CHAPTER 335

UNIFORM NEGOTIABLE INSTRUMENTS ACT

335.01 DEFINITIONS.

NOTE:

Laws 1913, Chapter 272, codifies the law relating to negotiable instruments, does not expressly repeal any prior law, and does not purport to supersede any particular law existing as of July 1, 1913. It would be confusing and in no way helpful to attempt to synchronize sections found in Chapter 335 with laws prior to the passage of Laws 1913, Chapter 272.

The uniform negotiable instruments act has been adopted in all states except Illinois and Vermont.

For uniform trust receipts act see chapter 515.

HISTORY. 1913 c. 272 s. 191; G.S. 1913 s. 6003; G.S. 1923 s. 7235; M.S. 1927 s. 7235.

The purpose of an endorsement is to do what the maker undertakes to do in case the latter fails, and that is to pay the note where it is payable. Healy-Owen-Hartzell Co. v Montevideo F. & M. Elev. Co. 165 M 330, 206 NW 646.

Where an erasure of the name of one of several endorsers of a promissory note is apparent upon the back of the note, the presumption is that the erasure was made prior to the delivery of the note. Healy-Owen-Hartzell Co. v Montevideo F. & M. Elev. Co. 165 M 330, 206 NW 646.

Action on notes for money loaned by plaintiff to the defendant elevator company, signed by the company, and individual members as endorsers and guarantors. By a resolution of the company's board of directors, its manager was appointed one of a committee who procured the signatures of the individual members as endorsers. The notes were kept in a bank vault, and after having been signed by all of the endorsers, at the request of one of them, the manager went with him to the bank and scratched his name by drawing a pen through it; subsequently the notes were removed to the company's office, where another endorser asked the manager to see the notes, and scratchd his name by drawing a pen through his signature. In that condition the notes were delivered to plaintiff who had no knowledge of the circumstances of the signing. In the action on the notes the endorsers contended the scartching of the names amounted to such an alteration as to relieve them from liability and urged that delivery, within the meaning of the statute, was not delivery to the payee but the passing of the instrument between the signers for the purpose of endorsements, with the contemplated delivery by the principal to the payee: held, such is not the rule in this state, and that where the manager had charge of the notes for all of the parties signing and allowed them to be scratched, defendants must bear any consequences of his act. Healy-Owen-Hartzell Co. v Montevideo F. & M. Elev. Co. 165 M 330, 206 NW 646.

The endorsement of the name of the payee on a promissory note by means of a rubber stamp is sufficient and satisfies the requirement of the statute if such endorsement was made by someone having authority so to do. It is within the scope of the implied power of the cashier of a bank to endorse negoitiable paper in the ordinary transaction of banking business. Farmington State Bank v Delaney, 167 M 394, 209 NW 311.

Plaintiff was the administrator of the estate of Christian Hansen; a bank issued its certificate of deposit payable to the order of Christian Hansen Estate, and with plaintiff's consent, delivered it to plaintiff's attorney, who deposited it for collection in his personal account with defendant bank. Defendant presented the certificate to the bank which issued it, received payment, and placed the amount to the credit of the attorney, who drew all of it out during that month. In an action to recover the amount of the certificate, held, the name of the payee did

not purport to be the name of a person, hence the certificate was payable to bearer and was negotiable without endorsement. Hansen v Northwestern National Bank, 175 M 453, 221 NW 873.

According to a contract plaintiff bank and its stockholders turned over the ownership and all the liquid assets of the bank to the First Bank Stock Corporation; the stock so received was placed in the hands of a trust company to secure the Bank Stock Corporation against any losses it might suffer because of any of the assets becoming uncollectible. The trust company sent two of the notes so taken over back to plaintiff for collection, and in the action brought to recover on them the defense was that plaintiff was not the real party in interest: held, a payee in possession, as was the plaintiff, is a holder, within the meaning of the statute, and could bring the action in his own name. Farmers National Bank v Brown, 198 M 195, 269 NW 409.

This action is on a note payable to bearer and endorsed in blank by the payee to plaintiff bank as collateral security for the payee's indebtedness to plaintiff and another bank; and the defendant asked for a dismissal of the action on the ground of a defect of parties plaintiff. Held, an action on a bill or note payable to bearer, or endorsee in blank, may be maintained in the name of the nominal holder; that possession by such nominal holder is prima facie evidence of his right to sue, and cannot be rebutted by proof that he has no beneficial interest, or by anything else but proof of mala fides. The mere fact that another bank had an interest in the proceeds was unimportant to defendant. Northwestern National Bank & Trust Co. v Hawkins, 205 M 490, 286 NW 717.

The enactment of the negotiable instruments act without embodying a limitation provision on depositor's suit against a bank for forgery did not repeal by implication the existing six months' limitation statute. Minnesota Statutes 1941, Section 335.01, et seq. Brunswick Corp. v Northwestern National Bank & Trust Co. 214 M 376, 8 NW(2d) 333.

An unauthorized signature not amounting to a forgery as defined by the criminal statutes may be ratified. A party who with full knowledge of the facts receives and retains the benefits of his unauthorized signature ratifies the signature. Strader v Haley, 216 M 315, 12 NW(2d) 608.

Rights of remitters and other owners not within the tenor of negotiable instruments. 12 MLR 584.

Bills and notes; possession of unendorsed note payable to order. 14 MLR 806.

Negotiability of a note payable in foreign money. 19 MLR 700.

Non-payment of interest as dishonoring demand note. Liability of accommodation maker to party taking after dishonor. 22 MLR 726.

Interpretation of provisions for attorneys' fees. 23 MLR 219.

Notes payable to the order of the maker. 24 MLR 863.

FORM AND INTERPRETATION

335.02 FORM OF NEGOTIABLE INSTRUMENT.

HISTORY. 1913 c. 272 s. 1; G.S. 1913 s. 5813; G.S. 1923 s. 7044; M.S. 1927 s. 7044.

By mistake a purchaser gave plaintiff a check in an amount for 66 shares of stock; in fact plaintiff owned, and the purchaser received, but 39 shares. Plaintiff presented the check to the defendant drawee bank, and received for his own convenience a small amount in cash and the rest in drafts or cashier's checks. Before plaintiff presented the drafts or cashier's checks to a bank for payment, the purchaser of the stock notified defendant to stop payment on his check, which the bank did. In an action on the drafts or cashier's checks, the purchaser intervened; held, when plaintiff presented and surrendered the purchaser's check to defendant, upon receiving the cash and draft or cashier's checks there was in law a payment of the check, and neither the defendant nor the purchaser, as intervenor, had a defense. Johnson v First State Bank of Rollingstone, 144 M 363, 175 NW 612.

The provisions of the uniform negotiable instruments act with respect to the negotiable character of an instrument are merely declaratory of the common

law on the subject. Liberty State Bank v Metropolitan Church Assn. 154 M 248, 191 NW 414.

A note containing an express promise to pay a definite sum of money for value received "out of rents from the Cole Apartments" does not obligate the maker thereof to pay unless rents were receivd. The promise is not absolute but conditional, and one suing upon such a note cannot recover without showing that the maker received rents. Liberty State Bank v Metropolitan Church Assn. 154 M 248, 191 NW 414.

In an action to recover bonds, containing a clause which read "all were issued subject to an indenture of mortgage or deed of trust," and "hereby reference is made to said indenture and the same made a part hereof, with the same effect as if herein fully set forth," which were pledged by plaintiff as security for a note, and held by a company which transferred the note and half of the bonds to one bank, and the other half to another bank as security for a total indebtedness in excess of the amount of the note, through which latter transaction defendant subsequently received them, held, the bonds were not negotiable, and defendant held them subject to their conversion by the company. King Cattle Co. v Joseph, 158 M 481, 198 NW 798, 199 NW 437.

A reference in a note or bond to a mortgage or deed of trust given as security does not destroy the negotiability of the instrument, unless it appears to have been the purpose of the parties to burden the instrument with the conditions of the mortgage or deed. If the reference is of such a nature as to subject the paper to the terms of an extrinsic agreement and to impress them upon it, its negotiability is destroyed. King Cattle Co. v Joseph, 158 M 481, 198 NW 798, 199 NW 437.

The mere fact that bonds are secured by a deed does not affect their negotiability, but they are deprived of negotiability when the deed is expressly made a part of them; negotiable paper enters the channels of commerce, and to circulate freely it must be "a courier without luggage." King Cattle Co. v Joseph, 158 M 481, 198 NW 798, 199 NW 437.

Where a trust deed provided that the trustee and the mortgagor might alter the terms of the deed, it was deemed consistent with the best interests of the bondholders; the promise to pay, contained in the bonds, was subject to this provision and ceased to be unconditional, an essential of negotiability as required by the act. King Cattle Co. v Joseph, 158 M 481, 198 NW 798, 199 NW 437.

A purchaser of a note or bond does not acquire the rights of a holder in due course unless the instrument is complete and regular upon its face, hence when the language of a bond not only refers to the provisions of the trust deed securing it but makes the bond subordinate to the conditions of the deed, the bond shows upon its face that it is not a complete and regular negotiable instrument. A purchaser cannot determine from a mere inspection of the bond that it contains an unconditional promise to pay a sum certain at a fixed or determinable future time, but must examine the deed to ascertain the precise nature of the obligation of the maker of the bond. King Cattle Co. v Joseph, 158 M 481, 198 NW 798, 199 NW 437.

Whether a particular note or bond is negotiable is a question to be determined by consulting the negotiable instruments act, which prescribes the tests to which an instrument must be submitted when it is presented for admission to the class of negotiable paper, and proof of the existence in the business world of a custom under which the particular instrument is generally treated as negotiable, is not admissible, as it is not a case governed by the law merchant, as provided by section 335.80, but falls within and is covered by the express provisions of the act. King Cattle Co. v Joseph, 158 M 481, 198 NW 798, 199 NW 437.

A provision in a promissory note for a higher rate of interest after maturity than before, works a forfeiture of the interest under Minnesota Statutes 1941, Section 334.01, but does not render the note non-negotiable as to the principal sum. Allen v Cooling, 161 M 10, 200 NW 849.

To constitute a holder in due course under the statute the instrument when taken must be complete and regular upon its face; and a note which complies with these requirements, and which on inspection discloses nothing to indicate that it has been altered or was not intended to be fully operative according to its

terms is complete and regular upon its face within the meaning of the statute. Allen v Cooling, 161 M 10, 200 NW 849.

The doctrine of lis pendens does not apply to negotiable paper; under the statute a purchaser is not chargeable with notice of an infirmity or defect in the instrument unless he had actual knowledge, or knowledge of such facts that his action in taking the instrument amounted to bad faith. Allen v Cooling, 161 M 10, 200 NW 849.

Plaintiff by an agreement with defendant was to receive a commission of a per cent of the cash paid by a purchaser he obtained for defendant's stock of goods and fixtures; for the purchase price, defendant received an amount in cash and an amount in notes, some secured and some unsecured; held, in an action to recover the commission, it was error for the court to instruct the jury that if their verdict was for the plaintiff it must be in an amount which was a per cent of the sum total of the cash and notes, for the notes were not the same as cash. Feyereisen v Schmahl, 162 M 341, 202 NW 738.

Defendant sold plaintiffs the stock of a bank and by contract agreed to guarantee payment of notes regarded as unacceptable; it was provided that if plaintiff should reject any of the notes within six months thereafter, defendant should have written notice of such rejection, and six months after receiving such notice in which to make the note acceptable or to purchase it from the holder, performance by plaintiffs to be a condition precedent to performance by defendant, who should be released from any obligation which should be affected by a failure on the part of plaintiffs. In an action on the contract, as a guaranty of notes in default, defendant claimed that his obligation was not that of a guarantor, but that his duty was to repurchase the notes upon notice of their rejection. Held, defendant was not affected adversely as to any of his obligations, by lack of formal written notice of rejection of notes, and that the conduct of the parties, in application and partial execution of the contract showing that they considered the notes rejected and defendant's liability fixed and continuing, was a practical application and construction of the contract which prevented defendant from escaping liability. Breher v Beiseker, 163 M 76, 203 NW 518.

Where one endorses a promissory note made by another before delivery and the note then passes from the maker to the payee, that is prima facie a delivery. But when the answer of such endorser alleges an oral agreement to the effect that the note should not become operative until endorsed by certain other parties, which never occurred, it is competent to show such agreement by parol evidence. Towle-Jamieson Inv. Co. v Brannan, 165 M 82, 205 NW 699.

County warrants are not negotiable under the law merchants; the transferee takes them subject to all defenses which existed against them in the hands of the payee. Kalman v County of Grant, 167 M 458, 209 NW 638.

Evidence sustained finding that there was no consideration for plaintiff's signature on the note of a third party to defendant. Christianson v Nat. Citizens Bank, 168 M 211, 209 NW 899.

Where a note held by a bank to avoid criticism by a bank examiner as being overdue was charged against the account of the bank's president, but was not endorsed or in any way delivered to him and remained an asset of the bank, the bank remained the holder of the note, and the real party in interest in an action on it. First State Bank of Ely v Seliskar, 169 M 321, 211 NW 163.

Evidence sustained verdict that the maker of the promissory note in suit was mentally incompetent to transact business when he executed the note. Ewert v Chirpich, 169 M 386, 211 NW 306.

Commercial paper deposited in a bank for collection remains the property of the depositor, and the bank is merely his agent to collect it. Eifel v Veigel, 169 M 281, 211 NW 332.

Commercial paper deposited in a bank for collection and credit remains the property of the depositor until it has been collected and the proceeds credited to him, and the relation between the depositor and the bank is that of principal and agent; but when the collection has been made, and the proceeds have been placed to the credit of the depositor, they then become the property of the bank, and the relation between the bank and the depositor becomes that of debtor and creditor. Eifel v Veigel, 169 M 281, 211 NW 332.

Where commercial paper is deposited for collection and remittance, both the paper and its proceeds remain the property of the depositor, and the bank is merely his agent to collect the paper and transmit to him the proceeds thereof, and does not become the owner of either. Eifel v Veigel, 169 M 281, 211 NW 332.

In the absence of an agreement, whether paper was deposited for collection and credit, or for collection and remittance, may be implied from the circumstances. Eifel v Veigel, 169 M 281, 211 NW 332.

Depositing paper for collection merely gives authority to collect it, and both the paper and its proceeds remain the property of the depositor in the absence of facts showing a different intention. Eifel v Veigel, 169 M 281, 211 NW 332.

Plaintiff, a resident of another state and a nondepositor, placed in a bank for collection an unendorsed promissory note payable to a third party but sold to and owned by him. The bank made the collection but, claiming the payee had deposited the note with it, claimed the right to apply proceeds upon the indebtedness of the payee to it, and did not remit the proceeds to plaintiff nor place them to his credit, and while holding them became insolvent. In an action against the superintendent of banks, held, evidence sustained finding that plaintiff was the owner of the note and that the bank, as his agent, undertook to collect and remit the proceeds to him, that title to the proceeds did not pass to the bank, and as they augmented the bank's assets, plaintiff was entitled to their full amount. Eifel v Veigel, 169 8 281, 211 NW 332.

Plaintiff loaned a bank $4,000, taking the unsecured note of an accommodation maker therefor; subsequently plaintiff loaned the bank $4,500 and the bank gave its note for that amount, and pledged as collateral notes in the amount of $9,000 secured by a trust deed. Later the bank became insolvent, and the $4,500 note was paid through liquidation. In an action against the bank commissioner to foreclose the security, as standing for the $4,000 note also, held, evidence required a finding of an agreement that the collateral should stand as security for the prior unsecured note. Bank of Howard Lake v Veigel, 177 M 187, 224 NW 841.

