, is a penalty imposed for a violation of the law. Mayes v Byers, 214 M 54, 7 NW(2d) 403.

Suit cannot be maintained in equity to recover money paid by way of usury, after remedy at law is barred by statute of limitations. Nitkey v S. T. McKnight Co., 87 F(2d) 916.

Admissibility of parol evidence to show usurious oral agreement. 21 MLR 370.

Receivers; appointment ex parte as a method of abating a public nuisance. 23 MLR 843.

2. Intent

There can be no usury without a corrupt intent to take greater interest than the law allows. Ward v Anderberg, 31 M 304, 17 NW 630.

It was immaterial that there was neither intent on the part of the borrower to pay usury, nor knowledge that the renewal note was usurious. Lukens v Hazlett, 37 M 441, 35 NW 265.

Where a note for $7,500 and mortgages securing the note were executed, without consideration, to a payee, for the purpose of raising money, and were sold by the payee for $6,500 to a purchaser, who did not know that the payee did not own them, it was held, there was no usury between the maker and the payee, nor as to the purchaser, who bought in good faith, supposing he was making a purchase, and not a loan. Jackson v Travis, 42 M 438, 44 NW 316.

To charge one with usury, he must know of, and be a party to, the intent to violate the law against it. Jackson v Travis, 42 M 438, 44 NW 316.

Evidence supported finding that the payee, intentionally included in the amount of the note a sum not due, with interest, whereby he secured a greater compensation for the forbearance of the sum actually loaned than the statute allows, and that the transaction was usurious. Holman v Rugland, 46 M 400, 49 NW 189.

The law raises a presumption of usury, from the fact that the lender has reserved a greater compensation than the law allows. Holmen v Rugland, 46 M 400, 49 NW 189.

Sustained finding, that the amount, included in the renewal note, was for the purpose of securing a rate of interest greater than that allowed by law. Cowles v Canfield, 49 M 496, 498, 52 NW 135.

Where a broker, who had money of his principal for investment, which he loaned on long-time loans, after consulting his principal, was instructed not to make any more long-time loans, but if any money was paid in, to make short-time loans, made such a loan without consulting, and without the knowledge and consent of his principal, taking a note for the full amount, in the name of the principal. Held, the note was not usurious. Brainard v Prouty, 66 M 343, 69 NW 3.

It is of the essence of usury that there be a corrupt intent to take, or reserve, a greater compensation for the future use of money than is allowed by law. Brainard v Prouty, 66 M 343, 69 NW 3.

Advancing interest due dates, as to four-tenths of the ten per cent agreed upon, alone, in the absence of all other evidence of a usurious intent, did not establish a corrupt design, nor did it condemn the transaction as usurious. Swanson v Realization & Debenture Corp., 70 M 380, 73 NW 165.

The finding of the trial court, that the transaction was not a loan, but a purchase of land by defendant, and sale thereof to plaintiffs, was held not sustained by the evidence, and the transaction was usurious. Hagan v Barnes, 92 M 128, 99 NW 415.

A person is presumed to have intended the necessary consequences of his acts. Hagan v Barnes, 92 M 128, 99 NW 415.

Where an application for a loan was made to a corporation, submitted by it to another, which made the loan, and a note for a bonus was given to the first corporation, held, assuming the relation of the two corporations was such that the bonus, paid to the one, inured to the benefit of the other, there was no intent to exact usury, and the transaction was not usurious. Wetsel v Guaranteed Mortgage Co., 195 M 507, 263 NW 543.

It is an essential element of usury that the lender must intend to receive more in return for the loan than the law allows. Wetsel v Guaranteed Mortgage Co., 195 M 509, 263 NW 605.

If parties intentionally provide for a greater compensation for the use of money than the law allows, the intent is presumed. Wetzel v Guaranteed Mortgage Co., 195 M 509, 263 NW 605.

The intent to do something, which when carried out, results in usurious compensation for the loan of money, results in usury, whether or not the lender at the time of making the loan, considered it as usury. Adjustment Service Bureau v Buelow, 196 M 563, 265 NW 659.

Where a borrower, in consideration of $150.00 paid to him, gives the lender a note for $190.00, with interest thereon at the rate of eight per cent per annum, the loan is prima facie usurious. Adjustment Service Bureau v Buelow, 196 M 563, 265 NW 659.

There is a rebuttable presumption that all violations are intentional. Midland Loan Co. v. Madsen, 217 M 267, 17 NW(2d) 475.

3. Contracts void for usury

An executory contract for a greater rate of interest than is allowed by law is invalid and cannot be enforced. Brown v Nagel, 21 M 415.

Except as to bona fide purchasers, usurious contracts, and all securities given therefor, are absolutely void. Jordan v Humphrey, 31 M 495, 18 NW 450.

Except as to a bona fide purchaser, a foreclosure sale, made under a power contained in a void mortgage, works no estoppel against the mortgagor, and in such case, the purchaser is in no better position than if no sale were made. Jordan v Humphrey, 31 M 495, 18 NW 450.

Plaintiff could recover damages for a conversion of cattle, because under statute, the contract for the usurious loan, the note by which it was evidenced, and bill of sale, by which it was secured, were void, and there was no valid indebtedness for the money actually loaned. Ormund v Hobart, 36 M 306, 3 NW 213.

The statute makes no difference in the effect of reserving a larger, or smaller, excess above the permitted rate. Cowles v Canfield, 49 M 496, 498, 52 NW 135.

An agreement to pay more than the maximum rate of interest allowed by law is usurious and void. Swank v G. N. Ry. Co., 63 M 258, 65 NW 452.

Usurious contracts are non-enforceable, and any amount taken or received as interest above the permissible rate is fatal. If it is found there is a violation, the mandate of the legislature must be given effect, and as the usurious contract is void, no right or remedy except as given by the usury law is available to either party. Seebold v Eustermann, 216 M 567, 13 NW(2d) 739.

A transaction whereby the borrower was required to give notes, bearing seven per cent interest for the amount of a $500,000 loan, to purchase worthless stock for $80,000, and to purchase a house at $128,000 more than value, held usurious, making notes void. E. C. Warner Co. v W. B. Foshay Co., 57 F(2d) 656.

4. Form not controlling

Held, evidence sustained verdict that lender gave a check for the face amount of a note, for a loan, bearing the highest legal rate of interest, and took back a sum from the amount received on the check, as a bonus, as a mere device to give the transaction a false appearance, and was no obstacle in the way of the court's ascertaining the true character of the transaction. Elstoen v Kelly, 34 M 409, 26 NW 229.

Where a note was in fact a renewal of a usurious note, obtained by an agent of the lender, for a pretended loan, the transaction was held a mere device to evade the usury law. Lukens v Hazlett, 37 M 441, 35 NW 265.

There is no device on the part of the money-loaner which cannot be investigated, in order to ascertain the facts. Hass v Camp, 40 M 329, 42 NW 20.

The courts will get at the real nature of a transaction, no matter what form the parties may give it, and no matter what devices they may resort to for the purpose of covering up or concealing its true character. Jackson v Travis, 42 M 438, 44 NW 316.

Sustained verdict that the alleged agency of a lender was a mere subterfuge to evade the usury statute. Dade v Spalding, 52 M 356, 54 NW 591.

Unusual clauses always excite suspicion. Dade v Spalding, 52 M 356, 54 NW 591.

The devices resorted to, to cover usury, are so numerous and various that direct and positive evidence is often not attainable; but the courts have never hesitated to pronounce a contract usurious, whenever the circumstantial evidence, intrinsic or extrinsic, reasonably satisfied them that such was the fact. Missouri, Kansas & Texas Trust Co. v McLachlan, 59 M 468, 61 NW 560.

Sustained finding that 50 shares of mining stock were exacted and received by a lender, as and for interest, in excess of the highest legal rate, and affirmed judgment, canceling notes for the loan, as usurious, and for a return of the collateral security. Phelps v Montgomery, 60 M 303, 62 NW 260.

If, in fact, the 70 shares of stock were exacted by the lender, as a condition of his making the loan, no matter what name the parties may have given to the transaction, whether gift or bonus, or what formal contracts the parties may have executed, the court must hold the loan usurious and void, for the law, in such cases, regards the substance and effect of what the parties have done or agreed to do. Phelps v Montgomery, 60 M 303, 62 NW 260.

There is no device or shift on the part of the lender, to evade the statute, under or behind which the law will not look in order to ascertain the real nature of the transaction. Lukens v Hazlett, 37 M 441, 35 NW 265; Babcock v Murray, 69 M 199, 71 NW 913.

If a debtor applies to his creditor for an extension of time in which to pay his debt, and, as a condition for the extension the latter sells to the former property at an exorbitant price, which he knows he does not want, and makes such a sale a condition for the extension, the transaction cannot be considered a bona fide sale, and is nothing more or less than a usurious loan. Kommer v Harrington, 83 M 114, 85 NW 939.

A sale of horses, at an exorbitant price, by a creditor, as a condition for the extension of a note, was held a subterfuge, to compel the borrower to pay an unlawful rate of interest. Kommer v Harrington, 83 M 114, 85 NW 939.

Where the defense, in an action of ejectment, was that the mortgage through which plaintiff claimed title to the land, was usurious, and the principal question was whether the agent, who retained a usurious bonus, was the agent of the company making the loan, or the agent of the borrower, it was held, the fact that the borrower signed an agency contract, did not preclude him from showing that the agent was the agent of the company, and not his. Commonwealth Title Ins. & T. Co. v Dakko, 89 M 386, 94 NW 1088.

In determining whether a particular transaction is usurious or not, the forms and names used by the parties are not important, for the court will ascertain the substance and effect of what the parties have done, or agreed to do. Hagan v Barnes, 92 M 128, 99 NW 415.

Mortgages given for loans made, not in money in specie, but by sales of grain, at prices in excess of the market value, which the borrower sold at an elevator,

receiving the amount of money he desired, were not necessarily usurious, and finding was sustained, that the transactions were in good faith, and were not intended as an evasion of the usury law. Barry v Paranto, 97 M 265, 106 NW 911.

It is elementary that no device or scheme intended for the purpose of evading the laws against usury will prevent the courts from giving force to the statute, and declaring contracts made in violation thereof null and void. Barry v Paranto, 97 M 265, 106 NW 911.

Where the device attempted was to require a borrower to purchase property, at an excessive price, as a condition of making a loan, the excess in price was, in effect, additional compensation for lending the money, although the notes did not import a usurious interest rate. E. C. Warner Co. v W. B. Foshay Co., 57 F(2) 656.

Courts will look beyond the mere form of a transaction, to its substance, in determining whether there is usury. E. C. Warner Co. v W. B. Foshay Co., 57 F(2d) 656.

5. Question of fact

Question of whether a sum of money was retained as usurious interest should have been submitted to a jury. Egbert v Peters, 35 M 312, 29 NW 134.

Testimony in an action on a promissory note alleged by the defendants to be usurious, examined and found to have justtified the order of the trial court directing a verdict for plaintiff. Hass v Camp, 40 M 329, 42 NW 20.

Evidence held sufficient to sustain verdict that a sum, included in a renewal note, was added to the sum actually due upon original notes, for the purpose of securing a greater rate of interest than was allowed by law. Cowles v Canfield, 49 M 496, 52 NW 135.

Where a written instrument was proved, providing for the negotiation of a loan by an agent, and for extensions thereof, and the question was of usury in the loan and extensions, it was held competent to prove an oral agreement, in addition to the instrument, for an extension or extensions of the notes upon payment of a commission, made at the time of the original loan. Stein v Swenson, 46 M 360, 49 NW 55.

Where, as part of the transaction for securing a loan, a borrower was required to purchase a bond, and turn it over to the lender, as additional security for the loan, the finding of the court was sustained that such purchase was bona fide, and not intended as an evasion of the usury law. Chase v New York Mortgage Loan Co., 49 M 111, 51 NW 816.

Whether the purchase of securities or other property, or the execution of a collateral contract in connection with a loan, as a part of the consideration and inducement therefor, is in fact a cover for usury, must ordinarily be determined as a question of fact. Chase v New York Mtge. Loan Co., 49 M 111, 51 NW 816.

Where the agent of a borrower paid the commission he usually charged for procuring a loan, to the lender, the issue was one of fact, and evidence justified finding of no usury. Grieser v Hall, 56 M 155, 57 NW 462.

Facts warranted the inference, and circumstances justified a finding, that a contingency was not bona fide, but was merely a device to cover usury. Missouri, Kansas & Texas Trust Co. v McLachlan, 59 M 468, 61 NW 560.

Where to secure a loan, borrowers subscribed for stock of a building and loan association, and the amount agreed to be paid as premium and interest was in excess of the highest legal rate of interest, it was held, upon the record, the transaction was not a loan to strangers, who were to have no share in the profits, and whose membership was a cover for usury, and that a verdict for the association was properly directed. Central Bldg. & Loan Ass'n v Lampson, 60 M 422, 62 NW 544.

Whether an agreement that $110.00 of a $300.00 bonus was to indemnify a lender for his loss in having to sacrifice his securities to get money to loan to the borrower, or merely a device to evade the usury laws, is a question of fact, to be determined on a trial, where the court can inquire into and ascertain the intent and motives of the parties. Stevens v Staples, 64 M 3, 65 NW 959.

To obtain a loan, a borrower agreed to purchase property, at a price which was more than it could be sold for, and gave a note, secured by a mortgage, for an amount which included the loan, and the purchase price of the property; held, the transaction was not necessarily usurious, the inquiry in such case being whether, upon the evidence, there was any corrupt agreement or device, to receive or take usury, and in this aspect of the case, the quo animo, as well as the acts of the parties, is most important. Saxe v Womack, 64 M 162, 66 NW 269.

Upon the facts, the trial court did not err in finding that the note in suit was not usurious. Brainard v Prouty, 66 M 343, 69 NW 3.

Where, as a condition for making a loan, the lender required a borrower to purchase two lots, at a price in excess of their market value, the question of whether or not the transaction was usurious depended on the purpose and intent of the parties, and the finding by the court, of no usury, was sustained. Banning v Hall, 70 M 89, 72 NW 817.

Where loans were made, not in money in specie, but by sales of grain to the borrower, at a price in excess of the market value, which the borrower sold, to obtain the money he desired, the good faith and intent of the transactions were questions of fact for the trial court, and the finding of no usury was sustained. Barry v Paranto, 97 M 265, 106 NW 911.