Where an insane person had not received the benefit of a promissory note signed by her as surety or accommodation maker to the other signer who did receive the whole thereof from the payee, in an action on the note the guardian appointed for her established a good defense by proving that she was insane and incompetent to transact business when the note was executed by her. Hughes v Crean, 178 M 545, 227 NW 654.

In a suit against a bank on a negotiable promissory note given by one of its directors and his wife at the bank's request, but to which the bank is not a party, the bank cannot be held liable because of Minnesota Statute 1941, Section 335.11, which provides that no person is liable on the instrument whose signature does not appear thereon. Magee v First National Bank, 181 M 294, 232 NW 336.

The negotiability of a promissory note is not destroyed by a recital that it is secured by a mortgage. Magee v First National Bank, 181 M 294, 232 NW 336.

Plaintiff purchased bonds of defendant corporation whose bylaws provided for an annual payment of interest on its bonds out of the earnings of the preceding year, the balance to be transferred to a sinking fund until such time as its board of directors should order it used for the redemption of its outstanding bonds. Shortly before maturity, under its articles of incorporation, and by a resolution of a majority of its bondholders, time for payment was extended. In an action after maturity to recover on the bonds, held, the bonds were unconditional written contracts and promises to pay to the holder therein named a stated sum of money on a definite date, and in effect were promissory notes for money loaned, and the terms could not be varied or changed by extrinsic evidence; that plaintiff as a stockholder could deal with the corporation and acquire the same rights as a stranger; that the sinking fund was not made the sole fund for payment of the bonds; and that the resolution did not affect the rights of those not consenting thereto. Heider v Hermann Sons Hall Assn. 186 M 494, 243 NW 699.

Under the decision in Hansen v N. W. National Bank, 174 M 453, 221 NW 873, a note payable to the estate of a named incompetent person is in legal effect payable to bearer. Kluczny v Matz, 187 M 93, 244 NW 407.

Defendants executed a note, secured by a mortgage on a farm, to a company which for value endorsed the note and assigned the mortgage to the plaintiff

bank, after which defendants conveyed the mortgaged farm to the company, who assumed and agreed to pay the mortgage debt. At maturity, when the farm was worth more than the amount due on the note, plaintiff, for a valuable consideration and without defendants' knowledge, granted the vendee company an extension of the time for payment of the note and mortgage. The mortgage was foreclosed for less than the amount is secured, leaving a deficiency, and in an action on the note, plaintiff, though conceding the settled law that when a mortgagor conveys the mortgaged land and the vendee assumes and agrees to pay the mortgage, the legal status between the mortgagor and the vendee with respect to the debt, becomes that of surety and principal, so that if the holder of the note, with knowledge of such status, extends the time of payment without the consent of the mortgagor, the mortgagor is released, claimed that it had no knowledge of the conveyance by defendants to the company, and that under the negotiable instruments act, defendants were primarily liable and could not be shown to be sureties, or secondarily liable. Held, evidence sustained finding that plaintiff had knowledge of such facts as would have led to actual knowledge, and that the act does not govern the negotiation of securities or mortgages given as part of the transaction in which the note was given; equity forbids the holder making contracts that will prejudicially affect the rights of makers of notes without their consent. Jefferson County Bank v Erickson, 188 M 354, 247 NW 245.

Makers of promissory notes, secured by mortgage executed by them, become sureties upon conveying the mortgaged premises to vendees who assume and agree to pay the debt or notes, and when the holder of the notes and mortgage, having knowledge of such conveyance, extends the time of payment without the consent of the makers of the notes, the latter are released. Jefferson County Bank v Erickson, 188 M 354, 247 NW 245.

In suits on promissory notes, not secured by mortgage, one who appears as maker on the face of the notes, but is in fact an accommodation maker or surety, is not released by an extension agreement made with a comaker. Jefferson County Bank v Erickson, 188 M 354, 247 NW 245.

Plaintiff in an action against defendant on a note, garnished a South St. Paul live stock broker, in which proceedings a North Dakota bank intervened, claiming a portion of the broker's indebtedness to defendant, who was a shipper of live stock, and who, pursuant to an agreement with the bank that it would finance his purchase of a carload of cattle to be shipped to the broker, had drawn two drafts, one for $550.00, the other for $150.00, in favor of the bank against the broker. The drafts were drawn generally, and not against the proceeds of the shipment. The cattle were shipped, and the drafts forwarded to a bank in St. Paul, where on a Saturday, when the $550.00 draft was presented for payment, the bank's messenger was told the cattle had not come, they could not pay until they did, to hold the draft until the stock arrived, and that then the draft would be paid; the stock was received the following day, and the next day, on Monday, before the draft was again presented, the garnishee summons was served. The $100.00 draft was never presented to the garnishee broker, but after the summons, the two drafts were canceled and a new one drawn for $650.00, for the same debt. Held, the facts show a case of equitable assignment by defendant, as drawer of the drafts, to intervener, the payee, of $550.00 of the proceeds of the shipment, and so effected, it was not nullified because of the cancelation of the original drafts—the obligation evidenced by them was but merged in the new one substituted for them. Baird v Simonstad, 193 M 79, 258 NW 570.

A negotiable instrument is a complete written contract not to be varied by parol evidence, but where the claim was not based on the instrument alone, but upon all the evidence of an equitable assignment of which the draft was but a part, the contract was neither altered nor impinged by a conclusion that an equitable assignment was made out as to $550.00, the amount of the draft presented before the garnishee summons was served. Baird v Simonstad, 193 M 79, 258 NW 570.

Action on a note, which defendant claimed he signed, believing it to be a receipt for a diamond ring to the effect that the ring would be returned if not satisfactory to his fiancee: held, a parol contemporaneous agreement is inoperative to vary or contradict the terms which have been reduced to writing, but parol evidence is admissible to show that an instrument was delivered to take effect and

become operative only on the happening of a certain contingent future event; and that the evidence sustained a finding for the defendant. Hendrickson v Bannitz, 14 M 528, 261 NW 189.

The beneficiary of a deceased policyholder, whose policy had lapsed but who had certificates of deposits evidencing dividends, brought action to recover on the policy; the insurance company claimed that the certificates being negotiable, they were the same as cash, hence the company had no cash in its possession to apply to premiums due; the court's finding for the insurance company was sustained. Nordby v Central Life Ins. Co., 201 M 375, 276 NW 278.

In an action on a note, the answer was a verified general denial; at the trial, plaintiff offered the note in evidence without any proof of the signatures, over defendant's objection: held, a general denial puts the execution of the note in issue, and under Minnesota Statutes 1941, Section 600.15, the note itself was proof that it was executed by the person purporting to have signed it, until denial of the signature was made by his oath or affidavit; plaintiff was entitled to put the note in evidence without first proving its execution, and when the note was received, plaintiff made out a prima facie case. A general denial was not sufficient, a specific verified denial of the signature or execution was required to overcome such proof. Christianson v Lindquist, 203 M 533, 282 NW 273.

An action to foreclose a mechanics lien. By a contract, defendant was to pay a contractor $1,600 for the building of a barn, the contractor to furnish all the materials and labor. The contractor's financial condition was shaky, and when plaintiff had delivered $1,100 worth of materials, he pressed for payment, and defendant gave his check for $800.00 payable to the order of plaintiff and the contractor; plaintiff at the same time gave the contractor a check for $400.00, and charged it to the lumber account. The court found that in filing his lien statement, plaintiff had knowingly demanded $400.00 more than was justly due; plaintiff's contention was that under the negotiable instruments law, the check being payable to both, each became the owner of half: held, consideration being given to the situation of the parties, the court's finding was sustained. Standard Lumber Co. v Alsaker, 207 M 52, 289 NW 827.

In an action against the surety on a county auditor's official bond for loss sustained by a purchaser of county warrants, wrongfully issued and negotiated by the auditor, held, verdict that purchaser was not negligent was properly determined, and that the purchaser, as an innocent holder who was not negligent, had equities superior to the surety of the principal whose misconduct caused the loss. State Bank of Mora v Billstrom, 210 M 497, 299 NW 199.

County warrants are not negotiable, and purchasers take them subject to a defense. State Bank of Mora v Billstrom, 210 M 497, 299 NW 199.

The relation between a bank and its depositor is that of debtor and creditor. Burnswick Corp. v Northwestern Natl. B. & T. Co. 214 M 376, 8 NW (2d) 333.

An instrument designated a "customer's acceptance", reading "the obligation of the acceptor hereof arises out of the purchase of goods from the drawer", held, negotiable, though "accepted for payment as per Reolo contract for amount and date shown hereon", since the instrument contained an unconditional promise to pay a sum certain in money, as required by Minnesota negotiable instruments law. International Finance Co. v Northwestern Drug Co. 282 Fed. 920.

Extrinsic evidence is not admissible to show whether an acceptance is negotiable or non-negotiable. International Finance Co. v Northwestern Drug Co., 282 Fed. 920.

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

Certificates of deposit; instrument made payable in "current funds" or "currency". 8 MLR 536.

The effect of the "substitute for money" analogy on the law of commercial paper. 14 MLR 335.

State warehouse laws. 15 MLR 309.

Effect of acceleration clauses on negotiability. 16 MLR 302.

Reference to extrinsic agreement as destroying negotiability of bonds. 16 MLR 309.

Medium of payment; negotiability of note payable in foreign money. 19 MLR 700.

Nonpayment of interest as dishonoring demand note; liability of accommodation maker to party taking after dishonor. 22 MLR 727.

Interpretation of provisions for attorneys' fees. 23 MLR 219.

Conclusion. 23 MLR 501.

335.025 CERTAINTY AS TO SUM; WHAT CONSTITUTES.

HISTORY. 1913 c. 272 s. 2; G.S. 1913 s. 5814; G.S. 1923 s. 7045; M.S. 1927 s. 7045.

In an action on a note, which was an Iowa contract, and provided that nonpayment of interest within ten days after due caused the whole amount of the note to become due, and for attorney's fees if collected at law, the Iowa statutes were not pleaded; held, under our negotiable instruments act, the note was negotiable, but it was not under the common law, and since there is no presumption that the statutory law of a sister state is the same as our own, and in the absence of pleading or evidence to the contrary, the common law of a sister state is presumed to be the same as in the state of the forum, the note was not negotiable in Iowa, and was subject to defense as if brought in Iowa. Farmers State Bank v Walch, 133 M 230, 158 NW 253.

Defendant gave a tractor company a note for the repairing of a tractor, the company guaranteeing the tractor would do good work, and promising not to transfer the note. The following day, the company endorsed and delivered the note to plaintiff bank as a part of its deposit made that day, and received credi for the amount in its account with the bank; on the following day the account was overdrawn. Later when tried the tractor would not work. In an action on the note, defendant claimed the title of the company was defective by reason of its promise not to transfer the note, and that under the statute, Minnesota Statutes 1941, Section 335.222, this cast upon plaintitff the burden of proving it was a holder in due course: held, the note was executed and delivered unconditionally, and the promise by the payee did not render his title defective, nor furnish any defense, the note being negotiable, and finding was correct that defendant had failed to overcome the statutory presumption in favor of the holder of the note. First Nat. Bank of Mankato v Carey, 153 M 246, 190 NW 182.

The holder of a negotiable instrument is deemed prima facie to be a holder in due course and need not prove affirmatively that he is such holder, unless it be shown that the title of the person who negotiated the instrument was defective. First Nat. Bank of Mankato v Carey, 153 M 246, 190 NW 182.

Under the negotiable instruments act, a provision in a promissory note to pay all exchange and collection charges no longer takes it out of the class of negotiable paper. First Nat. Bank of Mankato v Carey, 153 M 246, 190 NW 182.

Where the title of the person who negotiated a note was not defective, a defense of breach of warranty is not available against the transferee, unless it be shown that he had knowledge of the warranty and of its breach, before he parted with the consideration for the note. First Nat. Bank of Mankato v Carey, 153 M 246, 190 NW 182.

Where notes provided for a reasonable attorney's fees if placed after maturity in the hands of an attorney for collection or collected through probate proceedings, held, the former rule that such a provision rendered the note non-negotiable was abrogated by this section of the negotiable instruments act. Goedhard v Folstad, 156 M 453, 195 NW 281.

Notes providing for an increase in the rate of interest if not paid at maturity, were held negotiable. Goedhard v Folstad, 156 M 453, 195 NW 281.

A customer's acceptance, accepted for payment as per Reolo contract for amount and date thereon, held negotiable as containing an unconditional promise to pay a sum certain in money, as required by Minnesota negotiable instruments act. International Finance Co. v Northwestern Drug Co. 282 Fed. 920.

Effect of acceleration clauses on negotiability. 16 MLR 218.

Interpretation of provisions for attorneys' fees. 23 MLR 218.

335.03 UNCONDITIONAL PROMISE.

HISTORY. 1913 c. 272 s. 3; G.S. 1913 s. 5815; G.S. 1923 s. 7046; M.S. 1927 s. 7046.

A note, stating that the consideration was the sale of a player piano, that the instrument was to remain the property of the vendor, the payee, that title should vest in the purchaser upon payment, that in case of default, or an attempt to sell or remove the instrument, all payments should be forfeited, and that possession should be given the vendor, was not negotiable before the negotiable instruments act, as the promise was not unconditional; and the words, coupled with the promise, do not constitute a statement of the transaction which gives rise to the instrument, within meaning of the statute, so as to make it negotiable. Polk County State Bank of Crookston v Walters, 145 M 149, 176 NW 496.

An instrument containing an express promise to pay a definite sum of money for value received "out of rents from the Cole Apartments" does not obligate the maker thereof to pay unless rents were received. The promise is not absolute but conditional, and one suing upon such an instrument cannot recover without showing that the maker received rents. Liberty State Bank v Metropolitan Church Assn. 154 M 248, 191 NW 414.

Two county warrants, to be charged to a designated road fund, issued to a construction company, and assigned to a bank, were stamped "not paid for want of funds", and endorsed in blank without recourse by the company and bank. They became the property of a broker company which sold them to plaintiff, without any further endorsement; thereafter the broker company falsely wrote plaintiff that the warrants had been called for payment and offered to collect them, and the plaintitff sent the warrants, with instructions to send them to the county for payment and remit the proceeds to him. The brokers sold them, for full value to defendant, who believed the brokers owned them. In an action to recover the bonds or their value, held, the warrants not being negotiable instruments, they were notice to the purchaser that he took no better title than his vendor possessed, and plaintiff could recover. Cardozo v Fawcett, 158 M 57, 196 NW 809.

Although the endorsement of the payee made them transferable by delivery, merely intrusting them to an agent for collection was not such conduct on the part of the owner as would estop him from reclaiming them from a purchaser from such agent. Cardozo v Fawcett, 158 M 57, 196 NW 809.

A statement of the transaction which gave rise to an instrument negotiable in form, does not destroy its negotiability if the statement amounts to nothing more than a mere reference to the transaction or to some other instrument. King Cattle Co. v Joseph, 158 M 481, 198 NW 798, 199 NW 437.

In an action on a note, defendants claimed it had been executed with the understanding that a realty company would sell a farm for them for a sufficient amount over and above a certain price to pay the note, that the note was not to be paid at maturity, but was to be renewed yearly until the farm was sold, and that when the company sold the farm, it was to take whatever amount it obtained over and above the stated price, in full payment of the note; held, parol evidence is not admissible to show that a promissory note was not to be paid according to its terms, but only on the happening of a contingent future event and out of a special fund. Merchants Nat. Bank v Bryngelson, 160 M 205, 199 NW 905.

Where trade acceptances contained a statement "obligation of the acceptor arises out of the purchase of goods from the drawer, maturity being in conformity with original terms of purchase", held, a statement of the transaction which gave rise to the instruments was all that was incorporated in the acceptances, and did not put plaintiff, an endorsee for value and without notice, upon inquiry. Heller v Cuddy, 172 M 126, 214 NW 924.

A customer's acceptance held negotiable, though "accepted for payment as per Reolo contract for amount and date hereon". International Finance Co. v Northwestern Drug Co. 282 Fed. 920.

Reservation of rights in seller as affecting negotiability of note. 15 MLR 108.

Assignment of conditional sales contract and note. 28 MLR 413.

335.035 DETERMINABLE FUTURE TIME; WHAT CONSTITUTES.

HISTORY. 1913 c. 272 s. 4; G.S. 1913 s. 5816; G.S. 1923 s. 7047; M.S. 1927 s. 7047.

Effect of acceleration clauses on negotiability. 16 MLR 302.

335.04 NEGOTIABLE CHARACTER NOT AFFECTED.

HISTORY. 1913 c. 272 s. 5; G.S. 1913 s. 5817; G.S. 1923 s. 7048; M.S. 1927 s. 7048.

Minnesota Statutes 1941, Section 335.04, which declares that an instrument is none the less negotiable because it contains a provision authorizing the entry of judgment on confession, in no way conflicts with section 548.23, which authorizes entry of judgment by confession. Keyes v Peterson, 194 M 361, 260 NW 518.

The economic function of promissory notes. 14 MLR 340.

335.041 BONDS, NOTES, DEBENTURES, AND PROMISES TO PAY SECURED BY MORTGAGE, DEED OF TRUST, INDENTURE, OR LIEN DEEMED NEGOTIABLE.

HISTORY. 1927 c. 416 s. 1; G.S. 1923 s. 7048-1; M.S. 1927 s. 7048-1.

The economic function of promissory notes. 14 MLR 340.

The double hazard of a note and mortgage. 16 MLR 340.

Negotiability of elaborate instruments containing collateral undertakings. 26 MLR 653.

335.045 VALIDITY AND NEGOTIABILITY NOT AFFECTED, WHEN.

HISTORY. 1913 c. 272 s. 6; G.S. 1913 s. 5818; G.S. 1923 s. 7049; M.S. 1927 s. 7049.

Negotiability of note payable in foreign money. 19 MLR 700.

335.05 PAYABLE ON DEMAND, WHERE.

HISTORY. 1913 c. 272 s. 7; G.S. 1913 s. 5819; G.S. 1923 s. 7050; M.S. 1927 s. 7050.

Defendant held a note, past due, of a mercantile company, which he endorsed, and which was used as part of the purchase price paid by his son-in-law, for plaintiff's business; two days later, plaintiff formally presented the note to the makers and demanded payment, which was refused, as they were unable to pay; no notice of this presentment and dishonor was given to defendant. Six months later, plaintiff again presented the note to the trustee of the company's property, and this was followed by a proper notice to defendant. Held, as against the defendant endorser, failure of plainttiff, to give the notice, discharged the endorser, and a subsequent presentation and demand for payment, attended with the same formalities some six months later, followed by proper notice, did not revive his liability. Torgerson v Ohnstad, 14 M 46, 182 NW 724.

A demand of payment is not a prerequisite to the enforcement of a note payable on demand. Horan v Keane, 164 M 57, 204 NW 546.

A note which on its face bears no due date but reads, "after date, for value received, we promise to pay", etc., is a negotiable instrument payable on demand, under the provisions of Minnesota Statutes 1941, Section 335.05. Mills v Charlson, 201 M 167, 275 NW 609.

In an action by the brothers of a deceased payee, of a note on which the blank space provided for the maturity date had not been filled in, held, the note was payable on demand, and evidence that it was to be paid only upon the payee's demand and was to be non-collecttible after her death was barred by the parol evidence rule. Skoberg v Hjelm, 211 M 392, 1 NW(2d) 599.

335.051 PAYABLE TO ORDER, WHERE.

HISTORY. 1913 c. 272 s. 8; G.S. 1913 s. 5820; G.S. 1923 s. 7051; M.S. 1927 s. 7051; 1929 c. 353.

A note payable to the estate of a named incompetent person is in legal effect payable to bearer; the amendment to the negotiable instruments act by Laws 1929, Chapter 353, applies only to instruments payable to the estates of deceased persons and not to estates of persons under guardianship. Kluczny v Matz, 187 M 93, 244 NW 407.

Bills and notes, 14 MLR 65.

Notes payable to the order of the maker. 24 MLR 861.

335.052 PAYABLE TO BEARER, WHEN.

HISTORY. 1913 c. 272 s. 9; G.S. 1913 s. 5821; G.S. 1923 s. 7052; M.S. 1927 s. 7052.

Where a bank issued its certificate of deposit payable to the order of Christian Hansen Estate, held, the certificate was payable to bearer. (Now changed by amendment, Laws 1929, Chapter 353). Hansen v Northwestern National Bank, 175 M 453, 221 NW 873.

A note payable to the estate of a named incompetent person is in legal effect payable to bearer; the amendment to the negotiable instruments act, Laws 1929, Chapter 353, applies only to instruments payable to the estates of deceased persons, and not to estates of persons under guardianship. Kluczny v Matz, 187 M 93, 244 NW 407.

A check is not payable to bearer where it is payable to a non-existing payee, unless the drawer knew at the time the check was delivered that the payee was fictitious or non-existent. The buyer has a right to choose not only the goods he purchases, but the seller also. Jorgenson v First National, 217 M 413, 14 NW(2d) 618.

Instrument issued or endorsed to an imposter; forgery of endorsement. 7 MLR 582.

Rights of remitters and other owners not within the tenor of negotiable instruments. 12 MLR 587.

Fictitious payee; check made payable to one with no interest therein. 13 MLR 501.

Name of payee not purporting to be that of any person; instrument payable to estate of deceased person. 13 MLR 145.

Instruments payable to a fictitious payee as bearer paper. 24 MLR 988.

335.06 LANGUAGE, WHEN SUFFICIENT.

HISTORY. 1913 c. 272 s. 10; G.S. 1913 s. 5822; G.S. 1923 s. 7053; M.S. 1927 s. 7053.

335.07 DATE, PRIMA FACIE EVIDENCE.

HISTORY. 1913 c. 272 s. 11; G.S. 1913 s. 5823; G.S. 1923 s. 7054; M.S. 1927 s. 7054.

335.071 ANTE-DATED AND POST-DATED.

HISTORY. 1913 c. 272 s. 12; G.S. 1913 s. 5824; G.S. 1923 s. 7055; M.S. 1927 s. 7055.

335.072 UNDATED PAPER.

HISTORY. 1913 c. 272 s. 13; G.S. 1913 s. 5825; G.S. 1923 s. 7056; M.S. 1927 s. 7056.

335.08 INCOMPLETED INSTRUMENTS.

HISTORY. 1913 c. 272 s. 14; G.S. 1913 s. 5826; G.S. 1923 s. 7057; M.S. 1927 s. 7057.

Delivery; holder in due course. 1 MLR 447.

Payee as a holder in due course. 9 MLR 102.

Notes payable to the order of the maker. 24 MLR 862.

335.081 INCOMPLETE INSTRUMENT COMPLETED WITHOUT AUTHORITY.

HISTORY. 1913 c. 272 s. 15; G.S. 1913 s. 5827; G.S. 1923 s. 7058; M.S. 1927 s. 7058.

Delivery; liability of signer of a blank check negotiated without authority to holders in due course. 9 MLR 570.

335.09 DELIVERY; WHEN EFFECTUAL; WHEN PRESUMED.

HISTORY. 1913 c. 272 s. 16; G.S. 1913 s. 5828; G.S. 1923 s. 7059; M.S. 1927 s. 7059.

In an action to recover possession of a note executed by plaintiff for the premium of a life insurance policy, which by written agreement, was to be held for 60 days and returned, if, within that time plaintiff obtained more satisfactory insurance, held, the delivery of the policy, the written agreement, and the delivery of the note, was but one transaction; delivery of the note was conditional, and since the evidence sustained the finding that defendant was not a bona fide holder in due course, plaintiff could recover. Wade v National Bank of Commerce, 144 M 187, 174 NW 889.

Defendant conceived a plan to raise money at a bank, to acquire a blacksmith shop, but executing his note to be endorsed by eight others, for whom he would do their work, having the bills paid to the bank and endorsed on the note; the note was so executed, but only five of the eight persons endorsed, and with no knowledge that the others had not signed; shortly after maturity, the note not being paid and with no endorsements thereon, defendant gave a renewal note, obtaining the signatures of the former endorsers on a blank note with the understanding that all the eight endorsers on the first note would sign. After three or more had signed the blank note, the face was filled out by the assistant cashier of the bank, and in an action on the note, the endorsers denied liability. Held, it was for the jury to say whether there was such an agreement between the parties to the note, as to how many endorsers there would be, and the jury having found for the endorsers, delivery to the bank was conditional and could not become operative until endorsed by all eight; and evidence sustained finding that the note was incomplete when the payee received it, and that plaintiff, who obtained the note after maturity, was not a holder in due course. Towle-Jamieson Inv. Co. v Brannan, 165 M 82, 205 NW 699.

The parol evidence rule was not violated because the testimony was not to show any change in the contract, but was for the purpose only of showing that the note was not a complete instrument when received by the bank. Towle-Jamieson Inv. Co. v Brannan, 165 M 82, 205 NW 699.

Plaintiffs executed their notes for $10,000 to a company organized to sell and operate rendering plants, in payment of a plant to be built by a manufacturing plant, and intrusted it with an officer of the company, to be negotiated to the manufacturing company so that it would carry the notes, discount them, retain $7.000 for the purchase price of the plant, and return $3,000 to plaintiffs to be used by them to buy hogs and operate the plant; in violation of this purpose, the officer fraudulently sold them to defendant, who had knowledge of the fraud, and who sold them to an innocent purchaser for value, who collected the full amount from plaintitffs, who bring this action to recover the amount they paid, from defendant, claiming there was a conditional delivery of the notes to the payee company: held, where notes are given to a payee pursuant to a written contract, and it is orally agreed that they are to be used by the payee, with a particular person for a certain purpose, it does not, in law, constitute a conditional delivery. Silliman v Dobner, 165 M 87, 205 NW 696.

A conditional delivery recognized by the courts as susceptible of proof by parol evidence, is limited to those cases in which the agreement of the parties was that such instrument should become operative as a contract only upon the happening of a future contingent event; this permits a party to show, not a variation from a written contract, but rather that no contract was in fact made because its obligation never commenced. Parol evidence is admissible to show want of contract, but not to show a change in a contract. Silliman v Dobner, 165 M 87, 205 NW 696.

Defendant and her husband, when guests at a summer resort, upon their inquiry for suitable land nearby for a home, were taken by the resort owner to see land owned by plaintiff, and to the plaintiff, with whom they entered into an agreement for the purchase of the land for $3,500 cash, of which $200.00 should be paid as earnest money, and the balance within the following month; defendant

then left, and mailed, to the resort owner, a check for $200.00 for plaintiff, and an earnest money contract for plaintiff to sign, enclosed in a letter stating "her husband would be away for two weeks—when he returned, the deal would be completed"; within a week thereafter, defendant's husband wrote the resort owner that his wife had changed her mind, and that payment had been stopped on the check. In an action to enforce payment of the check, held, there was ample ground for finding an unconditional delivery of the check. Little v Dyer, 181 M 487, 233 NW 7.

A coal dealer submitted a bid to sell coal to a city, accompanied by his check, in lieu of a bond, which defendant bank, having first taken security from the dealer, had certified, under an agreement that the dealer was to deposit the check as security for his bid, and if his bid was rejected, to return and surrender the check to it whereupon the bank was to cancel and release the security; the bid was rejected, and in the time to elapse between the opening and rejecting or awarding of bids, a judgment creditor of the dealer garnisheed the check. Plaintiff, who was appointed receiver of the check in the garnishment proceedings, brought action against the bank to enforce the obligation of the check; held, as between the immediate parties, and as regards a remote party other than a holder in due course, delivery of a negotiable instrument may be for a special purpose only, and not for the purpose of transferring the property in the instrument, and the taking of security by the party liable on the instrument does not change the effect of the transaction; since a certified check is in effect an accepted bill of exchange, it may be delivered for a special purpose under the rule. The dealer had no right to the check against the bank because of the contract under which it was delivered, the attaching creditor had no greater right, nor did the garnishment enlarge the receiver's right to those of a holder in due course. Gilbert v Pioneer National Bank, 206 M 213, 288 NW 153.

Parol evidence is admissible as between a bank and the drawer of a check procuring its certification before delivery, that delivery of the certified check was made under a contract for a special purpose only. Gilbert v Pioneer National Bank, 206 M 213, 288 NW 153.

In an action by the brothers of the deceased payee of a note, defendant claimed the note was not to be paid unless request was made, and in case the payee died before demand, it was not to be paid: held, parol evidence was not admissible to alter the terms of the written contract: to be admissible within the scope of Minnesota Statutes 1941, Section 335.09, "as between immediate parties, and as regards a remote party other than a holder in due course, delivery may be shown to have been conditional", evidence must show a condition precedent, (that legal liability on the instrument never commenced), not a condition subsequent, as in this case. Skogberg v Hjelm, 211 M 392, 1 NW (2d) 599.

Defendant delivered $500.00 to a bank, which issued a negotiable cashier's check to him for that amount, payable to plaintiff, which was used as an earnest money deposit under a contract by which plaintiff agreed to assign a lease he then held, and to return the sum if the contract was not complied with; before the check was presented, defendant notified the bank that plaintiff could not fulfill his contract, to stop payment, and to return the check to him. In an action against the bank, defendant was substituted in his place: held, on the facts, the finding was justified that there had been a delivery of the check for a special purpose only, not for an outright transfer of the instrument, but only for the purposes of and subject to the contract. Deones v Zeches, 212 M 260, 3 NW(2d) 432.

Ratification of an unauthorized signature is equivalent to precedent authority. A party who with full knowledge of the facts receives and retains the benefits of his unauthorized signature ratifies the signature. Strader v Haley, 216 M 315, 12 NW(2d) 608.

Delivery; holder in due course. 1 MLR 447.

Conditional delivery of deeds direct to the grantee. 5 MLR 289.

Delivery; liability of signer of a blank check negotiated without authority to holder in due course. 9 MLR 570.

Admissibility of parol evidence to prove conditional delivery as a defense. 16 MLR 201.

335.10 CONSTRUCTION OF AMBIGUITIES.

HISTORY. 1913 c. 272 s. 17; G.S. 1913 s. 5829; G.S. 1923 s. 7060; M.S. 1927 s. 7060.

In an action on a note given a payee, since deceased, where the amount in figures was $9,060, and the amount in writing was "nine hundred and sixty dollars", held, under the negotiable instruments act, words expressing the sum payable prevail over figures, but if the words are ambiguous or uncertain, reference may be had to the figures; in the note sued on, the words were badly written and spelled, but they were not ambiguous or uncertain, and they prevailed over the figures. Bonn v Maertz, 152 M 204, 188 NW 262.