Where a transaction was in the form of a bill of sale of goods, with an agreement to re-sell upon certain terms designated in the writings, and the issue was whether the transaction was a sale, or a loan, it was held, the evidence justified the court in submitting the question of usury to the jury, and was sufficient to sustain the verdict. Elwell v Lund, 102 M 166, 112 NW 1009, 1067.

Where the president of a corporation gave notes for a loan, secured by a mortgage, and as part of the transaction, secured the making of a note by the corporation for a sum agreed to be paid for the negotiation of the loan, by the lender, it was held, the finding and decision of the trial court, to the effect that the notes and mortgages were usurious and that they be canceled, is sustained by the evidence. Widell v Nat'l Cit. Bank of Mankato, 104 M 510, 116 NW 919.

Whether a transaction is usurious, is generally a question of fact. But where the facts are undisputed, and only one conclusion can reasonably be drawn from them, usury becomes a question of law. Rantala v Haish, 132 M 323, 156 NW 666.

6. Proof

The burden rested on plaintiff, who alleged usury, to make out his case by a preponderance of evidence. Bishop v Corbitt, 40 M 200, 49 NW 55.

The rule of evidence in usury cases is the same as in any other civil action; all that is required is a fair preponderance of evidence. Lukens v Hazlett, 37 M 441, 35 NW 265; Hass v Camp, 40 M 329, 42 NW 20.

Circumstances must be of such a character as to beget something more tangible than a mere suspicion that a transaction is colorable and usurious; and a full belief, of itself, would not justify a verdict. Hass v Camp, 40 M 329, 40 NW 20.

Where amount of a mortgage was made up of a sum loaned, and a sum, as the agreed price for cattle, which the borrower was compelled to buy as a condition of getting a loan, it was held, evidence justified verdict that the agreed price for the cattle was not the actual price, but included a bonus, and that the mortgage was usurious. Lewis v Willoughby, 43 M 307, 45 NW 439.

The amount taken may be so exorbitant, in respect to services for which the lender may charge the borrower, as to force the conclusion that it was taken for the use of money. Stein v Swensen, 46 M 360, 49 NW 55.

Where the general agent of a lender retained a bonus from the amount of a loan, taking a note for the full amount, secured by a mortgage, and at his principal's direction, assigned the note and mortgage to the principal's aunt, who brought an action to recover possession of the mortgaged property, the presumption was that the exaction of the bonus was by the authority, or with the consent of the principal, and the burden was on plaintiff to prove that it was not; held, evidence justified finding that the note was usurious. Hawkins v Sauby, 48 M 69, 50 NW 1015.

Plaintiff, who brought action to have notes and mortgages adjudged void for usury, had burden of proving the transaction usurious. Chase v New York Mortgage Loan Co., 49 M 111, 51 NW 816.

Usury is not to be presumed, but must be proved, and cannot be found on mere suspicion, however strong; but proof is merely that quantity of evidence which produces a reasonable assurance of the existence of the ultimate fact. Missouri, Kansas & Texas Trust Co. v McLachlan, 59 M 468, 61 NW 560.

All that is required to establish a case of usury is a fair preponderance of the evidence. Phelps v Montgomery, 60 M 303, 62 NW 260.

The burden is upon a party interposing the defense of usury to negative, by his answer and proof, every supposable fact, which, if true, would render the transaction lawful. Central B. & L. Ass'n. v Lampson, 60 M 422, 62 NW 544.

Heretofore held that usury need not be proved beyond a reasonable doubt, and that a fair preponderance of evidence is sufficient; but, as usury works an absolute forfeiture of the entire debt, the proofs on which it rests should be scrutinized, and the rule as to the effect of a fair preponderance applied, with more strictness than in ordinary civil actions. Such a defense ought not to be sustained upon evidence which is intrinsically improbable, when rebutted by positive evidence which is inherently reasonable and probable. Yellow Medicine Co. Bank v Cook, 61 M 452, 63 NW 1093; Saxe v Womack, 64 M 162, 66 NW 269.

The burden rested upon the party asserting the transaction to have been usurious, to show it. Saxe v Womack, 64 M 162, 66 NW 269.

Where, in an action between plaintiff, the borrower, and defendant, the lender, the issue was whether or not a loan was usurious, it was held, it was within the discretion of the court to permit plaintiff, on cross-examination, to ask defendant whether or not he had made usurious loans to other persons; where the court permitted a witness for the defendant to be asked if he had not stated to plaintiff that he had borrowed money of the defendant at a usurious rate, and the witness denied having made such a statement, it was error to permit the plaintiff, testifying in his own behalf, to contradict the answer of the witness. Murphy v Backer, 67 M 510, 70 NW 799.

Where a transaction is not on its face, usurious, the burden is on the party alleging usury, to show that it is. Banning v Hall, 70 M 89, 72 NW 817.

Party seeking to establish a usurious transaction with a party whose lips have been closed by death, which, if established, would work a forfetiture of an honest indebtedness, is bound to make strict proof of the transaction. Robbins v Legg, 80 M 419, 83 NW 379.

Where borrower applied to an agent of a lender for a loan of $500.00, and the lender furnished that sum to the agent, to be loaned at a legal rate of interest, and the agent made a loan of $400.00, taking a note for $500.00, secured by a mortgage, bearing the highest legal rate of interest, which he assigned to the lender, it was held, where a principal intrusts a definite sum of money to an agent, to be loaned to a known person, he will be held responsible for his acts, and charged with knowledge of his conduct. Robinson v Blaker, 85 M 242, 88 NW 845.

Where the cash payment of an earnest money contract for an apartment building was paid by one of three parties, title taken in the name of another, who executed a mortgage and trust deed and bonds, but who had no real interest, and the property was paid for by the cash so advanced and that secured from the securities, the one who advanced the cash, retaining six of the bonds, held, findings that the transaction was a joint venture and that there was no usury involved, were sufficiently supported by the evidence, and must stand. Security State Bank v Farmer, 175 M 560, 222 NW 278.

In an action to set aside an assignment of a $12,000 note, secured by a first mortgage on a farm, in consideration of which plaintiff received $2,568.20 and an option to repurchase within six months, held, the evidence supported finding that the transaction was a loan wherein the note and mortgage were assigned as security, and was usurious. Pomplun v Hudson, 177 M 321, 225 NW 115.

The burden was upon plaintiff to establish usury, the corrupt intent of the parties to agree to give and take more than the statute permits for the use or forbearance of money, and this includes overcoming the presumption that people intend to do only what is lawful. Pomplun v Hudson, 177 M 32, 225 NW 115.

The presumption is that contracts are lawful; the question then arises, did plaintiffs, who alleged usury, meet the burden imposed upon them, without evidence, that even after paying all the expenses they agreed to pay, the return to the lender was usurious. Palmer v First Mpls. Trust Co., 179 M 381, 280 NW 257, 258.

In an action to recover possession of real estate, based on a foreclosure sale of a mortgage, from which there had been no redemption, it was held, evidence warranted conclusion of the jury that an amount included in the loan contract was for a bonus, and sustained judgment holding the mortgage void for usury Clausen v Salhus, 187 M 534, 246 NW 21.

The burden of proof is upon the party claiming usury, to negative any hypothesis reasonably drawn from the evidence, which would render the transaction lawful. Fred G. Clark Co. v E. C. Warner Co., 188 M 277, 247 NW 225.

Where plain language, constituting an agreement, imports a bonus for the loan of money, and the intent is apparent, there is no room for a presumption that the transaction was legal, and construction of the language of the contract is a question of law. Fred G. Clark Co. v. E. C. Warner Co., 188 M 277, 247 NW 225.

Where a borrower, in consideration of $150.00 paid to him, gave the lender a note for $190.00, with interest thereon at the rate of eight per cent per annum, the loan is prima facie usurious, and if the lender performed any services for the borrower which entitled it to retain a sum of $40.00, the burden of proving that such services were reasonably worth the sum retained, rested upon the lender. Adjustment Service Bureau v Buelow, 196 M 563, 265 NW 659.

Defendants, who had the burden of proving usury, failed to prove the defense of usury pleaded by them, because they attempted to show, not that the sum they agreed to pay, included an illegal interest charge, but that the instrument, as drawn, did not in fact, represent the true agreement between the parties. Mpls. Discount Co. v Croff, 201 M 111, 275 NW 511.

7. Cover for usury

Check, for an amount which included a bonus, held a mere device to give the transaction a false appearance. Elston v Kelly, 34 M 409, 26 NW 229.

Upon the evidence, the question of whether a sum retained from the amount of a loan was, or should be, retained as extra interest, should have been submitted to the jury. Egbert v Peters, 35 M 312, 29 NW 134.

Where, in an action to enjoin the foreclosure of a mortgage because of usury, plaintiff's statement of items making up the amount secured by the mortgage, included a sum charged as a bonus, while defendant's statement included no such item, but contained an account of several other sums advanced to, or due from plaintiff, showing a full and valid consideration for the note secured by the mortgage; held, evidence supported findings for the defendant. Bishop v Corbitt, 40 M 200, 49 NW 55.

A charge agreed to be paid the lender for his services and expenses in connection with a loan, were found reasonable and bona fide, and did not make the transaction usurious. Daley v Minn. Loan & Invest. Co., 43 M 517, 45 NW 1100.

Evidence justified verdict that an amount representing the agreed price of cattle, included a bonus agreed to be paid for a loan. Lewis v Willoughby, 43 M 307, 45 NW 439.

Finding sustained that investment bonds were made in good faith, and were not used in a transaction as a device to evade the usury laws. Chase v New York Mortgage Loan Co., 49 M 111, 51 NW 816.

Where parties first negotiated for a bonus, in excess of the lawful rate of interest for a loan, and the excess was included in a note for the loan and the purchase price of wheat, there was usury, and it was of no importance that a part of the consideration for the note was for the price of wheat sold to the borrower. Parker v Maxwell, 51 M 523, 53 NW 754.

Where lender, requested to ascertain interest and back taxes due on land, included amounts actually due but on which no penalty had yet attached, such inclusion was not a device to evade usury. Rugland v Thompson, 55 M 466, 57 NW 205.

Sustained finding that an agreement, whereby for a loan, paid in deferred instalments, borrower paid interest at seven per cent, performed services of the value of $500.00, and paid to the lender, as a commission, five per cent of the loan, was device to cover usury. Smith v Parsons, 55 M 520, 57 NW 311.

Where, after a bonus was deducted from the nominal amount of a loan, interest computed on the remainder was less than the rate allowed by law, there was no usury. Hutchinson v Herrick, 58 M 473, 59 NW 1103.

Evidence supported finding that 50 shares of stock were given, not as a gift, but were exacted as a condition of making a loan, making the transaction usurious. Phelps v Montgomery, 60 M 303, 62 NW 260.

Where a borrower was required to buy stock as a condition for obtaining a loan, the number of shares depending on the amount of the loan, evidence justified finding that a sale of stock was a mere cover for usury. City Loan Co. v Cheney, 61 M 83, 63 NW 250.

Whether an agreement to pay the lender a certain sum to indemnify him for his loss in sacrificing his securities to obtain money for a loan to the borrower, was a device to evade the usury law, was a question of fact, to be determined on a trial. Stevens v Staples, 64 M 3, 65 NW 959.

Where an accommodation note for $500.00, bearing the highest legal rate of interest, was endorsed by the payee and another, and delivered to a bank for $470.00, evidence sustained finding that the transaction was a loan, and not a purchase of the note, at a discount, and was usurious. People's Bank of Mpls. v Howes, 64 M 457, 67 NW 355.

A sale of real property, at a price in excess of its market value, held not a cover for usury. Saxe v Womack, 64 M 162, 66 NW 269.

Finding sustained that a sale of real property, at a price in excess of its market value, was not intended as a cover for usury. Banning v Hall, 70 M 89, 72 NW 817.

Evidence sustained finding that, in order to obtain an extension of a note, borrower was compelled to buy horses at very high prices, and that lender's purpose was to evade the statute. Kommer v Harrington, 83 M 114, 85 NW 839.

Where in consideration of a loan of $207.90, borrower executed a note in the amount of $497.00, containing an agreement that at the option of the maker, the note could be paid in wheat, it was held, insertion of option agreement did not tend to relieve the note from the imputation of usury. Johnson v Joyce, 90 M 377, 97 NW 113.

Sustained finding that a sale of grain, at a price in excess of the market value, was not intended as a cover for usury. Barry v Paranto, 94 M 265, 106 NW 911.

A contract for the sale of real estate, containing an agreement by the seller, to re-sell the property within one year, at a profit to the purchaser of $500.00, or if not so sold, to refund the down payment of $1,000 and $500.00 additional, held, not to conclusively appear on its face to be a loan of money instead of a sale of real estate. Heinrich v Jenkins, 98 M 489, 108 NW 877.

A re-sale of a lot by lender to borrower, according to an oral agreement for a further loan, for a sum in addition to the original purchase price, held not a device to evade the usury law. Gould v St. Anthony Falls Bank, 98 M 420, 108 NW 951.

Under a written contract, plaintiff purchased a lot from defendant for $2,000 payable in one year, with interest, and from time to time borrowed money until he owed $5,000 more. As a condition of obtaining a further loan of $12,500, according to an oral agreement, the original note and contract were canceled and a new deed executed for a changed consideration of $2,500, and plaintiff thereupon executed a note for $20,000 secured by a mortgage, payable in eight months, with interest. By the oral agreement, no time for payment of the $20,000 was fixed, but when carried into effect, it was determined and voluntarily fixed by the plaintiff. Had the time for payment of the $20,000 been the same as of the original $2,000, it would not have been usurious; but as changed, interest on the original $2,000, the subsequent $5,000, and the $12,500, exceeded the lawful rate.

Held, finding that the re-sale was not a device to evade the usury law, sustained. Gould v St. Anthony Falls Bank, 98 M 420, 108 NW 951.

Where plaintiff required an indemnity bond in the amount of $25,000 for his endorsement of the note of a borrowing corporation, then adjudged a bankrupt in the proper court in Canada, in the amount of $22,500, with interest at eight per cent, which the corporation agreed with plaintiff to pay promptly, and plaintiff negotiated the note at a bank, receiving $2,500 for his compensation: Held, evidence supports finding that the transaction was in its true character and purpose, a loan by plaintiff to the corporation of $20,000, at eight per cent interest, with a bonus to plaintiff of $2,500, and was usurious. Drew v Skeena Lumber Co. Ltd. 180 M 358, 230 NW 819.