Defendant mercantile company gave a note to plaintiff, signed in blank upon the back by the individual defendants; the company being adjudged a bankrupt, action was brought against the individuals only, as makers. Held, the rule formerly followed in this state, has been abrogated, and that under the negotiable instruments act, a third party who places his signature upon a promissory note before delivery to give it credit, is an endorser, unless he indicates by appropriate words that he signs in some other capacity; defendants were endorsers, not makers. G. Sommers & Co. v Tintah Coop. Mercantile Co. 155 M 107, 192 NW 492.

In a suit on two promissory notes, the answer admitted the signing and delivery of the notes, that no part had been paid, and alleged a contemporaneous parol agreement that the notes should be paid out of the profits from the sale of lands by defendant, and prayed for a reformation of the notes to conform to the agreement; to which plaintiff demurred: held, the answer containing no allegations of mutual mistake in not incorporating the parol agreement into the notes; nor fraud practiced by plaintiff, nor inequitable conduct inducing defendant to sign the notes in reliance upon the parol agreement, the demurrer was properly sustained. Further, defendant knew he executed promissory notes for specific amounts, due and payable on a certain day, and he could not incorporate by parol evidence, conditions contrary to and destructive of the instruments he signed with open eyes. Johnson v Benham, 163 M 31, 203 NW 444.

In an action on a note for money borrowed for the purchase of a tractor, signed by defendant for the accommodation of his tenant, held: the rule of the law merchant is changed by negotiable instruments law, which makes an accommodation maker primarily liable to a holder for value; in consequence, he cannot avail himself of the defenses, such as extension of time of payment without his consent, which are available only to a surety. Vernon Center State Bank v Mangelsen, 166 M 472, 208 NW 186.

Defendant gave three promissory notes, two of which he paid, in payment of a tractor, the purchase price of which was $425.00 less the following year; in an action on the note, defendant alleged an oral agreement that he was to have the tractor at the later price, and attempted to bring himself within the exception to the general rule, that a written instrument, including promissory notes cannot be varied by parol evidence as to a prior or contemporaneous oral agreement, by way of partial performance: held, the exception does not permit oral evidence to contradict the provisions reduced to writing, and that the claim of partial consideration was inconsistent with the terms of the note. Brown v Backer, 166 M 50, 207 NW 20.

Defendant's father and mother gave a note, secured by a mortgage, and signed on the first two of the three lines in the lower right-hand corner; defendant signed in the lower left-hand corner where an attesting witness customarily signs; the mortgage recited that the note it secured was given by the father and mother. The parents died, the mortgage was foreclosed, and in an action on the note for a deficiency, defendant claimed he signed only as a witness for his father: held, the recital in the mortgage and the position of defendant's signature created an ambiguity as to whether defendant signed as a witness or a maker, and parol evidence was properly admitted to show in what capacity he signed; that evidence sustained finding that he signed as a witness, and not as a maker. Union Central Life Ins. Co. v Flynn, 196 M 260, 264 NW 786.

Proof that defendant signed as a witness in the place customarily used for attestation signatures did not vary any of the terms of the note. Union Central Life Ins. Co. v Flynn, 196 M 260, 264 NW 786.

Ambiguity as to capacity in which person signed note; when signer is deemed to be an endorser. 20 MLR 818.

Discrepancy between amounts in words and figures. 24 MLR 987.

335.11 LIABILITY OF PERSON SIGNING IN TRADE OR ASSUMED NAME.

HISTORY. 1913 c. 272 s. 18; G.S. 1913 s. 5830; G.S. 1923 s. 7061; M.S. 1927 s. 7061.

In a suit against a bank on a negotiable promissory note given by one of its directors and his wife, at the request of the bank, but which it did not sign, the bank could not be held liable because of Minnesota Statutes 1941, Section 335.11, which provides that "no person is liable on the instrument whose signature does not appear there on." Magee v First Nat'l Bank, 181 M 294, 232 NW 336.

Defendant corporation succeeded to the business and stock of another corporation, and operated it at the same place and in the same name; the president of defendant, who was also president of the latter corporation, and the business manager of both, gave notes to a bank, signing the name of the latter corporation, and his own as endorser, for loans made and used for the benefit of defendant, the bank having no knowledge of the relationship of the two corporations. A receiver of defendant was appointed in an action by a judgment creditor, in which action the bank intervened. Held, though the loans were evidenced by negotiable instruments, signed by the agent corporation, in whose name the undisclosed principal conducted its business, the principal could be held thereon as using an assumed or trade name. Amer. Fund, Inc. v Asso. Textiles, Inc. 187 M 300, 245 NW 376.

Evidence sustained finding that one of four owners of a farm, without the authority, knowledge, or consent of his coowners, executed a promissory note in the name of the other three owners, as a company; hence, having no authority to execute such instrument, it became solely the instrument of the one who made it out and signed it, in a name assumed by him. Campbell v State Bank, 194 M 502, 261 NW 1.

335.115 SIGNATURE BY AGENT; AUTHORITY; HOW SHOWN.

HISTORY. 1913 c. 272 s. 19; G.S. 1913 s. 6831; G.S. 1923 s. 7062; M.S. 1927 s. 7062.

Where defendant corporation obtained loans to conduct its business through, and gave its notes in the name of, another corporation, defendant was held as the undisclosed principal of the corporation which acted as its agent. Amer. Fund, Inc. v Asso. Textiles, Inc. 187 M 300, 245 NW 376.

A partnership is not liable on a note given, without authority or consent of his partners, by one member of a firm for funds for his individual purposes where the payee plaintiff knew that he was borrowing the money for such purposes. Security State Bank v Remington, 201 M 472, 276 NW 743.

Principal and agent. 7 MLR 498.

335.116 AGENT NOT LIABLE, WHERE.

HISTORY. 1913 c. 272 s. 20; G.S. 1913 s. 5832; G.S. 1923 s. 7063; M.S. 1927 s. 7063.

A person who executes a promissory note in a representative capacity without authority, becomes personally liable thereon; but where the payee of such note, takes it with knowledge of all the facts, he cannot enforce it against the person who so executed it. Eliason St. Bank v Montevideo Baseball Ass'n, 160 M 341, 200 NW 300.

Personal liability on negotiable instrument and contracts. 9 MLR 666.

Negotiable instruments; personal liability of receivers on contracts. 9 MLR 690.

Trustee's personal liability on contracts. 18 MLR 860.

Interpretation of signature of officer of corporation. 19 MLR 336.

Situations in which plaintiff is entitled to rely upon the existence of facts as represented. 22 MLR 970.

335.117 SIGNATURE BY PROCURATION; EFFECT OF.

HISTORY. 1913 c. 272 s. 21; G.S. 1913 s. 5833; G.S. 1923 s. 7064; M.S. 1927 s. 7064.

Signature by procuration. 7 MLR 495.

Signature by procuration; signing without authority. 7 MLR 508.

335.118 EFFECT OF ENDORSEMENT BY INFANT OR CORPORATION.

HISTORY. 1913 c. 272 s. 22; G.S. 1913 s. 5834; G.S. 1923 s. 7065; M.S. 1927 s. 7065.

335.12 FORGERY.

HISTORY. 1913 c. 272 s. 23; G.S. 1913 s. 5835; G.S. 1923 s. 7066; M.S. 1927 s. 7066.

The president and secretary of a company executed a note payable to the order of "ourselves," by signing their individual names on the face, and endorsing them on the back of the note, subsequent to which the president changed them by inserting with a rubber stamp, the company name, per, above his own, and adding the words "Pres." and "Sec." after their names so that the note, instead of purporting to be the note of the individuals, purported to be the note of the company, endorsed by its officers. In an action on the note by a holder in due course, the secretary appealed from a judgment against him. Held, Minnesota Statutes 1941, Section 335.12, protects the party whose signature has been forged, but contains no provision releasing other parties from whatever liability they have assumed. Public Bank of N. Y. City v Burchard, 135 M 171, 160 NW 667.

A note owned and left by plaintiff with a bank for safe keeping, was delivered, endorsed, by the bank's cashier, to another bank, as collateral for the cashier's personal note to that bank; in an action to replevin the note, the jury's verdict was that the endorsement was forged. Held, the note was not transferred. Hayes v Midland Credit Co. 173 M 554, 218 NW 106.

Before an owner of personal property may be estopped from asserting his title against a person who has dealt with the one in possession, something more than mere possession and control is necessary. The possession of the third person must be of such character as to deceive those dealing with him in the belief of his ownership. Hayes v Midland Credit Co. 173 M 554, 218 NW 106.

A person who acquires a promissory note without a valid endorsement cannot be a holder in due course. Hayes v Midland Credit Co. 173 M 554, 218 NW 106.

No title is acquired to a promissory note transferred by a forged endorsement. Hayes v Midland Credit Co. 173 M 554, 218 NW 106.

Plaintiff turned over certificates of stock he owned in a power company, assigned in blank, as security, he claimed, for a note given for stock of a motor company, delivered to him as a cash purchase. The motor company promptly endorsed the certificates to the power company and received its checks, drawn on defendant bank, payable to plaintiff, for the market value of the stock. Shortly thereafter, plaintiff discovered his power stock had been transferred, made complaint to the securities commission, and at the hearing, saw photostatic copies of the checks with their unauthorized endorsements; but he kept the motor stock, did not notify the bank that the endorsements were forged, and allowed the entire matter to rest until four years later, when the motor company went into the hands of a receiver. He then brought action to recover possession of the checks, cashed four years before by the motor company, and returned to the power company as canceled vouchers. Held, assuming the motor company was as claimed, a pledgee of the power stock, plaintiff had clothed it with indicia of title, his conduct by acquiescence and long delay was a ratification of the unauthorized endorsements to the prejudice of defendant, and he was estopped from setting up the forgery. Theelke v Northern States Power Co. 192 M 330, 256 NW 236.

A check issued by defendant in part payment of a consignment of cattle, was, in some way not known, obtained by a person other than the payee, who endorsed and cashed it in plaintiff's store. When defendant discovered the endorsement was a forgery, it refused to honor the check. In an action for its face value,

held, since the negligent delivery of a check by the drawer to one who is not the payee, does not preclude the drawer from setting up the forged endorsement unless his negligence proximately causes another to pay value to the person to whom the check is delivered, it was essential that plaintiff establish the fact that the person who presented the check, and the person to whom it was delivered by the drawer, were identical, and that he acted in reliance thereon. Plaintiff not having proved these facts, defendant was not precluded from setting up the forged endorsement. Montgomery Ward & Co. v Central Co-op Ass'n, 201 M 425, 276 NW 731.

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

Conflict of laws applicable to bills and notes. 1 MLR 335.

Endorsement without authority. 7 MLR 495.

Signature without authority. 7 MLR 508.

Bank's liability for misappropriation by fiduciary of fiduciary funds in bank. 17 MLR 408.

Forgery of endorsement; negligence of drawer of check precluding him from setting up forgery of payee's signature. 18 MLR 470.

Issuance or endorsement of a check to an imposter. 22 MLR 550.

Acceptance; retention of a forged instrument. 22 MLR 879.

CONSIDERATION

335.13 PRESUMPTION OF CONSIDERATION.

HISTORY. 1913 c. 272 s. 24; G.S. 1913 s. 5836; G.S. 1923 s. 7067; M.S. 1927 s. 7067.

In an action on a note, given by defendant to the payee for the purchase price of stock, and endorsed by the payee to plaintiff as collateral security for a debt he then owed plaintiff, defendant claimed the note was obtained through fraud, and was voidable. Held, the endorsee of negotiable paper taken before maturity as collateral security for an antecedent indebtedness, in good faith, and without notice of defenses, such as fraud, which might have been available as between the original parties, holds the same free from such defenses, and sustained a verdict for the plaintiff. Rosemond v Graham, 54 M 323, 56 NW 38.

Where in an action on a note, defendant counterclaimed for services rendered to the plaintiff, and recovered a substantial verdict, a new trial was granted because due weight was not given to the presumption arising from the giving of the note, and the verdict was not justified by the evidence. Sullivan Lbr. Co. v Thorn, 124 M 532, 144 NW 1135.

Before his death, plaintiff's husband gave her three checks, though he had not sufficient funds to meet them, in payment of money loaned him by her 30 years before, and to compensate her for her third interest in two properties which he had purchased, having title taken in the name of another, who transferred them to his daughter by a previous marriage. In appeal from the probate court, no claim was made except on the checks, and no statement was made as to their consideration. The executor claimed they were without consideration. Held, it is not necessary that a negotiable instrument should specify the consideration for which it was given. A check is a species of bill of exchange, and itself imported a consideration that the outlawed debts formed a sufficient consideration for a check for the amount of them, and that the facts constituted a valid consideraion for a check to plaintiff in recognition of her marital rights in the properties. Baxter v Brandenburg, 137 M 259, 163 NW 516.

In action to recover the amount of a note from the estate of a deceased, the defense was want of consideration; held, the presumption is that a promissory note is a valid obligation based upon a good and legal consideration, and the burden of showing that there was a want of consideration rested upon the defendant; and that the evidence sustained the finding for defendant. Long v Conn, 147 M 77, 179 NW 644.

Defendant, acting as plaintiff's cashier, discounted a note for one of plaintiff's directors, and extended further credit, which loan turned out to be almost

a total loss. Plaintiff, claiming defendant had acted without authority, and threatening him with criminal prosecution, obtained notes from him for the amount of its loss on the loan. Defendant had resigned because of ill health amounting to a temporary nervous collapse. In an action on the notes, defendant claimed he had acted with authority, that his notes were given in consideration of a promise by plaintiff to transfer and assign the director's notes to him, and because of plaintiff's failure to deliver and assign them pursuant to such promise, there was a failure of consideration which discharged defendant from his part of the contract, and that the notes were obtained by duress. Held, evidence supported a verdict on the two defenses. Brown Co. Bank v Hage, 156 M 460, 195 NW 275.

In an action on a note, in form, a straight negotiable promissory note for $4,000, payable upon demand; held, when plaintiff rested, it had made out a case of being a holder of the note, in due course and for value. Midland Nat'l Bank v Farmers Co-op. Elev. Co. 157 M 348, 196 NW 275.

Under the statute there was a presumption that the draft was issued for a valuable consideration, and that the endorsee was a holder in due course. Unless and until it was shown that the title of the payee was defective, the endorsee was not obliged to prove that it became a holder in due course, and an instruction to the contrary was erroneous. St. Paul State Bank v Rippe Grain & M. Co. 160 M 102, 199 NW 519.

Plaintiff and defendant purchased a farm, each to pay a half, defendant assigning a $6,000 mortgage he owned on another farm as part of the purchase price, taking a note from plaintiff for $3,000, half the amount of the mortgage. The following winter, the value of farm lands having decreased, a deal was made whereby they conveyed the land back, and defendant's mortgage was assigned back to him. In an action for the cancelation of the $3,000 note given by plaintiff; held, neither the claim that the consideration for the note had failed, nor the claim that defendant had agreed to surrender it under a subsequent contract was sustained by the evidence. Ulferts v Thissen, 163 M 173, 203 NW 603.

By agreement, defendant, who owned a grain elevator, drew drafts on a grain commission firm, for money to purchase grain, which he shipped to the commission firm to be sold on commission, and as security to the open account between them, he gave his note for the amount of credit agreed to be given to him. The note was not to be negotiated, but to be held in the company's files. The note was negotiated to a bank, whose receiver brought action on it; held, the promise to make advances was a consideration for the note, and its negotiation was not a fraud within meaning of the negotiable instruments act. Veigel v Johnson, 163 M 288, 204 NW 36.