Where application for a loan was made to one corporation, and the loan made by another, and the relation of the two corporations was such that the lending corporation received the benefit of the commission agreed to be paid for the negotiation of the loan, it was held, the arrangement of the corporations was not for the purpose of evading the usury laws. Wetsel v Guaranteed Mtge. Co., 195 M 509, 263 NW 605.

Where a note for a loan, payable in four months, bore no interest before maturity, and at the time the note was given, the lender retained interest from the amount of the note, at the rate of eight per cent for the four months' period, held the borrower could not show an oral agreement that the note should be paid in instalments, before due, for the purpose of establishing usury. Blindman v Industrial L. & T. Corp., 197 M 93, 266 NW 455, 267 NW 143.

Transaction by which borrower was required to purchase property at a price greatly in excess of its value, held a device to evade the usury law. E. C. Warner Co. v W. B. Foshay Co. 56 F(2d) 656.

8. Inclusion of more than received

Evidence sustained finding that a note for a loan included a bonus, and was usurious. Elston v Kelly, 34 M 409, 26 NW 229.

Upon the evidence, the question of whether a sum, included in the amount of a note, was retained as a bonus, should have been submitted to a jury. Egbert v Peters, 35 M 312, 29 NW 134.

Evidence sustained verdict that a note made for the payment of $17.00, with interest at the highest legal rate, was in fact given for a loan of $15.00 only, the extra $2.00 being charged as additional interest upon the money loaned, and the note was held usurious and void. Kemmitt v Adamson, 44 M 121, 46 NW 327.

Where a borrower received $833.50 for a loan, and signed a note, payable three months thereafter, made out by the lender, for $868.00, it being understood that the interest was added to the sum loaned to make up the amount of the note, evidence sustained the defense of usury. W. B. Clark Inv. Co. v McNaughton, 46 M 8, 48 NW 412.

The taking of a sum, in addition to the lawful rate of interest, if exacted, and paid to an agent, bona fide, as compensation for services and not for the use of money, will not make a loan usurious, even though the sum be unreasonable as compensation. But its unreasonableness is evidence, of greater or less weight as it is more or less unreasonable, that it was taken in part at least, for the use of the money, and that requiring it as compensation was only a cover. Stein v Swensen, 46 M 360, 49 NW 55.

Evidence supported finding that the payee of a note wrongfully and intentionally included in the amount of a note, a sum of $60.00 as for goods taken out of his store by the maker, so that he might have and recover a sum greater than the amount actually forborne, and the highest legal rate of interest, and that the transaction was usurious. Holmen v Rugland, 46 M 400, 49 NW 189.

Where borrower who applied for a loan of $1,675 on each of three houses and lots, was required to purchase an investment bond with each loan at $1,925 each and assign it as collateral security, in addition to giving his notes, secured by mortgages, with interest, the finding was sustained that the bonds were made in good faith, and were not used in the transaction to evade the usury laws. Chase v N. Y. Mtge. Loan Co., 49 M 111, 51 NW 816.

Sustained finding that the sum of $8.97, included in renewal notes, was added to sum due upon the original notes, for the purpose of securing greater interest than allowed by law. Cowles v Canfield, 49 M 496, 52 NW 135.

Where cashier of a bank drew a note for $54.00, bearing the highest legal rate of interest, and borrower signed the note, receiving only $50.00, the bank was held responsible, and the note usurious. Cromb v Olson, 60 M 534, 63 NW 108.

Where borrower gave a note for $147.00, and received only $140.00, the difference being usurious interest, and pledged a sealskin coat as security, the pledgee had no right to retain the security, and the pledgor was entitled to recover the value of the property. Scott v Reed, 83 M 203, 85 NW 1012.

Where borrower received a check for $30.00, and signed a note bearing the highest legal rate of interest, for $36.00, it not appearing that as between the maker and payee, the $30.00 was the only consideration for the note, the evidence fell short of the measure sufficient to prove usury. Neuhauser v Banish, 84 M 286, 87 NW 774.

Where for a loan of $207.90 borrower gave a note for $497.00, which included $289.10 as a bonus, the fact that the note stated that it could be paid, at the option of the maker, in No. 1 wheat, did not relieve it from the imputation of usury. Johnson v Joyce, 90 M 377, 97 NW 113.

9. Liability of principal for act of agent

Evidence was sufficient to justify the conclusion that a loan was pretended and made by the agent, or mere cat's paw, of a lender, as a device to secure a renewal of a usurious note, and to evade the usury law. Lukens v Hazlett, 37 M 441, 35 NW 265.

Where a general agent, intrusted with the management of making, negotiating, and collecting loans, exacts a bonus, for the benefit of his principal, and includes it in securities, subsequently enforced, the presumption in such case is, that what the agent assumes to do for his principal was done by his authority, and in the absence of any evidence that the bonus was exacted without his knowledge or consent, the act of the agent, as a matter of law, must be held to be the act of the principal. Lewis v Willoughby, 43 M 307, 45 NW 439.

Where a contract is essentially usurious, it matters not whether the money loaned belongs to the principal to whom a note is made payable, or to the agent, who transacts the business in the course of his employment. Kemmitt v Adamson, 44 M 121, 46 NW 327.

Where a general agent loaning money for his principal, makes a usurious exaction, solely for his own benefit, without the knowledge, authority, or sanction of his principal, who has received no benefits of it, nor in any manner ratified it, the principal is not affected by such exaction; but, in the absence of proof to the contrary, the acts of a general agent are presumed to have been authorized by his principal. Stein v Swensen, 44 M 218, 46 NW 360.

If the principal either authorizes or sanctions the taking of a sum in excess of the lawful rate of interest, for the use of money loaned by his agent, even for the agent's own benefit, the principal is chargeable with usury. Stein v Swensen, 46 M 360, 49 NW 55.

The principal is presumed to know the general manner in which his general agent transacts his business. Stein v Swensen, 46 M 360, 49 NW 55.

Where an agent, intrusted with money of his principals, to buy lands, made a loan of $800.00 to be repaid within 100 days, with an additional $100.00 for the use of the $800.00, and at the same time, took a deed in the name of his principals, an absolute conveyance in form, but executed as security for the loan; it was held, as the deed was executed as a mortgage, the principals must adopt it, if at all, as a mortgagee, and their availing themselves of it as a security for the amount actually loaned, will not amount to a ratification of the act of the agent in exacting usury. Nye v Swan, 49 M 431, 52 NW 39.

Bank was responsible for a usurious loan made by its cashier, who had the general management of all loans made by the bank, and their collection. Cromb v Olson, 60 M 534, 63 NW 108.

A principal who intrusts a definite sum of money to an agent, to be loaned to a known person, will be held responsible for his acts, and charged with knowledge of his conduct. Robinson v Blaker, 85 M 242, 88 NW 845.

When an officer who is intrusted with the management of the business of a corporation, exacts or receives a bonus of any kind for a loan of money made by the corporation through him, it is presumed to be the act of the corporation, and calls for an explanation. Fred G. Clark v E. C. Warner Co., 188 M 277, 247 NW 225.

10. Bonus of commission to agent

An agent, authorized to loan money of his principal, and charge and collect from the borrower, a reasonable compensation for his services, exacted an unreasonable amount as compensation for his services in obtaining a loan for a borrower; held, that so far as such amount was a bonus, the principal never authorized the taking, or ratified or sanctioned it by receiving any part of, or benefit from it, and the taking was not usury on his part. Acheson v Chase, 28 M 211, 9 NW 734.

A bonus taken out by agents for their own benefit and without any collusion with the lender, who neither authorizes nor ratifies the act, nor derives any benefit from it, is not presumptively a cover for usury on the part of the lender, and does not make the loan usurious; and receiving the mortgage securing the loan, and attempting to enforce it for the amount actually loaned, with lawful interest, does not amount to a ratification. Jordan v Humphrey, 31 M 495, 18 NW 450.

By agreement, bankers were to secure application for loans, to be made by money procured by two other parties, commissions on the loans to be divided between them. In an action on a note for a loan so made by money in the hands of the two parties, where a commission of $60.00 was retained from the amount of the loan, Acheson v Chase, 28 M 211, Jordan v Humphrey, 31 M 495, followed on the question of usury. Strait v Frary, 33 M 194, 22 NW 295.

Where a lender authorized her agent to loan her money and make what he could out of it, his act in exacting a usurious commission must be taken to have been authorized and sanctioned by her, and in contemplation of law, to have been her act. Avery v Creigh, 35 M 456, 29 NW 154.

A broker, loaning money for and in the name of his principal, made a loan, with interest at the highest legal rate, and in addition, under an express agreement with a borrower, charged him an agreed commission for procuring the loan, examining personal property on which security was given, and drawing necessary papers. Held, it not appearing that the commission charged was unreasonable, the transaction was not usurious. Mackey v. Winkler, 35 M 513, 29 NW 337.

In an action on an accommodation note, sold and assigned by the payee to the son of plaintiff, and by the son, sold and made payable before maturity, to his father; held, evidence failed to sustain allegation that plaintiff, by his son, and agent, entered into a corrupt contract with the borrower by which he was to receive usurious interest. Hass v Camp, 40 M 329, 42 NW 20.

Where an agent, intrusted with the entire management of making, negotiating, and collecting loans for his principal, exacts a bonus for the benefit of the principal, and includes it in the amount of securities subsequently enforced by the principal, there being no evidence that it was done without his knowledge or consent, the act of the agent must be held, as a matter of law, to be the act of the principal. Lewis v Willoughby, 43 M 307, 45 NW 439.

A contract being essentially usurious, it matters not whether the money loaned belonged to the payee of the note or to his agent, who transacted the business in the course of his employment. Kemmitt v Adamson, 44 M 121, 46 NW 327.

If a usurious exaction is made by an agent, solely for his own benefit, without the knowledge, authority, or sanction of the principal, and without reason on his part to anticipate such conduct on the part of his agent, the principal, if he has not received the benefits of it, nor in any manner ratified it, is not affected by such illegal exaction. Stein v Swenson, 44 M 218, 46 NW 360.

Where a general agent had unlimited discretion and authority in a business of loaning and reloaning money of his non-resident principal, and he made a loan

of $200.00, taking a note for $210.00, with interest at the highest legal rate, secured by a chattel mortgage, finding was sustained that $10.00 was deducted as a bonus, the transaction was usurious, making the note and mortgage void, and the bonus being included in the note, presumptively, the agent was authorized to so include it. Adamson v Wiggins, 45 M 448, 48 NW 185.

Where an agent to loan moneys exacts from the borrower, for his own benefit, a sum in addition to the lawful interest, and the same is not authorized, sanctioned, nor ratified by the principal, it is not usury so far as the principal is concerned; and it is equally true that, if such exaction be authorized or sanctioned by the principal, if will be usury, if it would be, did he make such exaction personally. Stein v Swensen, 46 M 360, 49 NW 55.

A general agent in this state, with full power to lend, renew, collect, and reinvest money of his non-resident principal, made a loan of $450.00, taking a note for $500.00, bearing the highest legal rate of interest; held, evidence sustains finding that the note was usurious, and that the exaction of the $50.00 bonus was by the authority and consent of the principal. Hawkins v Sauby, 48 M 69, 50 NW 1015.

Where agent wrongfully loaned $800.00 of his principals' money, under an agreement that it should be repaid within 100 days, with an additional $100.00 for the use of the money, without knowledge or ratification on their part, they could enforce the security given for the loan. Nye v Swan, 49 M 431, 52 NW 39.

Where a resident of Chicago, Illinois, placed money in the hands of his general agent in this state, for investment by loan, with unlimited authority to transact all kinds of business according to his best judgment, with the understanding that he was to obtain compensation for his services and expenses, as agent, by way of commissions or bonuses from the borrowers, and the agent made a loan of $250.00, with interest at eight per cent, retaining $25.00 as commission from the amount of the loan; held, the transaction was usurious, and the case stands precisely as if the usurious exaction had been done by the principal personally. Hall v Maudlin, 58 M 137, 59 NW 985.

Where general agent of a non-resident principal made a loan of $125.00, taking from the borrower a note for $135.00, secured by a chattel mortgage, payable in one month, with interest at the highest legal rate, and a sum of $10.00, claimed as payment for services in making the loan; held, the transaction was usurious, and the lender must abide by all the consequences. Horkan v Nesbitt, 58 M 487, 60 NW 132.

Loaning money through agents who charge usurious and illegal interest under the guise of pretended services rendered the borrower, constitutes a void transaction. Horkan v Nesbitt, 58 M 487, 60 NW 132.

A partnership, engaged in a general banking business, employed a cashier to whom they intrusted the entire and exclusive charge and managment of the business. The cashier made two loans, in each case charging an amount in excess of the highest legal rate of interest for the use of the money, and including such excess in a note, as part of the principal. Held, the notes were usurious in the hands of the principals, even if the cashier, in exacting usury, disobeyed their positive instructions not to charge more than a legal rate of interest. Stephens v Olson, 62 M 295, 64 NW 898.

Where broker paid $195.00 of his principal's money to a borrower, taking a note for $200.00, with interest at the highest legal rate, and retained a commission of $5.00 for his own benefit, without knowledge or consent of his principal, the administrator of deceased principal was held not chargeable with usury. Brainard v Prouty, 66 M 343, 69 NW 3.

Where agent deducted $75.00 from the amount of a loan for $1,500, taking a note, bearing the highest legal rate of interest, and secured by a mortgage, for the full amount, finding was sustained that the $75.00 was not withheld for payment of legitimate services of the agent in making the loan, but as a bonus to be paid in excess of the highest legal rate of interest for the money loaned, and the transaction was usurious, canceling the note and mortgage. Carpenter v Lamphere, 70 M 542, 73 NW 514.

Where agent retained a sum of $100.00 from $500.00 furnished by his principal, to be loaned to a certain borrower, and took a note, secured by a mortgage, bearing

the highest legal rate of interest, the transaction was held usurious, and the principal charged with usury. Robinson v Blaker, 85 M 242, 88 NW 845.

Trial court erred in refusing to instruct the jury to the effect that if an agent makes an usurious exaction solely for his own benefit, without the knowledge, authority, or sanction of the principal, and without reason on his part to anticipate such conduct on the part of the agent, the principal is not affected by such illegal action, if he has not in any manner received any benefit therefrom, or ratified it. Commonwealth Title Ins. & T. Co. v Dakko, 89 M 386, 94 NW 1088.