A bank held a promissory note which it sold and transferred to plaintiff, by an endorsement, without recourse. At the same time and as part of the same transaction, the president and cashier of the bank executed and delivered to plaintiff, a written guaranty of payment of the note, in which no reference was made to consideration. In an action on the guaranty against the president, the question was whether the guaranty sufficiently expressed the consideration to satisfy the statute of frauds, Minnesota Statutes 1941, Section 513.01(2) "Every promise to answer for the debt of another." Held, it is sufficient if the consideration appears by necessary implication; that the note and guaranty were to be construed as one; that the consideration involved passed from plaintiffs contemporaneously with the delivery of the guaranty; and that under Minnesota Statutes 1941, Section 335.13, the qualified endorsement transferring the note to plaintiffs, imported a consideration. Hall v Oleson, 168 M 308, 210 NW 84.

Plaintiff was an accommodation endorser on G's note for $10,000 to a bank; at maturity, the bank refused to accept a renewal note unless payment at maturity was guaranteed. Plaintiff refused to sign such a note without some security. G offered the bank to furnish defendant as an endorser on a renewal note, but the bank would not accept such a renewal without also having plaintiff's endorsement. To secure plaintiff's endorsement, G gave his note, endorsed by defendant, to plaintiff, for $10,000. The renewal note, as executed by G, endorsed by plaintiff and defendant, was not paid at maturity, and plaintiff and defendant each paid $5,000 to the bank. In an action by plaintiff on the note held by him, for the $5,000 which

he paid to the bank; held, there was ample consideration emanating from plaintiff on the note and its endorsement. Malkin v Bearman, 177 M 325, 225 NW 113.

Defendant had signed two notes, with his son-in-law and daughter, to plaintiff. To induce him to sign a renewal note to take them up, plaintiff reduced the principal, threw off interest up to that time, and reduced the interest rate. In an action on the note, held, there was sufficient evidence of consideration for defendant's signing the note. Erickson v Husemoller, 191 M 177, 253 NW 361.

The note itself is prima facie evidence of consideration as to all the signers thereof. The burden of proof rested on defendant to prove want of consideration. Erickson v Husemoller, 191 M 177, 253 NW 361.

In a suit upon promissory notes claimed to have been executed in settlement of damages sustained by plaintiff because of alleged acts of adultery committed by defendant with plaintiff's wife; held, the question of whether the acts were committed was properly submitted to the jury, and the evidence supported a negative finding. Defendant having caused plaintiff no damage, there was no consideration for the notes. Steblay v Johnson, 194 M 352, 260 NW 364.

Defendants, husband and wife, lived on a farm under a lease executed by the husband alone. Unable to meet the rent, the husband gave a note, secured by a mortgage on his interest in another farm, to which his wife affixed her signature upon representations of the landlord that it was essential to the legal sufficiency of her husband's obligation. The mortgage was foreclosed, and the land sold to plaintiff, with the note thrown in. In an action on the note, the wife separately answered that there was no consideration for her joining her husband; the issue was whether the wife signed to make her husband's obligation legal, or in order to stay on the farm and satisfy the landlord's demands, and the jury found for the wife. The trial court had instructed the jury that plaintiff was not entitled to succeed unless the wife had received consideration. Held, the note was prima facie evidence of a consideration and the burden was on the wife to prove want; having done so, the landlord would not have been able to recover from her, and plaintiff then had the burden of proving that he was a holder in due course. Not having requested an instruction that he was entitled to recover regardless of consideration if he was found to be a holder in due course, nor objecting to its omission, but having acquiesced in the instruction given, that instruction became the law of the case since it did not conclusively appear that plaintiff was entitled to prevail. Parkin v Sykes, 203 M 249, 280 NW 849.

Want of consideration as a defense; burden of proof. 9 MLR 280.

335.131 VALUE.

HISTORY. 1913 c. 272 s. 25; G.S. 1913 s. 5837; G.S. 1923 s. 7068; M.S. 1927 s. 7068.

In a suit on a promissory note, given to a corporation for a share of its stock, a failure by the corporation to deliver or tender a share certificate is not a defense; and subsequent bankruptcy of the corporation does not establish failure of consideration of the note so given. Galbraith v McDonald, 123 M 208, 143 NW 353.

Defendant executed his note to a person, who being indebted to plaintiff in a sum exceeding the amount of the note, endorsed the note to plaintiff, before maturity, as collateral security to that indebtedness; in an action on the note, defendant claimed that the payee had obtained the note by fraud, and that plaintiff was not a bona fide holder. Held, evidence supported the conclusion that plaintiff had no knowledge or notice of fraud, that the note was acquired in the usual course of business, and for value. Following Rosemond v Graham, 54 M 323, to the effect that an endorsee of negotiable paper, taken before maturity as collateral security for an antecendent debt, in good faith and without notice of defenses, holds the same free from such defenses. German-American State Bank of Ritzville v Lyons, 127 M 390, 149 NW 658.

In an action on a note given by defendant for the first premium of a $5,000 life insurance policy, which contained a clause, "with privilege of increasing or decreasing insurance on first payment," defendant alleged an oral contemporaneous agreement that when he signed the application for a $5,000 policy, he agreed he would pay the premium for a $5,000 policy if he took that amount, and that

the insurance agent agreed that before writing the policy he would ascertain from defendant, the amount he would accept; but that without doing so, the agent wrote and sent to him a policy for $5,000 which he refused to accept, and offered to return; and that the note was without consideration. Held, the issuance and delivery of the policy pursuant to the application furnished a sufficient consideration for the note, that the clause gave defendant an option, with the obligation to so signify if he availed himself of it, and that evidence of the oral agreement which varied the written agreement, was not admissible. Wadsworth v Walsh, 128 M 241, 150 NW 870.

A land company executed a note, secured by a mortgage, to a bank for a past due indebtedness, and as part of the same transaction, three stockholders of the company individually guaranteed payment of the note by an endorsement upon the back thereof. After the note became due, the mortgage was foreclosed, and a deficiency judgment obtained. In an action against the guarantors, held, the extension of time for the payment of the past due debt was a sufficient consideration to support the guaranty executed before delivery and acceptance of the note. Mchts. State Bank v Sunset Orchard Land Co. 158 M 108, 196 NW 963.

The cashier of a correspondent bank of plaintiff had embezzled money by forging notes; plaintiff had discounted notes, including some forged ones, for that bank in an amount of $30,000, and was willing to continue, but insisted upon collateral. Defendant executed his accommodation note for $10,000 to the cashier, who endorsed it to his bank, which endorsed it to plaintiff. In an action on the note, defendant alleged that the cashier had procured it by fraud. Held, a bank which takes, by endorsement, an accommodation promissory note, knowing it to be accommodation, as collateral security to an antecedent liability of a bank as an endorser on discounted paper, is protected against defenses of the maker just as a bona fide purchaser of negotiable paper for which a present consideration is given is protected. First Nat'l Bank of Willmar v Malmquist, 158 M 140, 197 NW 271.

In an action on a draft for $2,000, drawn by defendant on a grain commission company, made payable to an Iowa bank, and endorsed by the payee bank to plaintiff bank, its Twin City correspondent to which the Iowa bank was indebted in the amount of $1,948.64, held, the indebtedness of the payee to the endorsee, existing at the time when the draft was received and credited, was a valuable consideration, at lease to the extent of the indebtedness, for the taking of the draft. St. Paul State Bank v Rippe Grain & M. Co. 160 M 102, 199 NW 519.

Defendant executed a note to a grain commission company in consideration of the company's agreement that during the season for buying grain, defendant should have a line of credit for the amount of the note, and should consign the grain he took in at his elevator to the company for sale on commission; credit was extended by the company, by its honoring drafts drawn on it by defendant. At times defendant's account was overdrawn, but when the company failed, he had a credit balance. In an action on the note, held, the promise to advance money was a sufficient consideration for the note, and a verdict could not stand which was based on a finding of want or failure of consideration. Veigel v Johnson, 163 M 288, 204 NW 36.

A promise to do an act at a future time is a sufficient consideration for an engagement to the party making the promise, provided the promises are mutual and concurrent. Veigel v Johnson, 163 M 288, 204 NW 36.

A valid executory agreement is a sufficient consideration for commercial paper. Veigel v Johnson, 163 M 288, 204 NW 36.

A decedent, who desired to contribute to the scholarship fund of a college, delivered his note to an officer of the college, whereupon the contribution was announced and others were induced to make similar contributions. Large contributions were also made to the general endowment fund, and, in reliance upon all the subscriptions, the trustees erected new buildings, added to the equipment of the college, and enlarged its field of instruction. Held, payment of the note could not be avoided on the ground that it lacked consideration. It became an enforceable obligation prior to his death, and both the probate and the district court were right in allowing it as a valid claim against his estate. Horan v Keane, 164 M 57, 204 NW 546.

Defendant elevator company, being in need of money and credit with which to carry on its grain business, became indebted to plaintiff, a grain commission firm, for $35,000, above all credits, under a written agreement signed by the company and four of its individual members, by which plaintiff was to advance money to the company by honoring drafts drawn on plaintiff by the company, for the payment of grain to be shipped to and sold by plaintiff on a commission. The company used the money in its business, but discontinued shipping its grain to plaintiff. Plaintiff then demanded further security, and in compliance therewith, the company executed its notes to plaintiff, endorsed by the members who had signed the agreement, for $35,000. In an action on the notes, held, the evidence justified the finding that there was a valuable consideration for the endorsement of the notes. Healy-Owen-Hartzell Co. v Montevideo F. & M. Elev. Co. 165 M 330, 206 NW 646.

Where defendant gave a note in part payment of a tractor, he was not permitted to show an oral contemporaneous agreement that he was to have the tractor at its following year's lower price, for the purpose of showing a partial failure of consideration, to the extent of the difference in the prices. Brown v Backer, 166 M 50, 207 NW 20.

Plaintiff purchased notes from a bank, some of which it later learned had been forged by the cashier of that bank. There was a settlement by which both the cashier and his mother turned over their homesteads, the directors of the bank personally guaranteed payment to plaintiff of all paper received from the cashier, and plaintiff agreed to bring no action on the forged paper against either the cashier, or the bank. Following the settlement, defendant's father was induced to sign a note to help make up the loss from the forgeries. In an action on the note against defendant, as his father's administrator, held, the settlement was made for a full and valuable consideration, and by it plaintiff released and discharged the parties liable. Thus, plaintiff's forbearance in not enforcing its cause against the cashier and the bank, furnished no consideration for the note. Payne Ave. State Bank v Johnson, 166 M 392, 208 NW 15.

Defendant gave plaintiff note for a tractor which proved unsatisfactory. Plaintiff substituted another tractor. In an action on the note, held, it was not error for the court to instruct the jury that it might find that the note, by the understanding of the parties, stood for the second tractor. Buoye v Foldesi, 167 M 60, 208 NW 422.

Being required by the state banking department to replace worthless paper, a bank induced plaintiff to execute a note and mortgage to it, to be held only until the bank could make an assessment upon its stockholders. After the assessment, the bank endorsed them to defendant, who had knowledge of the facts. In an action for a cancelation of the note and mortgage, held, the transaction being without consideration and solely as an accommodation, plaintiff could limit the use to be made of the paper to a specific purpose, and was not liable if it was used for a different purpose unless it passed to a holder in due course. Defendant having taken the paper with knowledge of the limitations placed upon its use, could not enforce it against plaintiff. Grisim v Live Stock State Bank, 167 M 93, 208 NW 805.

Where paper is executed without consideration for a special purpose, taking security does not change the nature or effect of the transaction. Grisim v Live Stock State Bank, 167 M 93, 208 NW 805.

Parol evidence was admissible to prove that the note and mortgage were given without consideration as accommodation paper, and the special purpose for which they were given. Grisim v Live Stock State Bank, 167 M 93, 208 NW 805.

Defendant held a past due note of plaintiff's brother, which plaintiff claimed he signed at the request of the bank so that it would pass an inspection by the bank examiner, and that he was not to be called upon to pay it. The evidence was held to sustain the finding that there was no consideration for plaintiff's signature. Christianson v Nat'l Cit. Bank, 168 M 211, 209 NW 899.

In an action on a note, defendants claim that the note was without consideration was so conclusively disproved by his admissions to the contrary, and other undisputed facts in evidence, as not to sustain a verdict in his favor, and to make necessary the direction of a judgment against him. Farmers State Bank of Brooten v Taylor, 169 M 401, 211 NW 820.

The agreement in a renewal note to pay interest during the time extended for payment of a note, i. e., interest to accrue in the future, is a sufficient consideration to support the contract for extension. Farmers & Mer. Nat'l Bank of Cannon Falls v Doffing, 171 M 53, 213 NW 375.

Plaintiff and defendant were brothers; defendant owned a garage; their mother, desiring that her sons be associated in business, paid defendant $5,000 that was to put plaintiff in his brother's business. Plaintiff being then called away to war, it was agreed between the brothers that if he returned, there would be an accounting. Defendant was also called to war, and the business which was turned over to another to run, was not prosperous. When the boys returned, there was an accounting and as a result, defendant gave plaintiff a note for $4,582.54. In an action on the note, held, evidence sustained the finding that the note was executed without consideration, and through a mistake as to the rights of partners. Kruchek v Kruchek, 173 M 491, 217 NW 595.

Plaintiff gave defendant bank his check, drawn on another bank wherein he had money to pay it, in payment of two notes on which he was indebted to defendant; and received his two notes stamped "paid." Defendant presented check to the bank on which it was drawn, and accepted a draft in payment of the check which was then stamped "paid," and charged to plaintiff's account. Before the draft was collected, the drawer bank, being insolvent, closed. At the solicitation of defendant's officer in charge, who claimed his bank had received no money on plaintiff's check, plaintiff gave defendant his note, back dated to when his check was given, for the amount of his two previous notes. Soon thereafter he learned the facts, and in an action to cancel the note for want of consideration, held, the note imported a consideration, but merely made out a prima facie case which was completely destroyed by the facts. Tobiason v First State Bank of Ashby, 173 M 533, 217 NW 934.

A painter agreed to do work and furnish the material for defendant's building, for $275.00. He bought the material from plaintiff, and started work. Needing money, he requested an advance, and defendant, instead of cash, gave him a note for $275.00, which the painter endorsed to plaintiff, who credited him with $265.00 upon his account, and paid him $10.00 in cash. In an action on the note, defendant alleged the work had not been finished, and a lien had been filed upon the property. Held, the evidence did not show want, or failure of consideration. Calvin v Moshier, 177 M 477, 225 NW 388.

Plaintiffs gave their note, secured by a mortgage on their farm, to an individual, upon the agreement that he would hold it as security for the claims of four of their creditors. Two of the creditors gave their consent, and another granted plaintiffs an extension of time. In an action to cancel the mortgage, held, there was ample consideration for the note and mortgage in the pre-existing debts; though one of the creditors did not consent as was intended and agreed, two did, and one extended plaintiff an indulgence in the extension. There was at best, only a partial failure of consideration, and inasmuch as the mortgage was being enforced only for a part of the debt which it was intended to secure, by those who did consent, plaintiffs were not entitled to an equity superior to those for whose benefit the mortgage was being enforced. DeWolf v Johnson, 177 M 612, 225 NW 908.

In an action to cancel a note and mortgage, held, the court could come only to the conclusion that they were given and accepted in full settlement of a shortage in plaintiff's accounts when he was manager of defendant's creamery; that the settlement and compromise of defendant's claim, made in good faith and upon reasonable grounds, was a valid consideration for the note and mortgage. Gorezki v Ideal Creamery Co. 180 M 13, 230 NW 128.

Defendant, after having mailed plaintiff a check as earnest money on a purchase of land, and an earnest money contract which plaintiff signed and returned to her, changed her mind about the land, and stopped payment on the check. In an action for its enforcement, held, the earnest money contract was a valuable consideration for the check, for plaintiff, the payee, was able, ready and willing to convey good title to the property he agreed to sell under the contract. Little v Dyer, 181 M 487, 233 NW 7.

More than five years after defendant, among others, had signed a five-year guaranty of a mercantile company's notes to plaintiff bank, without his knowledge,

renewal notes were executed by the company, which as was held in Goodhue County Nat'l Bank v Fleming, 168 M 50, and Goodhue County Nat'l Bank v Larson, 174 M 383, resulted in a release of such guarantors. Subsequently, relying upon plaintiff's statement that he was liable on his guaranty, and not being advised of the acts which had released him, defendant signed a note for such obligation, and paid interest. In an action on the note it was held, it was given under such circumstances that there was a lack of consideration therefor, and that defendant recover the interest paid. Goodhue County Nat'l Bank v Ekblad, 183 M 361, 236 NW 629.

To constitute a compromise and settlement, sufficient to make a consideration for a note given, there must have been a bona fide mutual concession by each of the parties. Goodhue County Nat'l Bank v Ekblad, 183 M 361, 236 NW 629.

Defendants borrowed money from plaintiff to purchase stock in a Minnesota corporation of which plaintiff was president, giving their note for the loan. The corporation had not obtained a license to sell its stock in this state. In an action on the note, held, though the sale was in violation of the blue sky law, defendants in purchasing, violated no law and acquired good title to the stock, and it was a good and sufficient consideration for the note. Edson v O'Connel, 190 M 444, 252 NW 217.

To induce defendant to sign a renewal note to take up two prior notes which he had signed with his son-in-law and daughter, plaintiff agreed with him to reduce the interest, and went with him to his daughter's home where she and her husband signed. Defendant refused to sign that day, but did a day or so later. In an action on the renewal note, held, evidence sustained finding that there was sufficient consideration for defendant's signing, and that the note was not unconditionally delivered to and accepted by plaintiff, before he signed it. Erickson v Husemoller, 191 M 177, 273 NW 361.

Plaintiff purchased a note which ran for three years, and the first mortgage securing it, from the corporation which had made the loan to the owners. The following year the property was sold to purchasers who executed their note and a second mortgage, subject to the first mortgage, to defendant. When the first mortgage was due, plaintiff, knowing nothing of the intervening second mortgage, acting in good faith and relying solely upon representations of the corporation's employees, agreed to extend or renew her first mortgage, and not intending to release it, executed a satisfaction thereof and accepted a new first mortgage note and another "first mortgage." All instruments had been properly recorded. In an action to determine priority between plaintiff's and defendants' mortgages, held, a promissory note given for an antecedent debt does not discharge the debt unless expressly given and received as absolute payment; and the burden of proof is upon the party asserting such fact to show that it was so given and received, the presumption being to the contrary. The same rule applies where a third party joins in the execution of the new note. Taking a new mortgage does not discharge the old debt unless such was the intention of the parties. And that equity would grant plaintiff relief, such relief not resulting prejudicially to defendant. Hirleman v Nickels, 193 M 51, 278 NW 13.

Where in a suit upon notes claimed to have been executed in settlement of damages sustained by plaintiff because of alleged acts of adultery committed with his wife, a jury properly found that no such acts had been committed, and defendant's innocence was thus established, plaintiff had no claim for damages, and there was no consideration for the notes. Steblay v Johnson, 194 M 352, 260 NW 364.

A wife signed a note with her husband for past due rent, upon representations that her signature was necessary to make his obligation legal. In an action by plaintiff, an assignee of the note, the court instructed the jury to determine whether she signed to stay on the farm and satisfy the landlord's demands, or to make her husband's obligation legal, and that if they found the latter, plaintiff could not recover. The jury found for the wife. Held, the wife having proved that she did not intend to become liable, she was not an accommodation maker; having proved that she received no consideration, and was not an accommodation maker, it was incumbent upon plaintiff to show he was a holder in due course. By plaintiff's not asking an instruction that he was entitled to recover regardless of consideration if he should be found to be a holder in due course, nor objecting to its omission,

and acquiescing in the instruction given that he was not entitled to succeed unless defendant received consideration, the given instruction became the law of the case, it not conclusively appearing that defendant was not entitled to prevail. Parkin v Sykes, 203 M 249, 280 NW 849.

Defendant gave notes to a group of men who had sold him land, one of whom offered one of the notes, payable to himself, to a dealer on the purchase price of a truck. The dealer insisted on a new note from defendant payable to himself, which was done and the truck delivered to the purchaser. The note was endorsed to plaintiff bank, and in an action on a note in renewal of it, the defense was fraud practiced in the procurement of the first note by the land deal, and of no consideration to defendant. Held, there was consideration because it conclusively appeared that one of the group, the truck purchaser, did receive consideration from the dealer; this was as effectual as if it had moved directly to defendant. Becker Co. Nat'l Bank v Davis, 204 M 603, 284 NW 789.

Any consideration sufficient to support a simple contract is value for a negotiable instrument. Such consideration may consist in any benefit to the promisor, or in a loss or detriment to the promisee; or to exist when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstains from doing, something, the consideration being the act, abstinence, or promise. Becker Co. Nat'l Bank v Davis, 204 M 603, 284 NW 789.

335.132 VALUE PRESUMED.

HISTORY. 1913 c. 272 s. 26; G.S. 1913 s. 5838; G.S. 1923 s. 7069; M.S. 1927 s. 7069.

In an action on a note, given by defendant to a motor company, and discounted by the company to plaintiff bank, which credited the amount of the note less the discount, to the company's checking account with the bank, held, when the amount of the discounted note was placed to the payee's account, there was no purchase for value, as this merely increased the bank's debt to the depositor; but under the rule, that as checks are paid the amount is to be charged against the oldest item of deposit or credit of the customer, plaintiff was a purchaser for value. First Nat'l Bank v McNairy, 122 M 215, 142 NW 139.

When plaintiff produced the note, endorsed by the payee, the presumption obtained that the note was taken in good faith, for value, before maturity, in due course of business and without notice of any defenses thereto, and the court therefore rightly laid the burden on the defendant to prove the plaintiff not a good faith purchaser. First Nat'l Bank v McNairy, 122 M 215, 142 NW 139.

The president of plaintiff bank was actively interested in an incubator company; the accounts of both with plaintiff were overdrawn; the president executed a note to each of the three defendants, who as part of the same transaction, each executed a note to him, in the same amount as was his to them. The president took the notes to him to the bank, made out deposit slips, credited his account with two of them, and the incubator company with the other; the notes were carried to the bills receivable account at the bank in the usual way. The overdraft of the president was paid to the extent of the two notes, and the company's overdraft paid, with a credit balance left. In actions on the notes, held, the president's notes were a consideration for defendants' notes; defendants' notes were not accommodation for the bank, and defendants were liable thereon. State Bank of Gibbon v Glaeser, 156 M 136, 194 NW 98.

Plaintiff bank held notes which it had discounted for a correspondent bank, whose cashier had forged notes; defendant executed his accommodation note to the cashier, who endorsed it to his bank, which endorsed it to plaintiff, as collateral security for that bank's liability to plaintiff. In an action on the note, defendant alleged it had been obtained by fraud. Held, a bank which takes by endorsement, an accommodation note, knowing it to be accommodation, as collateral security to an antecedent liability of a bank as an endorser on discounted paper, is protected against defenses of the maker just as a bona fide purchaser of negotiable paper for which a present consideration is given is protected. The endorsee taking for a pre-existing debt is a holder for value, and it is no defense to the accommodation maker that the endorsee knew that he was an accommodation party. First Nat'l Bank of Willmar v Malmquist, 158 M 140, 197 NW 271.

One who takes by endorsement, a promissory note as collateral security for an antecedent or preexisting debt, is a purchaser for value. First Nat'l Bank of Willmar v Malmquist, 158 M 140, 197 NW 271.

335.133 WHERE HOLDER HAS LIEN.

HISTORY. 1913 c. 272 s. 27; G.S. 1913 s. 5839; G.S. 1923 s. 7070; M.S. 1927 s. 7070.

335.134 ABSENCE OF CONSIDERATION MATTER OF DEFENSE.

HISTORY. 1913 c. 272 s. 28; G.S. 1913 s. 5840; G.S. 1923 s. 7071; M.S. 1927 s. 7071.

Where a realty company contracted to convey a marketable title by warranty deed and failed to acquire such title within the time limited therefor, such failure was a complete defense to a note given for an instalment of the purchase price; and plaintiff, who was an employee of the realty company and took the note with knowledge of the facts, could not invoke the rule protecting a good faith purchaser. Schlemmer v Nelson, 123 M 66, 142 NW 1041.

In an action by the executor of the will of defendant's father, on a note for $1,000 given by defendant to his father in his lifetime, defendant alleged his father gave and advanced to him the amount for which the note was given, in anticipation of his share in his father's estate; that the note was given at his father's request, to be used solely as a memorandum of such advancement. By his father's will, defendant was bequeathed $500.00. It was held competent to prove by parol, that the money was a gift, and that there was no other consideration for the note. Kragnes v Kragnes, 125 M 115, 145 NW 785.

In an action on a note claimed by plaintiff to have been executed to him by his deceased father-in-law, held, where the issue of want of consideration is made by the pleadings, the question of consideration may be inquired into; and that the evidence sustained the charge of no consideration. Long v Conn, 147 M 77, 179 NW 644.

Plaintiff, who held an $800.00 past due rent note from a tenant of his farm, proposed to the tenant's son that he would accept $400.00 for the note; the son promised to pay, and agreed to sign his father's note if plaintiff would endorse thereon a payment of $400.00. This was done but no payment was ever made on the note. It was held that the note was not paid or discharged by the agreement of the son; and there being no new consideration for the son's becoming a party to the past due note, he was not liable on it. Gage v G. W. Van Dusen & Co. 156 M 332, 194 NW 769.

Defendant drew a draft on a grain commission company, payable to a bank, which was credited to his account with the bank; the bank failed, but no part of the draft had been drawn out, and he had a credit balance. Held, there was a failure of consideration for the draft. St. Paul State Bank v Rippe Grain & M. Co. 160 M 102, 199 NW 519.

Defendant, owner of a grain elevator, by agreement with a grain commission company, drew drafts on it for money with which to purchase grain which he shipped to the company to be sold on commission; and as collateral security to the open account between them, executed his note to the company under an agreement that it would not be negotiated, but kept in the company's files, to be shown to banks with whom the company dealt, as collateral to the account. The president of the company endorsed the note to a bank of which he was also president, at a time when defendant was not indebted to the company. In an action on the note, held, defendant failed to show lack of consideration. Veigel v Johnson, 163 M 288, 204 NW 36.

The guardian of an estate misappropriated funds of his ward; upon the probate court's calling him for an accounting, he induced defendant to sign a note to the estate for the amount he was short, with him, by telling him that he had loaned the funds to farmers at higher interest rates than he could obtain at the banks, that as soon as they were paid, defendant's note would be canceled and returned, and that it was to be held, as security only, in the files of the court. Before maturity of the note, a new guardian had been appointed who brought ac-

tion on it. Held, the new guardian was in no better position to recover on the note than the first, and was therefore vulnerable to the defenses of want of consideration, fraud, and accommodation, all of which were found upon sufficient evidence. Kluczny v Matz, 187 M 93, 244 NW 407.

Plaintiff furnished material and labor for a garage for defendant on a cost plus basis; during building operations, to obtain money, defendant gave his note to plaintiff in an amount which he claimed was 25 per cent more than he was owing so that it could be sold and discounted up to 25 per cent, to be canceled if not sold. It was not sold, but was used as collateral. In an action on the note the jury found for defendant, and it was held, that as to the difference between the amount claimed to be owing, and the amount of the note, it was not error to submit the question of partial want of consideration as a defense pro tanto. Cemstone Products Co. v Gersbach, 187 M 416, 245 NW 624.

A partial want or partial failure of consideration is a defense, pro tanto, to a negotiable promissory note in the hands of the original payee or in the hands of one not a holder in due course. Cemstone Prod. Co. v Gersbach, 187 M 416, 245 NW 624.

Want of consideration as a defense; burden of proof. 9 MLR 280.

Checks; delay in presentment; effect of, after payment stopped. 17 MLR 320.

335.14 ACCOMMODATION PARTY.

HISTORY. 1913 c. 272 s. 29; G.S. 1913 s. 5841; G.S. 1923 s. 7072; M.S. 1927 s. 7072.

Where a son signed a past due note of his father's, the only theory upon which he could be held would be a guarantor or surety on the note, having affixed his signature after delivery; there having been no new consideration for his becoming a party to the note, he was not bound. Gage v G. W. Van Dusen Co. 156 M 332, 194 NW 769.

Where plaintiff bank took an accommodation note, by endorsement, from another bank as collateral security for that bank's liability on paper which it had endorsed to plaintiff, plaintiff was a holder for value and was protected against the defenses of the maker just as a bona fide purchaser of negotiable paper for which a present consideration is given; and it was no defense to the maker that plaintiff, the endorsee, knew he was an accommodation party. First Nat'l Bank of Willmar v Malmquist, 158 M 140, 197 NW 271.

S, the president of plaintiff bank, and defendant, were jointly interested in the exchange of 960 acres of Swift county land for five sections of Montana land. In order to make up the 960 acres, S purchased 320 acres in Swift county, taking title in defendant's name. To make up the balance of the purchase price of the 960 acres, the purchasers executed their notes to defendant, secured by mortgages on the 320 acres so bought by S, and defendant endorsed the notes and assigned the mortgages to plaintiff bank. It had been agreed before the transaction, between S and defendant, that the notes and mortgages would be carried and held by plaintiff bank, without any liability to defendant, and the bank had knowledge of such agreement, and that the transactions as to the 320 acres were without benefit or consideration to defendant, and that his acts in that matter were at the request and for the accommodation of S. In an action on the notes by the bank, held, under the most favorable view to defendant on the admitted facts, though the transactions as to the 320 acres were solely for the benefit of S, defendant must be considered an accommodation endorser and liable as such; though S was not a party to the paper, he was the accommodated party. It was contemplated that plaintiff should take the notes, so the taking was not in bad faith, and plaintiff having paid full value before maturity was a holder in due course. Farmers & Mchts. State Bank v Olson, 161 M 310, 201 NW 440.

Defendant was discharged in bankruptcy from his liability on two notes to a bank. He thereafter executed two notes to the bank which, in an action on them, he claimed were without consideration and executed solely for the purpose of permitting the bank to use them as apparent assets, that he did not give or intend them to revive the old debt. Held, whether the notes were given as an accommodation to the bank was a question of fact, and parol evidence was admissible, not to vary the terms of the notes, but to show that there was no note at all because

it was not supported by the necessary consideration. Boyd State Bank v Dodge, 163 M 151, 203 NW 604.

The rule of the law merchant that an accommodation maker stood with respect to the payee, in the position of surety for the accommodated one is changed by the negotiable instruments act; which makes an accommodation maker primarily liable to a holder for value. In consequence, he cannot avail himself of the defense of an extension of time of payment without his consent, which is available only to a surety. Vernon Center State Bank v Mangelsen, 166 M 472, 208 NW 186.