Borrower applied to lender's husband for help in obtaining a loan of $550.00, to be secured by real estate mortgages, agreeing to pay him a commission of ten per cent if successful. The husband applied to his wife, and she made the loan, without any knowledge of the agreement, and she received no part of, or any benefit from the commission of $50.00 which was paid to her husband. In an action brought to set aside the mortgages as usurious, held, evidence sustained finding that the wife had not constituted her husband her general agent, and the loan was not void for usury. Bovee v Butters, 92 M 149, 99 NW 641.

Evidence supported finding that a transaction was, in character and purpose, a loan, at eight per cent interest, with a bonus of $2,500 to plaintiff, hence usurious. Drew v Skeena Lbr. Co. Ltd. 180 M 358, 230 NW 819.

Where a borrower, in consideration of $150.00 paid to him, gives the lender a note for $190.00, with interest thereon at the rate of eight per cent per annum, the loan is prima facie usurious. Adjustment Service Bureau, Inc. v Buelow, 196 M 563, 265 NW 659.

11. Repayment contingent

Where there is a loan of money, the mere fact that the contract for its repayment is in form contingent, will not exempt the transaction from the taint of usury, if the contingency thereof is not real, but colorable, and a mere device to evade the statute. Missouri, Kansas & Texas Trust Co. v McLachlan, 59 M 468, 61 NW 560.

In an action to obtain the cancelation of certain notes and the mortgage securing them, where the contract in question was identical, except as to names, dates, and amounts, with the contract in Missouri v McLachland, held, evidence sustained finding that the notes and mortgage were usurious, and that they be canceled. Mathews v Missouri, Kansas & Texas Trust Co. 69 M 318, 72 NW 121.

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

12. Interest, paid in advance

Where a loan, bearing interest, was made as of the date of the application, and paid, in deferred instalments, subsequent to the date of acceptance; held, though parties call it interest in advance, if it will result in reserving to the lender a rate greater than the rate permitted by law on the amount to be actually retained by the borrower, it is usury. Smith v Parsons, 55 M 520, 57 NW 311.

The fact that interest payments upon a loan maturing five years from date, have been advanced so that a slightly greater rate of interest than that allowed by law is reserved or secured to the lender, will not, of itself, support a finding that the loan was usurious, and the contract made with a corrupt intent to evade the law. Swanson v Realization & Debenture Corp., 70 M 380, 73 NW 165.

In computing interest on a loan due in five years, at a legal rate, interest, as taken in advance, did not constitute usury as a matter of law. Commonwealth Title Ins. & T. Co. v Dakko, 89 M 386, 94 NW 1088.

Retention of interest, for one year in advance, at eight per cent, is not usurious, under our statute. Blindman v Industrial L. & T. Corp., 194 M 462, 260 NW 867.

Statute which permits industrial loan and thrift companies organized thereunder to charge eight per cent interest, in advance, on loans not to exceed one year, is not unconstitutional. Mesaba Loan v Sher, 203 M 589, 282 NW 823.

13. New security

The effect of the statute is not avoided by the substitution of a new security for one infected with usury. Jordan v Humphrey, 31 M 495, 18 NW 450.

Where a new contract is substituted for a usurious one, the taint of usury will affect the new security. Lukens v Hazlett, 37 M 441, 35 NW 265.

14. Extensions

A note which is not usurious, originally, will not be made so by subsequent extensions, though in consideration of the payment of usurious interest. Avery v Creigh, 35 M 456, 29 NW 154.

A mere agreement, between the lender and the borrower at the time a loan is made, that at the option of the borrower, the debt may be renewed, or time of payment extended, after the time named for payment, on condition of the payment of some sum in excess of legal interest, is not usurious as to the original loan; but if circumstances should justify the conclusion that such agreement was a device to evade the statute, the mere form would not be allowed to defeat the purposes of the law. Stein v Swensen, 44 M 218, 46 NW 360.

The original transaction being valid, the exaction of a bonus in excess of the legal rate, after the note became due, did not make the note usurious. Mahler v Mchts Nat'l Bank, 65 M 37, 67 NW 655.

A note not originally usurious, cannot be made so by subsequent agreement for an extension, in consideration of a payment of, or a promise to pay, usurious interest. Morse v Wellcome, 68 M 210, 70 NW 978.

If an original transaction is not usurious, subsequent usurious extensions will not make it so; on the other hand, where usury inheres, the legal result is the same, even though extensions are not usurious. Pomplun v Hudson, 177 M 321, 225 NW 115.

15. Who may assail

An assignee, to whom, under our insolvent law, property has been transferred by the mortgagors, and who stands in legal privity with them, can interpose the defense of usury. Stein v Swensen, 44 M 218, 46 NW 360.

Although a mortgagor may have parted with his interest in real property mortgaged to secure the payment of a note, if the note is usurious, he is entitled to maintain an action for its cancelation when a foreclosure of the mortgage is attempted. Swanson v Realization & Debenture Corp. 70 M 380, 73 NW 165.

A vendee, who accepts a conveyance of land subject to a mortgage thereon, and containing a covenant whereby such vendee assumes and agrees to pay the mortgage, is estopped from asserting that the obligation secured thereby is usurious. Scanlan v Grimmer, 71 M 351, 74 NW 146.

The defense of usury is extended to the sureties of a borrower. Drew v Skeena Lbr. Co. Ltd. 180 M 358, 230 NW 819.

16. Estoppel

Where a husband gave a usurious mortgage on his homestead, and was not joined by his wife, and after a divorce, transferred the land to her, subject to the mortgage, which, as part of the transaction, she agreed to pay, she was estopped from questioning its validity. Alt v Banholzer, 36 M 57, 29 NW 674.

Where, for the purpose of raising money, borrower executed a note, secured by mortgages, to a payee, without consideration, in order that the payee might negotiate them, as his own, on the best terms he could obtain, if the borrower made the payee his agent, to sell the securities as his own, an estoppel as to their validity and the sufficiency of a consideration to support them, might arise upon what was done and said by him within the scope of his authority. Jackson v Travis, 42 M 438, 44 NW 316.

Where lender delivered $2,000, the amount of a loan, secured by a mortgage, to his agent, who paid between $1,800 and $1,900 in liquidating liens on land of the

borrower, retaining the balance, and the land was sold and conveyed by warranty deed, by the borrower and his wife, to a son, who sold and conveyed it by a warranty deed in a brother, who sold and conveyed it by warranty deed to the wife of the borrower, each deed containing a covenant whereby the vendee agreed to assume and pay the mortgage; held, while not deciding that the defense of usury could not be successfully interposed, that not being the question, the vendee was estopped from asserting that the obligation secured thereby, is usurious. Scanlan v Grimmer, 71 M 351, 74 NW 146.

17. Bona fide purchasers

Where the payee and holder of a note endorsed it to a bank as security for a loan, and upon maturity of the note, for granting its renewal and extension for a year took two notes from the maker, one for the amount of the principal and interest due, bearing the highest legal rate of interest, and the other for an amount, as interest on the principal, in excess of the highest legal rate, endorsing and exchanging the new note for principal and interest due, for the first note held by the bank, the bank having no knowledge of the usurious agreement; held, the bank was a bona fide purchaser, and as such, held the note free from the defense of usury. First Nat'l Bank of Rochester v Bentley, 27 M 87, 63 NW 1031.

Statute intends that the defense of usury may be interposed in an action on negotiable paper, only where any other defense, if it existed, might be interposed. First Nat'l Bank of Rochester v Bently, 27 M 87, 63 NW 1031.

A purchaser, at a foreclosure sale under a power in a usurious mortgage, or his assignee, to be protected as a bona fide purchaser, must have paid a valuable consideration for such purchase or assignment, without notice of the usurious character of the transaction. Jordan v Humphrey, 31 M 495, 18 NW 450.

Where plaintiff, for a usurious consideration, executed negotiable promissory notes, secured by a mortgage, which, before maturity, and without notice of the usury, were purchased by defendant, who, after he had received notice of the usury, sold the mortgaged premises under the power of sale in the mortgage, and purchased them at the sale; held, the statutory exception protecting bona fide purchasers of negotiable instruments from the avoiding effects of usury, is not applicable to mortgages securing negotiable paper. Scott v Austin, 36 M 460, 32 NW 89, 864.

Where defendant purchased usurious notes, secured by a mortgage, with no notice of usury, and after notice, foreclosed the mortgage, bidding in the premises at the foreclosure sale; held, the statutory exception protecting bona fide purchasers of negotiable paper was not applicable to mortgages securing negotiable paper. Scott v Austin, 36 M 460, 32 NW 89, 864.

It is presumed from endorsements, that a note is obtained in the ordinary course of business, before maturity, and for value. Hass v Camp, 40 M 329, 42 NW 20.

Where a debtor owed his creditor $260.70, and gave a note for the amount and $30.00 usury, made payable to the mother-in-law of the creditor, and by her assigned to a sister-in-law of the creditor; held, the evidence, though scant, probably justified leaving the question of whether the sister-in-law had notice of the usurious character of the note, to the jury. Rugland v Tollefsen, 53 M 267, 55 NW 123.

Where property is sold on a usurious mortgage, one who purchases at the foreclosure sale, and pays his money, without any notice of the usurious character of the mortgage, is protected as a bona fide purchaser; and the same is true where, after the foreclosure sale, and before the expiration of the time of redemption, a person buys the interest of the mortgagee, who bid in the property at such sales. Holmes v State Bank of Duluth, 53 M 350, 55 NW 555.

The exception of bona fide purchasers of negotiable paper from the operation of the usury law, does not extend to a mortgage to secure such paper. Smith v Parsons, 55 M 520, 57 NW 311.

Where guarantor of a usurious note, made payable to a bank by the lender, and sold to the bank before maturity, for a valuable consideration, and without notice on their part of any defense, brought action to recover the amount of a judgment for principal and interest on the note, recovered against him by the bank,

which he paid, since the bank was not an innocent purchaser, as it was the payee, and could not be a bona fide endorsee, guarantor had no cause of action within the statute. Fredin v Richards, 61 M 490, 63 NW 1031.

Innocent purchaser, as used in the statute, means a bona fide endorsee or bearer of the note, within the law merchant. Fredin v Richards, 61 M 490, 63 NW 1031.

Maker and note, as used in the statute, include the maker of a guaranty of payment of a promissory note endorsed thereon, where he has been obliged to pay a usurious note by reason of the guaranteed note having been sold to an innocent purchaser. Fredin v Richards, 61 M 490, 63 NW 1031.

Evidence sustained finding that a purchaser of four notes, secured by an usurious and void mortgage, was a bona fide purchaser, before maturity, for full value, and without notice of any rights of the makers, and that after maturity, he sold them to plaintiff, for a valuable consideration; held, the bona fide purchaser took the notes freed from the vice of usury, and further, that plaintiff, notwithstanding he purchased the notes, after maturity, and with notice of their origin, acquired all the rights of the bona fide purchaser. Robinson v Smith, 62 M 62, 64 NW 90.

One who acquires negotiable paper from a bona fide endorsee or bearer, who purchased it for value, before maturity, obtains the title and rights of such endorsee or bearer, and will not be affected by the fact that he purchased it after maturity of the paper, and with notice of fraud or other vice in the origin of the paper. Robinson v Smith, 62 M 62, 64 NW 90.

The statute gives the right to an innocent purchaser to acquire negotiable paper, usurious or otherwise, free from all equities; and by his purchase, he obtains this immunity, which becomes his property, and he may transfer it to whom he pleases. Robinson v Smith, 62 M 62, 64 NW 90.

To come within the protection of the statute, as an innocent purchaser, a party must have acquired negotiable paper in the due course of business, according to the law merchant. Stephens v Olson, 62 M 295, 64 NW 898.

Where members of an existing firm formed a new partnership with other parties, and all the assets, including some negotiable notes, not yet due, of the original partnership, were transferred to the new firm; held, that the new firm were not purchasers of the notes in the due course of business, within the law merchant. Stephens v Olson, 62 M 295, 64 NW 898.

As a scheme to raise money, two notes, secured by mortgages, were executed to an accommodation party payee, and turned over by him to a third party, for sale at a sufficient discount to constitute usury; held, the ordinary rules for determining whether one is a bona fide purchaser do not control, in such circumstances, the purchaser being charged only with actual knowledge, and not with such knowledge as inquiry would have disclosed. Martin v Hallen, 177 M 491, 225 NW 443.

A bona fide purchaser of a certificate, under a mortgage foreclosure sale, is immune from attack on the ground of usury. Kanevsky v Taran, 185 M 93, 240 NW 103.

18. Discounting commercial paper

Where one buys an accommodation note of the payee, not knowing that it was accommodation paper, but supposing that it was already a valid subsisting security in the hands of the payee, the transaction is not usurious, although he bought the paper at a discount greater than the legal rate of interest. Holmes v State Bank of Duluth, 53 M 350, 55 NW 555.

Where by an arrangement between the parties, notes, held by a loaning company were endorsed and delivered to a bank, at a discount greater than the legal rate of interest; held, the transactions were not necessarily loans, in which the notes were delivered as collateral security, but whether or not they were loans, was a question of fact; finding, that the transactions were not loans, was sustained. Becker's Inv. Agcy. v Rea, 63 M 459, 65 NW 928.

The selling of a note at a usurious discount, does not relieve the makers from their obligation, if they were not parties to the usury, but received full value for their obligation. Lake St. Sash & Door Co. v Verin, 169 M 332, 211 NW 161.

19. Liability of national banks

State courts have jurisdiction in actions brought against national banking associations to recover the penalty prescribed in Revised Statutes United States, Section 5198, for knowingly taking, receiving, reserving, or charging a rate of interest greater than that allowed by the laws of the state in which such an association is located. Endres v First Nat'l Bank, 66 M 257, 68 NW 1092.

Where a national bank has received a greater rate of interest than is allowed by law, the amount of recovery, under Revised Statutes United States, Section 5198, by the party who has paid the same, is twice the amount of all the interest paid, and not merely double the excess over the legal rate. Watt v First Nat'l Bank of Lake Benton, 76 M 458, 79 NW 509.

Questions presented were decided on a former appeal; judgment affirmed. Watt v First Nat'l Bank of Lake Benton, 79 M 266, 82 NW 1118.

20. Conflict of laws

A contract is valid unless it is contrary to the law of the place where it is made, and where the defense of usury is not interposed, the court should not declare a contract made in another state, usurious, although upon its face it bears interest at a rate in excess of that allowed by the law of this state. Reiff v Bakken, 36 M 333, 31 NW 348.

Where borrower, living in this state, sent an application for a loan, together with notes, secured by a mortgage on real estate situated here, to a lender who lived in another state, and he there accepted the securities, and made the loan, the notes being made payable there; held, it was competent for the parties to agree, when making the contract, that its construction and validity should be determined by the law of this state. Smith v Parsons, 55 M 520, 57 NW 311.

The general principle in relation to contracts, such as promissory notes, made and delivered in one place, and made payable and to be executed in another, is that they are to be governed by the laws of the place of performance; and, if the interest allowed by the laws of the place of performance is higher than that permitted at the place of the delivery of the contract, the parties may stipulate for the higher interest without incurring the penalties of usury, providing this be done without any intent to evade the usury law of the place of the contract. Ames v Benjamin, 74 M 335, 77 NW 230.

An intent to evade the usury law will not be inferred from the mere fact that the payees, of a note executed and delivered in this state, who were bona fide residents of another state in which the stipulated rate of interest was lawful, made such note payable at their usual place of business in such other state. Ames v Benjamin, 74 M 335, 77 NW 230.

Minnesota decisions, in so far as they are based upon the Minnesota statutes, are binding on this court. E. C. Warner Co. v W. B. Foshay Co. 57 F(2d) 656; 286 US 558.

21. Pleading

In an action to recover personal property under a chattel mortgage executed in another state, and bearing a rate of interest in excess of that allowed in this state; held, if the statute of the place where the contract was made, prohibited such a contract, that was a fact to be alleged in defense; it was not incumbent upon the plaintiff to affirmatively show that his mortgage was not usurious, by making proof that by the statute of the place where made, interest at the contract rate was lawful. Reiff v Bakken, 36 M 333, 31 NW 348.

Where, in an action to recover possession of personal property claimed under a mortgage, plaintiff alleged he was the owner and entitled to possession thereof, and defendant interposed an answer, denying generally the plaintiff's allegation of ownership, under such denial, defendant could attack the contract upon which

plaintiff relied to prove his title, and show that it was void for usury. Adamson v Wiggins, 45 M 448, 48 NW 185.

Where an action is brought to set aside an instrument as usurious, the facts must be specifically alleged; and in an action brought to recover upon or to enforce a contract claimed by defendant to be void for usury, such affirmative defense is new matter in confession and avoidance, which must be affirmatively alleged in the answer. Adamson v Wiggins, 45 M 448, 48 NW 185.

In an action on a promissory note, the answer alleged that the note in suit was usurious, and was given in renewal of a former usurious note; held, while the answer alleges that the note in suit was given in renewal of a former note, this was not admitted by the reply, and is deemed to have been put in issue by the general denial of what is not there specifically admitted, and the defendant was entitled to give evidence of usury in the note, as though it were an original, and to show that interest at an unlawful rate was charged and paid on this note. W. B. Clark Invest. Co. v McNaughton, 46 M 8, 48 NW 412.

Money of plaintiff was placed by her son in the hands of a loan agent, under an agreement not known by her, by which the son was to receive a usurious rate of interest on all money so placed; upon an accounting for the money received, the agent, representing to the defendants that he was buying the interest of plaintiff's son, as co-partner in the business, caused them to execute and deliver their promissory notes for such interest, which he signed and delivered to the plaintiff. In an action on one of these notes, the defense set up in the answer was that the notes were obtained through fraud, and were without consideration, but in no way was usury intimated, nor was the agreement set out. Held, under the pleadings, evidence was not admissible to show the usurious agreement. Babcock v Murray, 58 M 385, 59 NW 1038.

The burden is upon a party interposing the defense of usury, to negative by his answer and proof, every supposable fact which, if true, would render the transaction lawful. Central B. & L. Ass'n v Lampson, 60 M 422, 62 NW 544.

In an action by the guarantor of a note, claimed to be usurious, to recover the amount of a judgment for principal and interest on the note recovered against him by a bank; held, the allegations of the complaint did not state a cause of action because they did not show that the bank had recovered judgment because it was a bona fide endorsee or bearer, whereby plaintiff was deprived of his defense of usury. Fredin v Richards, 61 M 490, 63 NW 1031.

In an appeal from an order overruling a demurrer to the answer, the allegations were construed as alleging that $110.00 of an amount of $300.00 agreed to be paid, in addition to interest, for a loan, was to indemnify defendant for his loss in sacrificing securities to that extent, in order to get money for the plaintiff, and was the consideration for the promise to pay the $110.00; and since the other $190.00, with the stipulated interest, would bring the rate of interest up to less than was allowed by law, the allegations presented a good defense to the claim that the loan was usurious. Stevens v Staples, 64 M 3, 65 NW 959.

In overruling a demurrer, held, where it was alleged, in a direct and concise manner, that plaintiffs had paid, and defendant had knowingly received and retained, a rate of interest greater than that allowed by the laws of this state, in which the defendant bank was located, specifying the sums, we must give to the allegation, in respect to the payment of interest, the interpretation which the words used will naturally bear, which is that the payment was in pursuance of a prior contract for the future use of money, and as interest for such future use, not as a payment of interest for the past use of money. Endres v First Nat'l Bank, 66 M 256, 68 NW 1102.

In an action of ejectment, plaintiff claimed title through a mortgage executed by the defendant, and assigned by the mortgagee to him, which he foreclosed, bidding in the premises at the foreclosure sale; the complaint was in the usual form, alleging ownership, but not disclosing the manner in which such title was obtained, and the answer was a general denial; held, plaintiff could give evidence that the mortgage on which the plaintiff relied for title, was void because tainted with usury. Commonwealth Title Ins. & Trust Co. v Dakko, 72 M 229, 75 NW 106.

If, as alleged in the defense, defendant borrowed $207.90 from the plaintiff, and in consideration of that amount only, delivered to him a note for $497.00, due

in less than three months, the facts constituted a clear case of usury, and order overruling a demurrer to the answer affirmed. Johnson v Joyce, 90 M 377, 97 NW 113.

Where a complaint alleged title and right of immediate possession of a Ford automobile, describing it by motor and registration numbers, and the answer was a general denial, under the pleadings, plaintiff could prove defendants sold title or right of possession came through documents tainted with usury. Halos v Nachbar, 196 M 387, 265 NW 26.

22. Chattel mortgages held usurious

In an action for the conversion of grain, wrongfully taken from the granary of the plaintiff, and advertised and sold under a usurious mortgage, where finding was sustained that the grain had not been turned over as part payment of a note, but for the purpose only of surrendering possession to the mortgagee; held, plaintiff could defend against the mortgage and reclaim the grain. Wetherell v Stewart, 35 M 496, 29 NW 196.

Mortgagor is entitled to recover possession of personal property taken from him by the mortgagee, for the purpose of foreclosing a usurious mortgage. Bickford v Johnson, 36 M 123, 30 NW 439.

In an action by a mortgagee, to recover possession of personal property securing a note made by the defendant, the answer alleged that the note and mortgage were usurious, and on the trial, evidence was presented that they were given as a renewal of a former note, secured by a chattel mortgage on the property; it being found that the note and mortgage in suit were usurious, but that the former note and mortgage were not; held, in this action, plaintiff was not entitled to recover property under the former mortgage, as that right was not in issue, nor litigated. Barrows v Thomas, 43 M 270, 45 NW 443.

Evidence justified finding that a transaction was usurious in its inception, and the note and mortgage securing it, were void. Adamson v Wiggins, 45 M 448, 48 NW 185.

In an action to recover the value of property taken in a suit of replevin; held, evidence justified finding that the mortgage, under which the defendants claimed possession of the personal property, was usurious and void. Dade v Spalding, 52 M 356, 54 NW 591.

Evidence sustained finding that an instrument which, on its face, was an absolute bill of sale of a piano, was in fact a chattel mortgage given to secure a usurious loan, and was void. Armstrong v Freimuth, 78 M 94, 80 NW 862.

When the assignee of a conditional sales contract has full information as to all the facts the usual warranties do not apply. Midland Loan Co. v Madson, 217 M 267, 14 NW(2d) 475.

23. Real estate mortgages held usurious

Where borrower gave a deed, aboslute in form, to the lender, as security for a usurious loan, and the lender transferred the property to the wife of the borrower, taking from her a new mortgage for the same debt, the transaction was not effectual to remove the taint of usury. Exley v Berryhill, 37 M 182, 33 NW 567.

The foreclosure of a usurious mortgage by sale under the power, does not prevent the granting of relief. Exley v Berryhill, 37 M 182, 33 NW 567.

Where borrower gave his notes for a loan, secured by a mortgage on real estate, and in addition to interest, paid a bonus and performed services of a certain value; held, evidence sustained finding that the mortgage was usurious, and void. Smith v Parsons, 55 M 520, 57 NW 311.

In an action to foreclose a real estate mortgage securing a note for a loan; held, evidence sustained finding that a usurious bonus was retained by the general agent of the plaintiff, and judgment, canceling the note and mortgage, was affirmed. Carpenter v Lamphere, 70 M 542, 73 NW 514.

Over a period of years, plaintiff was indebted to the defendant on notes, and to secure extensions, was required to buy horses, at exhorbitant prices; the trans-

actions ended in the giving of the note in suit, secured by a real estate mortgage. In an action to cancel the note and mortgage, as usurious; held, evidence sustained finding that some of the transactions were usurious, and judgment for the plaintiff was affirmed. Kommer v Harrington, 83 M 114, 85 NW 939.

Where a principal intrusted the amount of a loan with an agent, to be loaned to a person known to the principal, and the agent retained a bonus from the amount, the note and mortgage were usurious. Robinson v Blaker, 85 M 242, 88 NW 845.

In an action to cancel two mortgages as usurious; held, the finding of the trial court that the transaction was a purchase and sale of land, and not usurious, were not sustained by the evidence. Hagan v Barnes, 92 M 128, 99 NW 415.

Where a borrower executed two notes, secured by a first and second mortgage, and it clearly appeared from the facts that the amount actually received by him with interest computed at the highest legal rate, was less than the amount which he agreed to pay for the loan, the transaction was held usurious, and the notes and mortgages void. Rantala v Haish, 132 M 323, 156 NW 666.

Under the statute, a usurious note in the hands of a bona fide purchaser for value, without notice, and before maturity, is valid; but a mortgage securing such note cannot be enforced. Rantala v Haish, 132 M 323, 156 NW 666.

24. Real estate mortgage held not usurious

Sustained finding, in an action to enjoin the foreclosure of a mortgage, that defendant had not charged plaintiff a bonus for a loan, and that the mortgage was not void for usury. Bishop v Corbitt, 40 M 200, 41 NW 1030.

In an action for the cancelation of a mortgage; held, the charge for services and expenses in connection with the loan was reasonable and bona fide; further, the fact that the note bore interest during the interval in which the note and mortgage were sent to them for their acceptance and their receiving of the money, did not make the mortgage usurious. Daley v Minn. Loan & Invst. Co. 43 M 517, 45 NW 1106.

In an action on a note, secured by a mortgage; held, the fact that, as a condition of obtaining a loan, defendant was required to purchase real property at a price in excess of its market value, did not necessarily condemn the transaction as usurious nor must the note be held usurious because of the amount of commissions paid to the agent; judgment for the plaintiff affirmed. Saxe v Womack, 64 M 162, 66 NW 269.

In an action to cancel a note for $350.00, secured by a mortgage, as usurious, where plaintiff received but $250.00, and testified that he was unable to read, and supposed that he signed a note and mortgage for the amount, finding was sustained that $100.00 was for interest for one year in advance, and for the services of the agent of the plaintiff in obtaining the loan; evidence in the case was not of usury, but rather of fraud. Chambers v Gilbert, 68 M 183, 70 NW 1077.

In an action to cancel a mortgage, its foreclosure and a certificate of sale, because of a usurious agreement for an extension of the mortgage; held, if not usurious, an original transaction cannot be made so by a subsequent agreement to extend the time of payment, although such agreement was in consideration of a payment of, or a promise to pay, usurious interest. Morse v Wellcome, 68 M 210, 70 NW 978.

In an action to have a written agreement for a loan declared void, for usury, and to set aside a deed securing a loan; held, evidence warranted finding that the agreement, as drawn, incorrectly stated that a sum was to be paid as a bonus, and justified conclusion that the deed be adjudged a mortgage, and foreclosed, in favor of the defendant. Stevens v Staples, 69 M 178, 71 NW 929.

Evidence sustained finding that plaintiff was a mutual building and loan association within meaning of the statutes exempting such associations from the usury laws of the state, and that the mortgage was valid. Zenith B. & L. Ass'n v Heimbach, 77 M 97, 79 NW 609.

In an action of ejectment, plaintiff claimed title through the assignment of a mortgage, and a purchase of the premises at the foreclosure sale of the mortgage; the defense was that the mortgage was usurious; held, computing interest on the

loan as made, the mortgage was not usurious, as a matter of law. Commonwealth Title Ins. & T. Co. v Dakko, 89 M 386, 94 NW 1088.

Findings do not affirmatively show usury, where, though a monthly premium of 50 cents for each $100.00 of the loan, added to the stipulated six per cent interest, would call for 12 per cent, the borrower participated in the annual distribution of the earnings of the lending corporation, and there was no showing as to the amount placed to his credit. Jenkins v Union Savings Ass'n, 132 M 19, 144 NW 765.

A loan, payable in, and considered by the parties to be a South Dakota loan, governed by the laws of that state, was not usurious under South Dakota law, and a mortgage securing it upon lands in this state, is valid. Jenkins v Union Svgs. Ass'n, 132 M 19, 155 NW 765.

In an action to cancel a note and mortgage for usury, findings were sustained that $110.00 from the amount of a loan, was paid by the defendant, in good faith, to one of the two persons who acted as agents of the plaintiff in procuring the loan; and that $100.00 was a reasonable charge by the defendant for his services in appraising the security. Hobart v Michaud, 174 M 474, 219 NW 878.

Appraisal services are placed in the class with attorney's fees for examining the title of the security. Hobart v Michaud, 174 M 474, 219 NW 878.