The accommodating party may limit the use to be made of the accommodation paper to a specific purpose and for a specific time, and is not liable thereon if it is used for a different purpose unless it passes to a holder in due course. Grisim v. Live Stock State Bank, 167 M 94, 208 NW 805.

Under the negotiable instruments law, accommodation parties are now liable in the capacity in which they appear upon the instrument, whether as makers or as endorsers. Lake St. State Bank v Hunter, 170 M 128, 212 NW 2.

A realty company, considering that land it had for sale could be more readily sold if mortgages were placed thereon so that purchasers could buy with less money by assuming the mortgages, caused defendant, as an accommodation only, to take title to the land, and then deed it to itself, and to execute his notes, secured by mortgages on the land, to plaintiff, who dealt in real estate mortgages, and with knowledge of the transactions, paid their full value directly to the realty company. In an action on the notes, held, the payee of a negotiable promissory note given for the accommodation of a third party, who pays the full consideration therefor direct to such third party and knows that it is accommodation paper, is a holder for value and entitled to recover thereon against the maker. Traub & Mantz Mtge. Corp. v Schreiber, 173 M 14, 216 NW 314.

The defense of want of consideration is only available against the party accommodated. Traub & Mantz Mtge. Corp. v Schreiber, 173 M 14, 216 NW 314.

Plaintiff loaned a mortgage he owned, to be used by the borrower as collateral security for his note to a bank for a loan obtained from it; when payment of his note was demanded, the borrower gave his note to defendant, to which the bank delivered the collateral it held, upon receiving its money. In an action of replevin, held, plaintiff was an accommodating party and could limit the use to be made of the accommodation paper to a specific purpose unless it passed to a holder in due course; defendant did not buy the paper and when the borrower, without authority, wrongfully attempted to use it and borrowed from defendant money with which he paid the authorized loan originally made, that terminated the use for which it was borrowed. Hayes v Midland Credit Co. 173 M 554, 218 NW 106.

Where plaintiff, to enable her relatives to borrow money from defendant bank, signed their notes to the bank, plaintiff was an accommodation maker for her relatives, and not for the bank. Laabs v Farmers State Bank, 174 M 261, 219 NW 93.

The director of a corporation delivered his note, payable to himself and endorsed in blank, to the secretary of the corporation; subsequently the receiver of the corporation sold all its assets to plaintiff. In an action on the note, held, evidence sustained the finding of the director's claim, that he executed and delivered the note in its special form solely as an accommodation and without consideration, for the purpose of its being filed with the securities commission of another state as security, in order to get permission to sell stock in that state; and that the note, being accommodation paper, the maker had a right to limit its use as he did, in the absence of plaintiff's being a holder in due course. Red Wing Rubber Mfg. Co. v Hjermstad, 176 M 425, 223 NW 682.

A painter who had agreed to do painting for defendant for $275.00, bought the materials from plaintiff and started on the work; needing money, he asked an advance from defendant. Instead, defendant gave him a note for $275.00 meant as full payment of the job, which the painter endorsed to plaintiff, who credited the painter's account with him for $265.00 and gave him 10.00 cash. In an action on the note, defendant alleged he signed the note as an accommodation to the payee painter, and that the work was never finished. Held, plaintiffs were holders in due course, and that in a legal sense, the note was not an accommodation note. Calvin v Moshier, 177 M 477, 225 NW 388.

A bank traded bonds it owned, at a discount, to plaintiff, for first and second farm mortgages which became assets of the bank. The second mortgages were criticized by the banking department and ordered from its assets. Plaintiff was requested by the bank's president to repurchase the second mortgages and give the bank a note for their amount, secured by the second mortgages as collateral, which was done under an agreement that the note was an accommodation to the bank only, without consideration, and was not to be paid. The note was regular on its face and bore interest, which was paid. The bank held other notes of plaintiff's well collaterally secured, and by a subsequent arrangement with another president of the bank, the second mortgages were returned to plaintiff, and in consideration of plaintiff's giving a renewal note to be carried five years, without interest, and waiving all claims to any defense on the accommodation note, the bank agreed to return $15,000 collateral in its possession as soon as plaintiff's $8,658 indebtedness on other notes to it was paid. The bank was closed, and in an action to compel the liquidating agent to carry out the agreement, held, where notes or other securities have been executed to a bank for the purpose of making an appearance of assets so as to deceive the examiner, although the circumstances may have been such that the bank itself could not have collected them, upon the insolvency of the bank, the receiver representing the creditors can maintain an action thereon and the makers are estopped to take advantage of the secret fraudulent agreement. German-American Finance Corp. v Mer. & Mech. State Bank, 177 M 529, 225 NW 891.

Where an insane person did not receive the benefit of a promissory note signed by her as surety or accommodation maker to the other, who did receive the whole thereof from the payee, her guardian established a good defense by proving that she was insane and incompetent to transact any business when the note was executed by her. Huges v Crean, 178 M 545, 227 NW 654.

In an action by the receiver of a bank on a note given by defendant, in renewal of the note of a business firm to the bank, defendant alleged there was no consideration for the note, and testified that the officers in soliciting it, in substance said the bank would have to have a note to satisfy the examiner or he would close the bank. Held, it did not appear as a matter of law that the note was given for the purpose of deceiving the examiner, and that the evidence sustained the verdict that the note in suit was without consideration, and given for the accommodation of the payee bank, nor was it made to appear that there were creditors who would be prejudicially affected by permitting defendants to show that the note was without consideration, nor was it shown that the assets of the bank in the hands of the receiver, were insufficient to satisfy the claims of creditors. Grant Co. State Bank v Schultz, 178 M 556, 228 NW 150.

Defendants executed their note for $9,000, and a mortgage on their farm, to plaintiff bank; they then conveyed the farm by quit-claim deed to E, an officer of the bank, who assumed and agreed to pay the indebtedness secured by the mortgage. After discharging prior liens in order to get title, there remained a profit of $6,492.39 of which E took $372.55 in cash, and used the remaining $6,119.34 to pay a past due indebtedness to the bank upon which he was personally liable. In an action on the note by the bank, held, defendants were accommodation makers, but only for E, the officer acting in his own interest, and not accommodation makers for the bank; and under section 335.14, were liable to plaintiff. Marshall State Bank v Buesing, 179 M 77, 228 NW 348.

Defendant who was a director and stockholder in plaintiff bank when it was closed, and liable as a guarantor on obligations of the bank, in addition to his liability to creditors as a stockholder, gave his personal note secured by a mortgage, to the bank which was placed in the bank as a valid asset in order to enable the bank to reopen; on the faith of such note and other like securities, the bank was permitted to and did open and continue in business, with such note as one of one of its listed assets. In an action on the note by the bank, the defense was that it was executed solely as an accommodation to the bank, without consideration, under an agreement with the bank's president that it was to be returned in three years. Held, defendant was interested in keeping the bank going and there was sufficient consideration for the note. It therefore was not an accommodation note; and that such an agreement was beyond the authority of the president to make. And that defendant's taking part in the reopening of the bank as one of its directors, and reporting such note as a valid asset of the bank, estopped

him from questioning its validity. Markville St. Bank v Steinbring, 179 M 246, 228 NW 757.

Defendant's son was required by the agent of a piano company to have the purchase price of a piano on hand when it was received for sale; to obtain credit on his note to a bank, he was required to give further security and sent the note, signed by himself, to his father, who signed and returned it to him. It was purchased by the bank and the amount placed to the credit of the agent's account, who checked it out before the bank closed. In an action on the note against the son and father, defendants alleged fraud in that the piano was not delivered as promised and a failure of consideration. Held, as far as the bank was concerned, it made no difference; the note was accommodation paper given for the purpose intended by the parties, and the bank was a bona fide holder for value. Moller v Sybilrud, 180 M 326, 230 NW 812.

A bank owned land upon which plaintiff held a mortgage; the bank was not liable on the mortgage. To accommodate the bank, defendants, without consideration, took title to the land, gave their note to plaintiff for the amount of the mortgage, secured by a mortgage, and then redeeded the land to the bank. In an action on the note, defendants sought to have the bank made a party. Held, the obligation of defendants on the note was primary, and they could not compel plaintiff to exhaust the mortgage before proceeding upon the debt. Aetna Life Ins. Co. v Cashman, 181 M 82, 231 NW 403.

Plaintiff bank leased a farm it owned, and sold personal property thereon to defendant's son for $3,000, taking the son's note for $2,000, and defendant's for $1,000. The son gave his note to defendant for $1,000. Defendant was told by the bank's cashier that his note to the bank was for its accommodation only, and would be held only until the crops came in. In an action on the note, held, as a matter of law, defendant was not an accommodation party to the bank within meaning of Minnesota Statutes 1941, Section 335.14. Citizens State Bank v Vohs, 184 M 506, 239 NW 249.

Plaintiff and defendant, father and father-in-law of the maker of a note, signed with him as accommodation makers. Plaintiff, on his liability as a comaker, paid the note to a bank and brought action for contribution. Held, evidence sustained finding that defendant signed for the accommodation of his son-in-law, and not for plaintiff, and that contribution was properly awarded plaintiff. Deden v Grosse, 185 M 278, 240 NW 909.

An accommodation maker is just as directly liable to a holder for value as the accommodated party; and the rule of successive liability of parties does not apply, as the primary liability of comakers is concurrent, and never successive. Deden v Grosse, 185 M 278, 240 NW 909.

In an action on a note given by defendant, without consideration, to the plaintiff bank, at the request of its cashier and managing director, the bank claimed that the note was given as an accommodation to the cashier; the note had been put in the bank and credited to bills receivable and the cashier had received the equivalent in money of the bank. Held, under the evidence, it was a question for the jury whether the note was made for the accommodation of the bank, or for the cashier. First Nat'l Bank v Blaha, 187 M 38, 244 NW 340.

The payee of a note, given for his accommodation, cannot recover as long as it remains in his hands unnegotiated; if such accommodation note to the payee is negotiated, the purchaser may recover though he knew it was given for the accommodation of the payee. First Nat'l Bank v Blaha, 187 M 38, 244 NW 340.

The guardian of the estate of an incompetent, by fraudulent representations, induced defendant, without consideration, to sign a note with him, to the estate, for the sum that he was short; in an action on the note by the guardian's successor, held, the guardian who obtained the note was vulnerable to the defenses of want of consideration, fraud, and that the note was for his accommodation, and plaintiff, his successor, was also. Kluczny v Matz, 187 M 93, 244 NW 407.

Defendant's direction that two shares of stock of the par value of $100.00 each, be turned over to plaintiff, to be applied on the note, disproved his defense that the note in suit was an accommodation note. Boeder v Taggatz, 187 M 337, 245 NW 428.

Defendant, at the request of her father, the officer of a bank, and to aid the bank, gave her note to the bank, and the bank issued to her its shares of capital stock for the agreed price thereof, pursuant to an understanding that the bank would sell the stock and apply it on the note, that the bank would not sell the note, nor require her to pay it. The stock was held by the father for her and part thereof sold and applied on the note, which was renewed from time to time for a period of ten years. Defendant also gave another note, in renewal of one given by another to the bank, pursuant to a like agreement. In an action by the trustee for the bank, held, the notes were not accommodation notes, but were given for value; and that on the facts, defendant was estopped from claiming that they were accommodation notes. Searing v Hubbard, 193 M 391, 258 NW 588.

Plaintiff, as president of the C bank, with control of 175 of its 200 shares of capital stock, induced defendant to come in and purchase 60 shares after which plaintiff disposed of his stock until he owned only five shares and his wife 20. Defendant became the bank's president, and in that year, the bank was criticized by the commissioner of banks and required to eliminate some real estate from its assets. Three farms held by the bank were taken out and deeded to plaintiff under a transaction, as alleged by plaintiff, by which defendant, then the bank's president, requested plaintiff to execute his promissory note for $15,000 to a St. Paul bank in which defendant had a controlling interest, for the accommodation of defendant and the C bank, upon which the St. Paul bank would loan that amount to the C bank, the farms to be pledged as collateral security, that defendant promised plaintiff he would not have to pay the note, and that the farms would be sold and thereby the note paid. In an action to recover from defendant, as damages, the amount plaintiff was compelled to pay the St. Paul bank on the note, held, the issues of the note being an accommodation note, and of defendant's making the agreement to hold plaintiff harmless were for the jury, and a finding for plaintiff affirmed. Cashman v Bremer, 195 M 195, 262 NW 216.

Where complaint alleged defendant by fraud and deceit, induced plaintiff to sign an accommodation note in reliance upon defendant's agreement to hold him harmless, and that this promise was made by defendant with the fraudulent intent not to fulfill it, it was not error to instruct the jury that though they did not find fraud, if they did find that plaintiff signed the note as an accommodation maker in reliance upon defendant's promise to hold him harmless, plaintiff could recover for a breach thereof. Cashman v Bremer, 195 M 195, 262 NW 216.

Where a wife signed a note with her husband for past due rent, upon a representation that her signature was necessary to make his obligation legal, and in an action on the note, the jury found that in signing she did not intend to become liable for payment of the note, she was not an accommodation maker, as an accommodation maker is one who has signed for the purpose of lending his name to another. Parkins v Sykes, 203 M 249, 280 NW 849.

Defendant's brother-in-law borrowed money from plaintiff bank, on a note signed by himself, and defendant as an accommodation maker. In an action on a note signed by defendant, in renewal thereof, defendant claimed the bank's cashier, in asking him to renew the note, said that he would get the brother-in-law in to sign and take it out of him; that in signing, defendant relied upon the promise, and would not have signed but for it. Held, under the circumstances, the evidence sustained a reasonable inference that the intention of both the accommodation maker and the payee was that the note should not take effect as such until the accommodated maker signed, and sustained the defense of conditional delivery with condition unperformed, so that the note never went into effect as a contract. First State Bank of Kensington v Braaten, 207 M 477, 292 NW 20.

To show conditional delivery of a promissory note, it is not enough that the maker signed upon the mere agreement of the payee to procure the signature of another; there must be a showing that the understanding was that the note was not to take effect as a contract until the additional signature was procured. First State Bank of Kensington v Braaten, 207 M 477, 292 NW 20.

Possible rules of identifier's liability on signature in blank. 13 MLR 313.

Liability of accommodation maker to party taking after dishonor. 22 MLR 727.

NEGOTIATION

335.15 WHAT CONSTITUTES NEGOTIATION.

HISTORY. 1913 c. 272 s. 30; G.S. 1913 s. 5842; G.S. 1923 s. 7073; M.S. 1927 s. 7073.

Although the endorsement of the payee of county warrants made them transferable by delivery, merely intrusting them to an agent for collection was not such conduct on the part of the owner as would estop him from reclaiming them from a purchaser from such agent. Cardozo v Fawcett, 158 M 57, 196 NW 809.

Defendant, with an agent selling stock, went to plaintiff's place of business where he gave plaintiff his note, claimed by plaintiff to have been negotiated and given to him by defendant for a loan with which to buy stock; defendant claimed the note was left with the understanding that he had until the next day to decide whether he would buy the stock. In an action on the note, the question of whether it was for a loan, or as defendant claimed, that he never got any money, was submitted to the jury, and a finding for plaintiff was affirmed. Ertl v Gunter, 158 M 280, 197 NW 282.