334.04 OFFENDERS TO ANSWER ON OATH.

HISTORY. 1877 c. 15 s. 4; G.S. 1878 c. 23 s. 5; 1879 c. 66 s. 4; G.S. 1894, s. 2215; R.L. 1905 s. 2736; G.S. 1923 s. 5808; G.S. 1923 s. 7039; M.S. 1927 s. 7039.

In an action to enjoin a loan company from violating the usury statutes, the court did not err in retaining the receiver in custody of the accounts, notes, and other evidence of the usurious transactions, pending the outcome of the trial. State ex rel v O'Neil, 205 M 366, 286 NW 316.

Laws relative to usurious contracts do not apply to building and loan associations. Minn. Bldg. & Loan Ass'n v Closs, 182 M 452, 234 NW 872.

Statute came in to overcome some of the difficulties arising under the old equity practices. Blindman v Industrial L. & T. Corp. 197 M 102, 266 NW 455, 267 NW 143.

334.05 USURIOUS CONTRACTS; CANCELATION.

HISTORY. 1879 c. 66 s. 6; G.S. 1978 Vol. 2 (1888 Supp.) c. 23 s. 7; G.S. 1894 s. 2217; R.L. 1905 s. 2737; G.S. 1913 s. 5809; G.S. 1923 s. 7040; M.S. 1927 s. 7040.

In an action to avoid a mortgage and foreclosure sale, as well as the notes, and to secure their surrender and cancelation, where the defendant had purchased the notes and mortgage with no notice of usury, and after notice, foreclosed the mortgage, purchasing the premises at the foreclosure sale; held, the statutory exception protecting bona fide purchasers of negotiable paper was not applicable to mortgages securing negotiable paper. Scott v Austin, 36 M 460, 32 NW 89, 864.

One who seeks the avoidance and cancelation of securities for usury need not, as a condition of obtaining such relief, offer to pay what he has received, with legal interest. Scott v Austin, 36 M 460, 32 NW 89, 864.

The fact that a usurious mortgage had been foreclosed by sale under the power, did not prevent equitable relief being granted in an action to avoid the mortgage and the statutory foreclosure of the same. Exley v Berryhill, 37 M 182, 33 NW 567.

In an action to cancel, as usurious, a mortgage upon real estate, the complaint must show that it is a cloud on the title of the plaintiff, and that he got title through the mortgagor, so as to be affected by the mortgage. Cleveland v Stone, 51 M 274, 53 NW 647.

In an action to compel the cancelation and delivery of a note and mortgage for $350.00, which plaintiff, who could not read, claimed he supposed were drawn for $250.00; held, evidence sustained finding that there was no usury in the loan, rather it was a case of fraud. Chambers v Gilbert, 68 M 183, 70 NW 1077.

One who asks for the cancelation, for usury, of notes and the mortgage securing them, need not as a condition for obtaining such relief, pay what he has re-

ceived, with interest. Mathews v Missouri, Kansas & Texas Trust Co. 69 M 318, 72 NW 121.

By virtue of the statute, one asking for the cancelation of securities for usury, need not as a condition of obtaining such relief, repay with interest, the amount of money actually received. Mathews v Missouri, Kansas & Texas Trust Co. 69 M 318, 72 NW 121.

In an action to cancel a note and mortgage, and annul foreclosure proceedings, the complaint alleged a usurious agreement between the parties, unless the defendant corporation, by reason of its being a mutual building and loan association, was exempt from the usury laws; the complaint, which was verified, also specifically alleged that defendant was not such an association; held, as the demurrer admitted all of these allegations, the complaint was sufficient. Birch v Security Svgs. & Loan Ass'n, 71 M 112, 73 NW 513.

In an action to cancel a note and to compel the surrender of security pledged as collateral; held, evidence sustained finding that a transaction, though in form a sale of stock, and valid on its face, was in fact a loan and usurious, and that the plaintiff have affirmative relief without restoring, as a condition to relief, the money received. Trauernicht v Kingston, 156 M 442, 195 NW 278.

In an action to cancel a note and mortgage for a loan which an attorney at law secured for a client, retaining from the amount of the loan, compensation for his services, and a usurious bonus which he falsely represented the lender wanted in addition to interest; held, evidence supported finding that the attorney was the agent of the borrower, and that plaintiff could recover the agreed compensation, in addition to the amount of the usurious bonus. Blackey v Alexander, 156 M 478, 195 NW 455.

In an action to annul a note and mortgage, and to enjoin the negotiation or enforcement thereof, plaintiff's application for a temporary injunction was denied; held, the mere allegation of usury in the moving papers is not sufficient to compel the granting of an injunction, it being within the discretion of the court to grant or refuse it. Durgin v Mercantile Acceptance Co. 167 M 330, 209 NW 5.

Where defendant, who held valid mortgages on lots, by an agreement with plaintiff, advanced money for the building of houses on the lots, discharged his mortgages so that first mortgages could be obtained when the houses were built, and took notes, secured by second mortgages, for amounts which included the money advanced, the first encumbrances and additional sums, evidence justified finding that usury vitiated the second notes and mortgages, but the court should grant equitable relief to the defendant by reviving the liens discharged by him, subject to the first mortgages obtained with his consent. Becker v Olkon, 176 M 427, 223 NW 777.

Laws relative to usurious contracts do not apply to building and loan associations. Minn. B. & L. Ass'n v Closs, 182 M 452, 234 NW 872.

A contract tainted with usury is illegal and void. Halos v Nachbar, 196 M 387, 265 NW 26.

In view of the statute, the court did not err in retaining the receiver of a loan company in possession of the accounts, notes, and other written evidence of usurious transactions, pending the outcome of the trial. State ex rel v O'Neil, 205 M 366, 286 NW 316.

Transaction was held usurious, making notes void. E. C. Warner Co. v W. B. Foshay Co. 57 F(2d) 656.

Under the statutes of Minnesota relating to usury, as construed by the courts of that state, whose construction is binding upon the federal courts, a borrower seeking relief in equity from a usurious contract, is not required to pay or tender the amount of the loan, with legal interest, as a condition of obtaining such relief. Missouri K. & T. Trust Co. v Krumseig, 77 Fed. 32.

Usury is a statutory offense, and federal courts in dealing with such question, must look to the laws of the state where the transaction took place, and follow the construction put upon such laws by the state courts. Missouri, K. & T. Co. v Krumseig, 172 US 351.

The purchaser of an automobile under a title retaining contract may have the contract declared void, but cannot have an adjudication of ownership. The

statute does not give the borrower the right to confiscate another's property and thereby make it his own. Seebold v Eustermann, 216 M 571, 13 NW(2d) 739.

What is usury in Minnesota. 21 MLR 586.

Regulations of business and trades; small loans. 24 MLR 255.

334.06 AGREEMENTS TO SHARE PROFITS; BUILDING ASSOCIATIONS.

HISTORY. 1879 c. 66 s. 7; G.S. 1878 Vol. 2 (1888 Supp.) c. 23 s. 7a; 1889 c. 121 s. 1; G.S. 1894 ss. 2218, 2219; R.L. 1905 s. 2738; G.S. 1913 s. 5810; G.S. 1923 s. 7041; M.S. 1927 s. 7041.

A mutual building and loan association, conducting its business in good faith, and loaning its funds to bona fide members, is not subject to the usury laws by reason of excess of premiums contracted to be paid on a loan, over the rate of interest permitted by law. Central B. & L. Ass'n v Lampson, 60 M 422, 62 NW 544.

Finding and conclusion that plaintiff was a mutual building and loan association, within the meaning of the statutes exempting such associations from the usury laws, and that the mortgage in question was valid, were sustained by the evidence. Zenith B. & L. Ass'n v Heimbach, 77 M 97, 79 NW 609.

Statutes exempting building and loan associations from the operation of the usury laws, held constitutional. Zenith B. & L. Ass'n v Heimbach, 77 M 97, 79 NW 609.

Where by agreement, money was advanced for the purpose of buying a hotel property, a share of the net annual earnings to be paid in lieu of interest, the fact that such share proved to be more than interest computed at the maximum rate allowed by law, did not make the loan usurious. Andrews v Andrews, 170 M 175, 212 NW 408.

Laws relative to usurious contracts do not apply to building and loan associations. Minn. B. & L. Ass'n v Closs, 182 M 452, 234 NW 872.

Building and loan associations are exempt from operation of usury statutes. Northern B. & L. Ass'n v Witherow, 205 M 413, 286 NW 397.

Usury. 21 MLR 588.

334.07 CONTRACTS DUE ON HOLIDAYS.

HISTORY. 1856 c. 17 ss. 1, 2; P.S. 1858 c. 29 ss. 10, 11; G.S. 1866 c. 23 s. 3; 1871 c. 46 s. 1; G.S. 1878 c. 23 s. 10; G.S. 1894 s. 2230; 1897 c. 51; 1903 c. 261 s. 2; R.L. 1905 s. 2739;G.S. 1913 s. 6010; G.S. 1923 s. 7242; M.S. 1927 s. 7242.

A bond given by a dealer in live stock was conditioned for payment of each lot of stock within 48 hours after delivery, and provided that the surety was not liable for a purchase, if when made, the dealer was in default to the seller more than 48 hours on previous sales; in an action to recover for a sale made on Monday, when the dealer was in default for a purchase made on the previous Friday; held, Sunday was not to be counted, and that the 48-hour period from the time of the purchases on Friday expired at the same hour on the following Monday. Hughes v Globe Indemnity Co. 139 M 417, 166 NW 1075.

Where an order of a town board laying out a road was claimed to be void because adopted on a Memorial Day; held, the transaction of public business on a legal holiday is legal in case of necessity, the existence of which will be presumed in the absence of a showing to the contrary. Ingelson v Olson, 199 M 422, 272 NW 270.

334.08 FOLLOWING DAY DEEMED HOLIDAY, WHEN.

HISTORY. 1905 c. 345 s. 1; G.S. 1913 s. 6011; G.S. 1923 s. 7243; M.S. 1927 s. 7243.

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

334.09 CORPORATE BONDS; SEAL.

HISTORY. G.S. 1866 c. 23 s. 2; G.S. 1878 c 23 s. 9; G.S. 1894 s. 2220; R. L. 1905 s. 2740; G.S. 1913 s. 6012; G.S. 1923 s. 7244; M.S. 1927 s. 7244.

A note, affixed with the corporate seal, and given by a corporation for an indebtedness in excess of the limit fixed by the articles of incorporation, was sold before maturity and for a valuable consideration; in an action on the note, held, the affixing of the seal did not impair the negotiability of the note, and the purchaser, as a bona fide holder, before maturity, could recover on the note. Auerbach v Le Sueur Mill Co. 28 M 291, 9 NW 799.

In an action to rescind a sale of two bonds for misrepresentation, held, evidence warranted finding that defendant represented that he personally signed the bonds and stood back of them, and that he was personally liable, even though the bonds were owned by the bank, for he made no disclosure that he acted for the bank. Kerr v Simons, 166 M 195, 207 NW 305.

334.10 DAMAGES ON INTERNATIONAL BILLS.

HISTORY. 1849 c. 46 s. 1; R.S. 1851 c. 34 s. 8; P.S. 1858 c. 29 s. 8; G.S. 1866 c. 23 s. 7; G.S. 1878 c. 23 s. 14; G.S. 1894 s. 2234; R.L. 1905 s. 2743; G.S. 1913 s. 6013; G.S. 1923 s. 7245; M.S. 1927 s. 7245.

334.11 RATE OF DAMAGE ON INTERSTATE BILLS.

HISTORY. 1849 c. 46 s. 2; R.S. 1851 c. 34 s. 9; P.S. 1858 c. 29 s. 9; G.S. 1866 c. 23 s. 8; G.S. 1878 c. 23 s. 15; G.S. 1894 s. 2235; R.L. 1905 s. 2744; G.S. 1913 s. 6014; G.S. 1923 s. 7246; M.S. 1927 s. 7246.

334.12 INSTRUMENT OBTAINED BY FRAUD.

HISTORY. 1883 c. 114 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 23 s. 19; G.S. 1894 s. 2239; R.L. 1905 s. 2747; G.S. 1913 s. 6015; G.S. 1923 s. 7247; M.S. 1927 s. 7247.

In an action by a bona fide endorsee for value before maturity, on a negotiable promissory note, obtained by representations that the note was non-negotiable, to be void unless 23 other signers were obtained, and that the makers were to be jointly and not severally liable, held, evidence justified finding that the maker's signature was obtained by false representations but that he was guilty of negligence in signing the note without informing himself of its contents, wholly relying on the statements of the party opposed to him in the contract as to its nature and contents. Ward v Johnson, 51 M 480, 53 NW 766.

Where signatures to one of three negotiable promissory notes for one-third of the amount of stock in a corporation were obtained through representations that each signer was severally liable for only one-third of his stock in the corporation, held, the statute did not apply as it is applicable only when the party believes that he is not signing a negotiable instrument at all. Yellow Medicine County Bank v Tagley, 57 M 391, 59 NW 486.

In an action on a joint and several negotiable note, defendants claimed they never signed a note, but signed what was represented to be, and what they thought was, a subscription list for shares in a stallion; held, under the evidence, their signatures were obtained by fraud, trick or artifice, and the question of the defendant's negligence was a question for the jury. First Nat'l Bank v Holan, 63 M 525, 65 N. W. 952.

Where a wife, whose husband was away, signed a note for his indebtedness to a creditor to avoid a threatened garnishment of accounts of persons indebted to her husband, and in an action on the note, claimed that the writing she signed was represented to be, and she thought was, a mere statement that her husband would return on a certain date and settle the account, held, the court properly refused to submit the question of fraud in obtaining the note, or negligence of the maker to the jury, as to bringing the statute into operation. There must be some evidence to raise such issue, and in this case there was none. O'Gara, King & Co. v Hansing, 88 M 401, 93 NW 307.

In an action on a note and contract for the building of a creamery, the answer set forth the defense that defendants had not signed the note and contract, and that if they did, it was done upon false and fraudulent representations as to the nature of the papers; held, the defenses were not inconsistent. Bank of Glencoe v Cain, 89 M 473, 95 NW 308.

Where a jury found a defendant was not guilty of negligence in signing a note which he supposed was a receipt for goods delivered, the court granted judgment for the plaintiff notwithstanding the verdict; held, while the statute requires the question to be tried by a jury, it does not do away with the general rule that findings of the jury must be sustained by evidence fairly and reasonably tending to support the same. Johnson Co. Svgs. Bank v Hall, 102 M 414, 113 NW 1011.

Evidence, though it did not make out a strong case, was held sufficient to sustain finding of fraud, and to negative defendant's negligence in signing a note without investigating and knowing its contents. Sibley Co. Bank v Schaus, 104 M. 438, 116 NW 928.

In an action on a note, endorsed and sold for value to a bank by the payee, which the maker was tricked into signing, believing it to be a duplicate of a contract of agency he had just signed, the court excluded evidence of knowledge of fraud on the part of the purchasers; held, the statute does not modify nor repeal the common law rule that fraud of the payee and knowledge thereof by the purchaser is a good defense to an action against the maker, but it added a new and additional defense, and it was error to exclude such evidence. Hinkley v Freick, 112 M 239, 127 NW 940.

Where the court instructed the jury that if they found the note in suit was obtained by fraud, the defendant was entitled to their verdict, but did not say that the defendant was required to make it appear that he was not guilty of negligence in signing the note without knowledge of its terms, held, the failure of the court to cover some particular feature of the case in its instructions is not reversible error, in the absence of special requests therefor. Farris v Koplau, 113 M 397, 129 NW 770.

A bona fide holder of negotiable instruments is not protected by his good faith, but takes title subject to this particular defense of the statute. Farris v Koplau, 113 M 397, 129 NW 770.

Without reading it because he was busy, defendant signed an instrument containing blank spaces which he did not know was a note, relying on the honesty of a stranger agent to change the instrument according to a verbal agreement; in an action on the note by an innocent purchaser for value, held, where from the evidence, defendant's negligence conclusively appeared, there was no issue for the jury, and plaintiff's motion for a directed verdict should have been granted. Cedar Rapids Nat'l Bank v Mottle, 115 M 414, 132 NW 911.

In an action against the holder, to cancel certain notes because obtained through the fraud of the payee, and for a temporary injunction to restrain the defendant from prosecuting an action on the notes against the plaintiff in the courts of a foreign state, held, to justify equitable interposition, it must be made to appear that a trial in the foreign court will impose an unreasonable burden upon the defendant, and that it is so brought for the purpose of compelling him to forego his defense or incur unreasonable and unnecessary expense, and not for any legitimate reason. Freick v Hinkly, 122 M 24, 141 NW 1096.

In an action by the assignee of a note, which defendant was induced to sign through payee's representations that defendant's wife was ill, and that payee was a doctor who alone had a treatment for such illness, held, evidence justified findings that the note was procured by fraud, and that plaintiff was not an innocent purchaser, but because the court failed to give the jury a proper statement of what constituted actionable fraud, and inaccurately stated rules whereby to determine whether plaintiff was an innocent purchaser, a new trial should be granted. First State Bank of Storden v Pederson, 123 M 374, 143 NW 980.

Where defendant, who could but partially read printed English, was tricked into signing a note for goods, as well as a contract of agency, held, he was not guilty of negligence, as a matter of law, in signing the instrument without knowing it was a note, and verdict in his favor was supported by the evidence. Johnson Co. Svgs. Bank v Weiby, 126 M 42, 147 NW 823.

Defendant, who was a milliner conducting a small store, was induced to order a line of toilet articles, to be paid for only as sold, and was induced to sign what apparently was only an order for the goods, but was in fact, a note, separated from the order by means of an indistinct perforation; in an action on the note, held, evidence justified finding of fraud, and that defendant was not guilty of negligence. Stevens v Pearson, 138 M 72, 163 NW 769.

Defendant signed four papers relating to the installing of a lighting plant in his house, not knowing any one of them was a note. Upon a request to write his name and address in full on the back of one of the papers, he in fact, endorsed a note signed by, and made payable to the order of himself; held, evidence sustained finding that he was not guilty of negligence in the endorsement of the note. National Farmers Bank v Nygren, 141 M 48, 169 NW 228.

In an action on a note obtained by representations that the financial standing of a cranberry corporation whose bonds were to be issued in exchange for the note, was in excellent condition, when it owned only 50 acres of swamp land on which there was a $12,000 mortgage; held, evidence sustained finding of fraud; and, fraud being found, that plaintiff who then had the burden of proving that it obtained the note in due course of business without notice or knowledge of the fraud, failed so to do. First Nat'l Bank of Phillips v Denfeld, 143 M 281, 173 NW 661.

In an action by the endorsee of a note claimed by defendant to have been given to be used as collateral, with the notes of others, by the payee service corporation, for a loan made to it by the plaintiff, but which the payee sold to plaintiff as an original obligation of the defendant; held, the note was negotiated in breach of faith and under such circumstances as amounted to fraud, and sustained finding that plaintiff, who, proof having been made that the note was defective, then had the burden of showing that he purchased the note for value, in good faith, and without notice of a fraud, failed to so prove. McWethy v Norby, 143 M 386, 173 NW 803.

An agent for defendants procured a party who contracted to buy their farm, and who made a cash payment of $1,000 on the $39,600 purchase price, and defendants gave their notes to their agent for an amount as his commission on the sale. Three months later, a suit by the party to recover the $1,000 paid, upon the ground that the title was defective, was dismissed and the defendants then acknowledged a second contract, as of the date of the first contract, embodying the general terms of the first, but supplying certain omissions. In an action by the purchaser of the commission notes, defendants, who could not read or write, claimed the note was procured by fraudulent representations as to their nature, they did not believe they were signing notes, and that they were not negligent in signing them. Further, that the payee fraudulently made use of the party to get the commission notes, with no intention that the sale would be completed. The plaintiff offered no evidence in rebuttal, claimed no case of fraud was made, and that as a matter of law, the execution of the new contract by the defendants, who then had knowledge that a note or notes were outstanding, constituted a waiver of the fraud or ratification of the notes, and the court directed a cerdict for him. Held, there was evidence of fraud, and though the court found the defendants negligent, so that the statute was not a defense, still if the jury found fraud, the burden was on the plaintiff to prove he was an innocent purchaser, and since he offered no evidence, a verdict should not have been directed for him though an element essential to a defense against an innocent purchaser, under the statute, was wanting; and that under the circumstances, there was no waiver or ratification, as a matter of law, if it could rightly be found, as a matter of fact. Albrecht v Rathai, 150 M 256, 185 NW 259.

The statute does not change the rule, that knowledge in the purchaser of fraud in the payee in securing the note, defeats recovery. Albrecht v Rathai, 150 M 256, 185 NW 259.

The purchaser in good faith of a note executed under the conditions defined by the statute, is not protected as a bona fide purchaser, but takes subject to the defense. Albrecht v Rathai, 150 M 256, 185 NW 259.

To make a defense within the statute, the signature must be obtained by a fraudulent representation as to the nature and terms of the contract signed, the signer must not believe it to be a negotiable instrument, and he must not be guilty

of negligence in signing; this much, but no more, is required, and the good faith of the purchaser does not avail him. Albrecht v Rathai, 150 M 256, 185 NW 259.

By a contract of employment, an attorney was to receive 40 per cent of all money or property recovered by legal action or settlement, from the estate of defendant's father, in Iowa, and from which defendant had been cut off from sharing with a brother by a codicil in his father's will. The attorney retained Iowa counsel and an action was commenced; but before trial, a settlement was agreed upon, and the terms embodied in a stipulation signed by the parties, which provided for a transfer of a one-half interest in the estate to a trustee for defendant, and for the conveyance of certain property to the trustee, with an option to the brother, to purchase at a certain price, half of which was to be paid to defendant's attorneys as their fees. The property was so purchased and the payment made to the attorneys. The following day, defendant executed notes to his attorney for the balance of an amount agreed to be accepted as compensation for his services. In an action on the notes, defendant alleged fraud, in that the attorney had agreed with defendant's brother, to receive the cash payment in full satisfaction of all claims for attorneys' fees, and that without informing him of that fact, the attorney falsely represented that the money was to go to the Iowa attorneys and that he would not allow the pending settlement to be completed unless defendant executed the notes; held, by giving a check for interest on the notes, after knowing everything that he claims he ought to have been told before he signed the notes, defendant waived his claim of fraud. Clarke & Simmons, Inc. v Rule, 159 M 406, 199 NW 89.

A finding that the makers' signatures were obtained by fraud, and without negligence on their part, defeats a recovery, even though plaintiff, the endorsee of the notes, was a holder in due course, and took them in good faith. Mchts. State Bank of Elizabeth v Umlauf, 160 M 255, 199 NW 819.

In an action on notes for first premiums on life insurance policies, where there was evidence that the payee, to obtain their signatures, invited the makers to his home, supplied them with intoxicating liquor, and when they were under its influance, requested them to sign application blanks for life insurance, telling them they would not have to take the policies when they came, but that he merely wanted them to help him win a contest; and that the makers so signed, not knowing they were signing notes; held, the court did not err in submitting the question of their negligence to the jury, and in instructing them that if the payee induced the makers to drink intoxicating liquor to facilitate the accomplishment of a fraudulent design to obtain their signatures, their condition, produced by drink, might be considered in determining whether they were negligent in signing the notes. Mchts. State Bank of Elizabeth v Umlauf, 160 M 255, 199 NW 819.

Where plaintiff, the owner of a Belgian stallion, by his agent procured defendant's signature on a note for $120.00 for a breeding certificate which entitled defendant to the services of the stallion for six colts, and in an action on the note, defendant, who could not read English understandingly, claimed that he did not sign a note, but signed a paper which was represented by the agent to be an agreement that he would breed his mares to the stallion and pay $20.00 per colt, held, evidence justified finding for defendant, under the statute, and that as a matter of law, he did not affirm the note, by continuing to have his mares bred, and fulfilling his agreement as he thought it to be, after being informed that he had signed the note. Owosso Sugar Co. v Drong, 163 M 216, 203 NW 610.

Owners of a dwelling entered into a contract for its remodeling with a construction company, and executed a note and mortgage to the company, to be used at a bank, to raise money with which to pay for labor and material. The mortgage was negotiated to the bank, placed to the account of the company and checked out by it, but no part of the amount was used for improvements upon the dwelling. Mechanics' liens were allowed against the premises, and the bank brought an action to foreclose its mortgage. In an action by the owners, for an accounting with the bank, and for an order directing it to pay and satisfy the liens allowed and to enjoin it from proceeding with its foreclosure, held, evidence sustained findings that the bank was not a bona fide owner of the note and mortgage, that they had been obtained by fraud, that the bank had knowledge of the purpose for which they were executed, and that the money paid by the owners to the bank was paid

in reliance upon the bank's paying for labor and material; that the bank accede to the mortgage in the amount which it paid for the liens. Olson v Chgo-Lake State Bank, 164 M 86, 204 NW 926.

Defendant bank, in Minneapolis, was the depository of a small bank in North Dakota, which desired to invest a portion of its balance in good commercial paper, and its president when in Minneapolis, made arrangements with defendant's president, to have about $20,000 worth of such paper sent to the North Dakota bank, leaving the matter of its selection with defendant's president. Practically worthless notes in the amount of about $18,000 were sent. In an action to recover for false representation, held, the evidence made a case for the jury, and would justify a finding of fraud. Engen v Mchts. & Mfgrs. State Bank, 164 M 293, 204 NW 963.

A land purchase contract provided that upon payment of notes given as earnest money and due nine months after date, a warranty deed reserving a vendor's lien would be executed for which vendor's lien notes should be given. In the following month, the purchaser, who was cultivating corn in his field, not well able to read English, and without his glasses so that he could see to read, was approached by an agent of the land company, and over his objections, induced to sign what was represented to be only a form of paper to be filled out so that when the proper time came, the deed could be issued. In an action on the lien notes so given, the court charged the jury that the plaintiff, as an innocent holder, was entitled to a verdict, unless defendant established that the notes were obtained by trickery so that he did not know he was signing notes, and that he was not guilty of negligence. Held, there was sufficient evidence of trickery and misrepresentation to go to the jury, and sustained finding for the defendant. Farm Mtge. Loan Co. v Pederson, 164 M 425, 205 NW 286.

The burden is on the one invoking the statute to prove that he was not negligent. Farm Mtge. & Loan Co. v Pederson, 164 M 425, 205 NW 286.

In an action by a bank examiner, on a note given by the defendant for stock in the bank, and obtained by the false representations of the bank's managing officer that its capital stock had been doubled and that it was paying substantial dividends, and where defendant, upon learning of the closing of the bank, immediately offered to return his stock certificate, held, evidence warranted finding that a fraud was perpetrated upon the defendant, and that he had not been guilty of laches and was not estopped from obtaining a rescission of his note. Rathbun v Goldman, 164 M 507, 205 NW 436.

The business of a bank was managed by its cashier and assistant cashier, and the bank procured a bond from a surety company conditioned for reimbursement for any pecuniary loss through fraud or dishonesty of these officers. Notes, secured by a chattel mortgage on an automobile, were endorsed and discounted to the bank by the mortgagee, subsequent to which the car was confiscated by Canadian authorities for a violation of their liquor laws. After learning that the mortgagor had another car in a public garage, the mortgagee garnisheed the garage keeper, and at his own instance, and by direction of the bank cashier, the bank's attorney went with him to the mortgagor, and they made an arrangement by which the garnishment was released and the title transferred to an associate of the mortgagor who executed new notes for debt of the mortgagor, and a chattel mortgage on the car, making them to the assistant cashier. The cashier placed them in the bank, and the first notes were surrendered. Shortly after, the assistant cashier endorsed the notes without recourse and assigned the chattel mortgage. Subsequently, the second car was confiscated in another state, leaving the bank holding the worthless notes, with no security. Thereafter, both officers resigned, by request, and a settlement was had between the bank and the cashier, for a claimed default, and an action brought against the surety company, in which the bank claimed the first notes were collectible from the endorser, and that they were surrendered for the uncollectible notes for the purpose of defrauding the bank. Held, from the evidence it clearly appeared that the assistant cashier was not present at the transaction, had no knowledge of it at that time, and had no culpable part in it. Liberty State Bank v Amer. Surety Co. 165 M 462, 206 NW 706.

Plaintiffs gave a note to a corporation for the construction of a rendering plant, intrusting it to an officer of the corporation, to be negotiated only to the manufacturer of the plant, which in breach of faith, the officer sold to defendant, who

had knowledge of the circumstances and who sold it to an innocent purchaser for value, who collected the full amount from the plaintiffs; in an action by plaintiffs for the amount so paid, held, where defendant fraudulently acquired and transferred the note, with knowledge of the breach of faith, for the purpose of imposing upon the plaintiffs a liability incident to a bona fide holder in due course, to which they would have no defense, he was liable to them in damages. Silliman v Dobner, 165 M 87, 205 NW 696.

Defendant signed a note, secured by a mortgage on a farm, with her husband, by which the time for payment of lumber furnished for a granary and garage on the farm and a home in town, owned by him, was extended for a year, and in an action on the note, claimed want of consideration, and that her signature was obtained by fraud, and misrepresentations, in that when she asked what kind of papers she was supposed to sign, she was told that it was a mortgage, and that was all; held, there was a valid consideration, and from the evidence, no active or conscious effort by the plaintiff to deceive or mislead, and her failure to know that she signed a note, must be attributed solely to her own negligence. Hawley Lbr. Co. v Nordling, 168 M 70, 209 NW 484.

Where purchaser gave his note for stock in a chemical company, and thereafter made a small payment on the principal, and executed three renewal notes, each time paying interest, and in an action on the third renewal note, alleged fraud as a defense, the principal misrepresentation being that the stock was regularly paying an eight per cent dividend, held, defendant must have had knowledge of fraud, if it existed, before executing the third renewal note, and by it, he waived his claim of fraud. Farmers State Bank v Miller, 168 M 199, 209 NW 869.

A solicitor for a proposed elevator, to be built by a farmers' cooperative company, with the cashier of a bank where defendant did his banking, went to defendant who was working in a field, to induce him to join other farmers in organizing such a company, and after much solicitation, the solicitor prepared and presented two papers for his signature; defendant could not read, and though his son was present, he asked the cashier to read and explain the papers, thinking he could more readily do so, and having implicit faith in his so doing. The cashier informed defendant that the papers were an agreement to meet with the rest of the farmers to see if they could raise money to build the elevator, and with no knowledge that he was signing a note, defendant so signed them. In an action on the note, held, clearly the evidence made a question of fact for the jury as to whether defendant's signature was obtained through fraud, whether he knew he signed a note, and whether he was negligent in so signing, and sustained a finding for defendant. Manahan v Puttbrese, 169 M 98, 210 NW 625.

In an action on two notes, defendant plead as a defense that they were given for plaintiff's homestead in Montana, in reliance upon his fraudulent representations that defendants could obtain a patent to the land free from reservations of minerals. The court directed a verdict for the plaintiff; held, such a representation is one of fact and not of law, and if false and relied upon is a defense. Pieh v Flitton, 170 M 29, 211 NW 964.

In two actions for the recission of purchases of bonds, secured by a trust deed, on the ground of misrepresentations in a security statement concerning the land on which the trust deed was given; held, evidence supported finding that the representations were substantially true and correct. Saupe v St. Paul Trust Co. 170 M 366, 212 NW 892.

Where the security statement with representations, contained the paragraph: "The foregoing statements, which we believe to be correct, are taken from several sources. We do not guarantee this information but it is the basis on which we ourselves acted in the purchase of this security." Held, one who qualifies his representations by the use of language indicating that they are based on information and belief, and honestly believes the representations to be true, is not guilty of fraud, although in fact they proved to be untrue. Saupe v St. Paul Trust Co. 170 M 366, 212 NW 892.

In a suit for recission for the misrepresentations of the vendor, it is not necessary that an intent to deceive existed, as the right exists whenever the vendee did not get substantially what he had a right to believe and did believe he was purchasing. Saupe v St. Paul Trust Co. 170 M 366, 212 NW 892.

In a suit for recission, based on alleged misrepresentations, it is immaterial whether the plaintiff sustained damages; the only inquiry is whether he got in substance, at least what he was induced to believe he was getting. Saupe v St. Paul Trust Co. 170 M 366, 212 NW 892.

In negotiations for a purchase of stock in a building company, a corporation was represented by its attorney, who was also its president, who also guaranteed payment of a note given by the corporation for part of the purchase price of the stock. In an action on the note against the guarantor, a cancelation of the note was asked because obtained by false and fraudulent statements and representations as to the property of the building company and its value. The president testified positively as to the representations, and they were positively denied by a member of the building company. Held, the issue was properly submitted to the jury, and sustained a verdict for the plaintiff. Cox v Selover, 171 M 216, 213 NW 902.

In an action by endorsees of trade acceptances, one defense pleaded by the acceptor was that the signature was procured by fraud, deceit and artifice, and the only evidence in support of the defense was an assertion by a witness that in negotiations for the sale of washing machines, the acceptor was told that nothing was to be paid on the machines until after the campaign was over, and then he was to settle only for the machines sold. Those unsold were to be returned. Held, the averment did not go to the extent required by the statute which requires fraudulent representations, trick, or artifice as to the nature and terms of the contract, evidence had very little tendency to prove such within meaning of the statute, and by the statement in a letter: "Your trade acceptance will become due before long and I expect you to be on the ground before I take any of them up," defendant had affirmed the transaction after he knew precisely what he had signed. Heller v Cuddy, 172 M 126, 214 NW 924.

In an action on a note, transferred to the plaintiff by his brother, the payee, and given by defendants as commission on a sale of 1,000 acres of land in California; held, the evidence well supported findings that plaintiff was not a good faith purchaser before maturity, that the payee, by false representations as to the quality of the land and its drainage system, induced defendants to enter a contract with a land company, that defendants had not waived the defense of fraud by continuing in possession after knowledge of the condition of the land, relying upon the statements of the payee that that was an unusual year, nor was there a waiver because defendants had been released by the vendors, from the land contract, and that though the payee was an agent for the land company, he was the one who made the misrepresentations and defendants could hold him responsible, as well as the land company. Sandercock v Evarts, 174 M 115, 218 NW 464.

Relatives of plaintiff sold their farm, upon which the defendant bank held a second mortgage, upon terms which required the bank's mortgage and certain other liens thereon to be released before the sale could be closed. They obtained the money for that purpose from defendant, by executing their notes, signed by plaintiffs, and assigning to the bank the note and mortgage given them by the purchaser, to be held by the bank as collateral security, and as security for plaintiffs for their liability on their notes to the bank. The notes were not paid at maturity, and plaintiffs gave their note, secured by a mortgage on land owned by one of them, for the amount of the notes signed or guaranteed by them. About six months later, a ditch lien was filed against the farm, about which the cashier, who had acted for the bank in the matter, claimed he knew nothing. In an action to cancel the notes and mortgage given by plaintiff, as having been without consideration to plaintiffs, and obtained by the fraudulent representations of the cashier that the farm land was free of any encumbrances except the first mortgage, that the second mortgage was good as gold and ample in value to secure them against loss, and that they were safe in signing and never would be called upon to pay anything; held, plaintiffs signed the original notes for the accommodation of the makers, and not the bank, and for a valuable consideration to them, and that the evidence sustained finding that no misrepresentations were made by the cashier. Laabs v Farmers State Bank, 174 M 261, 219 NW 93.

In an action by the receiver of a corporation, on notes procured from the defendants by stock salesmen of the corporation, the defense was put on the statute, and the evidence for defendants was that the stock salesmen told them they wanted their names, did not need money, never mentioned a note, and that defendants did

not read the papers, which were numerous and long. Held, the evidence was sufficient to make a fact issue, and sustained a finding for the defendants. Simerman v Habisch, 178 M 15, 225 NW 913.

Where the plaintiff, who did not and could not, claim to be a holder in due course, held notes subject to any defense arising at their inception, and the defense was put exclusively upon the statute, the case was not tried upon the common law defense but on the special defense created by the statute. Simerman v Habisch, 178 M 15, 225 NW 913.

The statute did not abrogate the common law defense of fraud, which is not good against a holder in due course. It created a new defense, available against any holder, even one in due course, conditioned on the absence of negligence on the part of the maker. Simerman v Habisch, 178 M 15, 225 NW 913.

The defense of the statute was not lost merely because the holder of the notes became insolvent and went into the hands of a receiver after their execution. Simerman v Habisch, 178 M 15, 225 NW 913.

In an action to recover upon a judgment of the municipal court of Chicago entered upon a warranty of attorney to confess judgment on a note, the defense was fraud practiced by the agent of the payee in its procurement; that defendant did not understand he was signing a note, and that the agent represented there was none. Defendant who was intelligent and could read, signed a paper, at the bottom, above which and near the middle was a perforated line, the portion above being an order for a milking machine, and the portion below, in the form of a promissory note. Findings for defendant, of fraud, that he did not know he was signing a note, and that he was not negligent, were sustained. Wismo Co. v Martin, 186 M 593, 244 NW 76.

Under proper pleadings in a suit in Minnesota, on a judgment entered on a cognovit note in Illinois, defendant may interpose fraud, or fraud and mistake, because this in effect may be done in Illinois, and so full faith and credit is given it in Minnesota. Wismo Co. v Martin, 186 M 593, 244 NW 76.

For a period of over five years, plaintiff sold defendant ginseng plants and seeds, representing them to be good and sound, and that they would grow and produce roots and seeds. Defendant gave his note for each purchase. The first note was paid, and two renewal notes were executed for the subsequent notes. Excepting for the first ones purchased, the plants and seed did not do well, but plaintiff gave various excuses, made replacements, and continued his assertions that they were sound and good, and would grow even after being in the ground two or three seasons. These representations continued until after the renewal notes. In plaintiff's action on the renewal notes, defendant claimed that the plants and seed furnished were infected by a disease which caused this failure, and that defendant did not discover or know of it until after his renewal of the notes. On the trial, plaintiff introduced two instruments which he had prepared and presented to defendant for signing, which started out as being receipts for replacements, and ended up as releases and settlements of all claims, one further containing a receipt for an interest deduction. Defendant claimed he had not read them, but had signed, relying on plaintiff's statements that they were only receipts. Held, there was evidence to sustain the verdict of fraud, and finding of no waiver or estoppel. Wiebke v Erickson, 189 M 102, 248 NW 702.

If at the time the renewal notes were given, the defendant knew, or should have known, that the representations made were false, and that such plants and seed were infected with a disease which caused their failure to grow, when defendant waived the fraud, and was estopped from asserting it. Wiebke v Erickson, 189 M 102, 248 NW 702.

Action on a note, endorsed to plaintiff, and procured by a member of the payee company for fixtures for a restaurant. Defendant, who read English with difficulty, signed several papers which were represented to be orders that had to be signed before work was commenced on the fixtures, which had to be manufactured. One of the papers signed was the note in suit. Notes were not mentioned, and defendant did not know that he signed one. He had wished to buy secondhand fixtures, but the seller represented that he could sell new ones as cheap as defendent could buy old ones, and that they would be much better. In addition to his defense, under the statute, defendant pleaded the defense based on common law fraud consisting of misrepresentations as to the merchandise sold. In its case in chief, plain-

tiff offered testimony to show that it was a holder in due course, and when defendant commenced developing evidence in support of his defense of common law fraud, objected, upon the ground that he should not be permitted to do so without first producing evidence that the plaintiff was not a holder in due course. The trial court instructed the jury that plaintiff was a holder in due course, submitted fraud under the statute, and told the jury to disregard the defense of common law fraud. Held, there was no prejudicial error in permitting defendant's evidence under common law fraud, and that evidence sustained a finding of fraud within the statute. M & M Securities Co. v Dirnberger, 190 M 57, 250 NW 801.

The burden of proof is upon the maker of the note to establish the facts made a defense by the statute. M & M Securities Co. v Dirnberger, 190 M 57, 250 NW 801.

If the facts established make a defense under the statute, a purchaser of the note, though in due course, is not protected. M & M Securities Co. v Dirnberger, 190 M 57, 250 NW 801.

Plaintiffs and defendants were stockholders in the Royce Co., a corporation which had a lease on an 80-acre tract of land in Oklahoma on which a promising oil well had been drilled. Plaintiff, who was its president, and defendants, were also interested in the Rigna Co., a Minnesota corporation, though not licensed to sell its stock in this state, which had leased 80 acres next to the Rigna tract on which there were two gas wells. The stockholders of both companies thought it necessary that a third well be drilled on the Rigna tract to the depth of the oil-bearing sand strata on the Royce tract, and to raise money for that purpose, plaintiff loaned defendants money with which they purchased stock in the Rigna Co. and assigned and delivered it, as collateral, with their note to plaintiff. In an action on the note, findings were sustained that defendants were not induced to purchase the stock through any fraud or misrepresentations, and that though the sale of the stock was in violation of the blue sky law of this state, since the purchaser violated no law, the note was not tainted. Edson v O'Connel, 190 M 444, 252 NW 217.

Where defendant claimed he was induced to sign a note, with his son-in-law, by payee's fraudulent representations that he would not try to get one cent out of defendant, but that he just wanted the note to look good on the probate of his father, there was a question of fact for the jury, and evidence to sustain a finding for the plaintiff. Erickson v Husemoller, 191 M 177, 252 NW 361.

In an action to recover, as drawee, for an amount paid for forged checks charged to plaintiff's account, defendant alleged that plaintiff's failure to report the forgeries within six months as required by Minnesota Statutes 1941, Section 48.29, barred him from recovery. Plaintiff contended that the quoted section was repealed by Minnesota Statutes 1941, Section 335.01, et seq, which was not a limitation but similar to Minnesota Statutes 1941, Section 334.12, which provided no time limitation. Held, the negotiable instruments act, though embodying no limitation provision on a depositor's suit against a bank for forgery, did not repeal, by implication, the existing six months' limitation statute. Brunswick Corp. v N. W. Nat'l Bank & T. Co. 214 M 370, 8 NW(2d) 333.

Waiver. 11 MLR 428.

Law of misrepresentation. 22 MLR 939.

334.13 TRANSFER OF SECURITY RECEIPTS AND EQUIPMENT TRUST CERTIFICATES; DEFINITIONS.

HISTORY. 1927 c. 433 s. 1; M.S. 1927 s. 7247-1.

334.14 MANNER OF TRANSFER.

HISTORY. 1927 c. 433 s. 2; M.S. 1927 s. 7247-2.

334.15 NEGOTIABILITY OF INSTRUMENTS NOT AFFECTED.

HISTORY. 1927 c. 433 s. 3; M.S. 1927 s. 7247-3.