Defendant bank sold notes to plaintiff bank, under an agreement by defendant to repurchase them at maturity. The bank went into the hands of a receiver and plaintiff did not return the notes. Subsequently the receivership was terminated and defendant resumed business. Thereafter, over a year after the notes became due, plaintiff brought an action to recover the amounts of the notes. It was held, the agreement merely gave plaintiff an option to require defendant to repurchase the notes, and did not create a bilateral contract binding plaintiff to sell and defendant to repurchase; and that the option expired without being exercised. Engen v Sheridan Co. State Bank, 163 M 1, 203 NW 434.

Where defendant sent notes to plaintiff bank under a written agreement to repurchase them, and their amounts were placed to defendant's credit and withdrawn by it by drafts, the transaction amounted to a sale, coupled with an agreement to repurchase. First State Bank of Odessa v First St. Bank of Correll, 165 M 285, 206 NW 459.

Defendant bank sent notes to plaintiff bank, under a written agreement to repurchase them; defendant collected and remitted all of the notes but five, and for three of those, it sent to plaintiff renewal notes in their stead. In an action on the unpaid notes, defendant claimed there was no undertaking on its part to repurchase the renewal notes. Held, while, strictly speaking, defendant was not a guarantor, it was obligated to repurchase the notes, and there was no reason why the rule as to a guarantor should not apply, that where a renewal is taken by or at the instance of the guarantor of the original note, for the purpose of extending the time of the payment of the indebtedness, he will be liable for its payment under his guaranty. First State Bank v First State Bank, 165 M 285, 206 NW 459.

Plaintiff bank, having a surplus amount of cash, and defendant bank, a large amount of notes, an agreement was entered into between them whereby notes held by defendant were negotiated to plaintiff, with a guaranty of payment, their amounts credited to defendant's account, and checked out by it. In an action on notes held by plaintiff under this agreement, the question was as to their ownership. Held, the transaction, as a matter of law, amounted to a discount and sale of the notes, and that plaintiff was not entitled to recover. Marshall State Bank v First State Bank, 165 M 428, 206 NW 708.

Where a note secured by a mortgage is endorsed and transferred to a purchaser without a formal assignment of the mortgage, the security follows the note as an incident thereof. Such transfer of the note operates as an equitable assignment of the mortgage. Hayes v Midland Credit Co. 173 M 554, 218 NW 106.

Plaintiff's son-in-law stole a certificate of deposit issued to her by K bank, forged her endorsement, endorsed it, and cashed it at B bank, which endorsed and forwarded it to K, which paid it. In an action for conversion, held, plaintiff was entitled to judgment against both banks; but as between the banks, B was liable on its endorsement to K. Moler v State Bank of Bigelow, 176 M 449, 223 NW 780.

Plaintiff's parents determined upon a distribution of their farm, and by a writing, stated that defendant, a son, was to have an 80 acres which they deed to him,

upon paying $500.00 each to a brother and three sisters, Mary, Mollie, and Ameila. Defendant paid the $500.00 to his brother, and executed his note to his father and mother for the $1,500 indebtedness to his sisters. He paid Mary and Mollie each $500.00 and Amelia assigned her interest to plaintiff, Mollie, which assignment was approved by the parents by a writing. The note was renewed every five years, the last time to the mother alone, the father having died. In an action by Mollie, on the assignment, held, Amelia had a definite and assignable interest; that after the assignment, to the extent of $500.00, plaintiff was the owner of the renewal notes and could recover. Timmins v Pfeifer, 180 M 1, 230 NW 260.

To raise money, plaintiff delivered a $10,000 note that he owned, the mortgage securing it, and an assignment of the mortgage in blank, to a company which used it as collateral security for its note to a bank for $4,735.86 borrowed by the company for plaintiff. Plaintiff's note was not endorsed. The company failed to pay the indebtedness, and the bank sold the $10,000 note and mortgage to defendant who purchased for value and in good faith. In an action to recover possession of the note or its value, plaintiff relied on the fact that the note was not endorsed. Held, though the note was not negotiable paper in the sense that without endorsement it would pass to an innocent purchaser free from defenses, it was nevertheless transferable by assignment and delivery without endorsement; and that plaintiff could not recover without restoring the benefits received by him in the transaction. Rohwer v Young, 182 M 168, 233 NW 851.

A note executed by defendant, and endorsed in blank by the payee, was delivered into plaintiff's possession as security for the indebtedness of the endorser to plaintiff's predecessor and another bank. Later, all interest of the payee and parties subsequent in the note was sold to plaintiff and the other bank. In an action on the note by plaintiff in its own name without joining such other bank which had a beneficial interest in the note, defendant secured a dismissal on the ground of a defect of parties plaintiff. Held, the note having been negotiated by the endorsement of the holder and completed by delivery to plaintiff, its continued possession from then on necessarily invested plaintiff with authority to collect and discharge the obligation. The mere fact that another bank had an interest in the proceeds was unimportant to defendant, and the lower court's order should be reversed. N. W. Nat'l Bank & T. Co. v Hawkins, 205 M 490, 286 NW 717.

A bond payable to bearer is a negotiable instrument, title to which can be transmitted only be endorsement or delivery. Larkin v McCabe, 211 M 11, 299 NW 649.

Payee as holder in due course. 6 MLR 156.

May the payee of a negotiable instrument be a holder in due course. 9 MLR 109.

335.151 ENDORSEMENT, HOW MADE; SUFFICIENCY.

HISTORY. 1913 c. 272 s. 31; G.S. 1913 s. 5843; G.S. 1923 s. 7074; M.S. 1927 s. 7074.

In an action on a note, plaintiff testified that supposing he owned the note, he had turned it over to another as collateral but had gotten it back. In an appeal from a verdict for plaintiff, defendant assigned as error, the refusal of the court to direct a verdict for defendant on the ground that it appeared that the plaintiff was not the owner of the note or party in interest. Held, the record did not show that any such request was made of the trial court, the pleadings did not raise the question, the note had no endorsement evidencing a transfer or negotiation, and the assignment was without merit. Ertl v Gunter, 158 M 280, 197 NW 282.

335.152 ENDORSEMENT MUST BE ENTIRE.

HISTORY. 1913 c. 272 s. 32; G.S. 1913 s. 5844; G.S. 1923 s. 7075; M.S. 1927 s. 7075.

335.153 KINDS OF ENDORSEMENT.

HISTORY. 1913 c. 272 s. 33; G.S. 1913 s. 5845; G.S. 1923 s. 7076; M.S. 1927 s. 7076.

335.154 SPECIAL ENDORSEMENT; ENDORSEMENT IN BLANK.

HISTORY. 1913 c. 272 s. 34; G.S. 1913 s. 5846; G.S. 1923 s. 7077; M.S. 1927 s. 7077.

In an action by the endorsee, on notes, the defense of the maker was that they were obtained by fraud. The notes bore six per cent interest, and below their endorsement made with pen and ink, "pay to the order of H.O., payment guaranteed," with the signature of the endorser, was a pencil writing "to draw seven per cent interest from 3-5-1920." It was held, the endorsement in ink was a complete special endorsement, and the pencil memorandum was a surplusage, and had no legal significance as between the parties to the action; nor was it of such character as to put the endorsee upon inquiry. Olsen v Hoffmann, 175 M 286, 221 NW 10.

Plaintiff bank held notes, endorsed in blank, in payment of an indebtedness of the endorser to plaintiff and another bank; in an action on the notes by plaintiff alone, without joining the other bank which had a beneficial interest, the defendant maker urged there was a defect of parties plaintiff. Held, under Minnesota Statutes 1941, Section 335.154, the notes were payable to bearer and were negotiated by delivery, and that the law is well settled that an action on a note payable to bearer, or endorsed in blank, may be maintained in the name of the nominal holder; that possession by such nominal holder is prima facie sufficient evidence of his right to sue, and cannot be rebutted by anything else but proof of mala fides. N. W. Nat'l Bank & T. Co. v Hawkins, 205 M 490, 286 NW 717.

335.155 CONVERSION OF BLANK ENDORSEMENT INTO SPECIAL ENDORSEMENT.

HISTORY. 1913 c. 272 s. 35; G.S. 1913 s. 5847; G.S. 1923 s. 7078; M.S. 1927 s. 7078.

335.16 ENDORSEMENT, WHEN RESTRICTIVE.

HISTORY. 1913 c. 272 s. 36; G.S. 1913 s. 5848; G.S. 1923 s. 7079; M.S. 1927 s. 7079.

Where plaintiff authorized a banker friend to select and buy safe and good securities for him, and sent him money for that purpose, and the banker did not do so, but instead sent plaintiff notes which he held personally, the banker's act was held so inconsistent with the exercise of the authorized agency that the relation of principal and agent was not involved. Olsen v Hoffmann, 175 M 287, 221 NW 10.

Defendant, at the request of her father to aid a bank of which he was an officer, gave her note to the bank, and the bank issued to her shares of its capital stock pursuant to an understanding that the bank would sell the stock and apply it on the note, and would not sell the note or require her to pay it. The stock was held by her father and part sold and applied on the note. In an action on the note by plaintiff, as trustee for the bank, to whom the bank had endorsed and assigned the note, held, it having been found that the note was not an accommodation note but to have been given for value, defendant's claim that the trustee was not a holder in due course, and that his title was defective and restrictive, need not be determined. Searing v Hubbard, 193 M 391, 258 NW 588.

335.161 RIGHTS CONFERRED BY RESTRICTIVE ENDORSEMENT.

HISTORY. 1913 c. 272 s. 37; G.S. 1913 s. 5849; G.S. 1923 s. 7080; M.S. 1927 s. 7080.

Under this section, an endorsee "for collection" may bring suit on the note in his own name; he is not precluded by Minnesota Statutes 1941, Section 540.02, requiring every action to be prosecuted in the name of the real party in interest. Farmers Nat'l Bank of Waseca v Brown, 198 M 195, 269 NW 409.

335.162 QUALIFIED ENDORSEMENT.

HISTORY. 1913 c. 272 s. 38; G.S. 1913 s. 5850; G.S. 1923 s. 7081; M.S. 1927 s. 7081.

The qualified endorsement "without recourse" protects the endorser against liability by reason of the endorsement, but has no tendency to relieve the endorser from his obligations arising from his separate contract of guaranty. Central Met. Bk. v Chippewa Co. State Bk. 160 M 129, 199 NW 901.

The endorsement even though "without recourse," presumed that value had been received equally as if it had expressly stated "for value received." Hall v Oleson, 168 M 308, 210 NW 84.

Following a penned endorsement, "Pay to the order of H.O., payment guaranteed. H. M." on a note bearing six per cent interest, was a penciled writing "To draw seven per cent from 3-5-1920." Held, the penned endorsement was a complete, special endorsement. The pencil memorandum was no part of it, and in no way impeached the endorsement or guaranty; it was surplusage, and had no legal significance between the parties, nor was it of such character as to put the endorsee upon inquiry. Olsen v Hoffmann, 175 M 287, 221 NW 10.

An endorser cannot show that an unconditional endorsement was intended only to transfer title, and that there was an oral agreement that it was intended to have been "without recourse." Johnson Hdwe. Co. v Kempf, 188 M 109, 246 NW 663.

Endorsement; maker relieved from liability. 1 MLR 364.

Effect of an assignment endorsed on the back of commercial paper; liability of transferor. 16 MLR 703.

335.163 CONDITIONAL ENDORSEMENT.

HISTORY. 1913 c. 272 s. 39; G.S. 1913 s. 5851; G.S. 1923 s. 7082; M.S. 1927 s. 7082.

Endorsement; maker relieved from liability. 1 MLR 364.

335.164 ENDORSEMENT OF INSTRUMENT PAYABLE TO BEARER.

HISTORY. 1913 c. 272 s. 40; G.S. 1913 s. 5852; G.S. 1923 s. 7083; M.S. 1927 s. 7083.

Endorsement; maker relieved from liability. 1 MLR 364.

Rights of remitters. 12 MLR 585.

335.17 ENDORSEMENT PAYABLE TO TWO OR MORE PERSONS.

HISTORY. 1913 c. 272 s. 41; G.S. 1913 s. 5853; G.S. 1923 s. 7084; M.S. 1927 s. 7084.

335.171 ENDORSEMENT TO FISCAL OFFICER.

HISTORY. 1913 c. 272 s. 42; G.S. 1913 s. 5854; G.S. 1923 s. 7085; M.S. 1927 s. 7085.

335.172 NAMES MISSPELLED.

HISTORY. 1913 c. 272 s. 43; G.S. 1913 s. 5855; G.S. 1923 s. 7086; M.S. 1927 s. 7086.

Where in a note made payable to the order of the "Northland Motor Co.," the word "Car" was left out, and when discounted to plaintiff, the true name of the payee, "Northland Motor Car Co." was endorsed, it was held the discrepancy or omission in the name of the payee was not fatal to a valid endorsement, and the endorsement and delivery to plaintiff undoubtedly passed title. First Nat'l Bank v McNairy, 122 M 215, 142 NW 139.

The payee of a check whose name is wrongly designated or misspelled has the right to endorse it only where he is the payee to whom the drawer intended it should be payable, and not otherwise. Jorgenson v First National, 217 M 413, 14 NW(2d) 618.

335.173 NEGATIVE PERSONAL LIABILITY.

HISTORY. 1913 c. 272 s. 44; G.S. 1913 s. 5856; G.S. 1923 s. 7087; M.S. 1927 s. 7087.

335.18 PRESUMPTION AS TO TIME OF ENDORSEMENT.

HISTORY. 1913 c. 272 s. 45; G.S. 1913 s. 5857; G.S. 1923 s. 7088; M.S. 1927 s. 7088.

335.181 PRESUMPTION AS TO PLACE OF ENDORSEMENT.

HISTORY. 1913 c. 272 s. 46; G.S. 1913 s. 5858; G.S. 1923 s. 7089; M.S. 1927 s. 7089.

335.182 DURATION OF NEGOTIABLE CHARACTER.

HISTORY. 1913 c. 272 s. 47; G.S. 1913 s. 5859; G.S. 1923 s. 7090; M.S. 1927 s. 7090.

335.19 STRIKING OUT ENDORSEMENT; EFFECT THEREOF.

HISTORY. 1913 c. 272 s. 48; G.S. 1913 s. 5860; G.S. 1923 s. 7091; M.S. 1927 s. 7091.

Plaintiff bank transferred all its assets, including a note from defendant, to the First Bank Stock Corporation in exchange for stock in that corporation; after maturity of the note, it was sent back to plaintiff for collection, who removed all intervening endorsements and brought suit on it. Held, plaintiff had a right to remove the endorsements, making the suit in effect, by the payee against the maker. Farmers Nat'l Bank v Brown, 198 M 195, 269 NW 409.

335.195 TRANSFER WITHOUT ENDORSEMENT; EFFECT OF.

HISTORY. 1913 c. 272 s. 49; G.S. 1913 s. 5861; G.S. 1923 s. 7092; M.S. 1927 s. 7092.

To protect the holder of a note against the equities of the maker, it must have been acquired in due course of business; that means more than an acquisition by assignment, or by other means of transfer of title, short of an endorsement under the law merchant. However, the omission of the word "Car" in the name of the payee did not destroy the validity of the endorsement under its true name. First Nat'l Bank v McNairy, 122 M 215, 142 NW 139.

Where it was found that an endorsement had been forged, held, one holding a note without a valid endorsement cannot be a holder in due course. Hayes v Midland Credit Co. 173 M 554, 218 NW 106.

Defendant endorsed a note he owned and assigned the mortgage securing it to a bank as collateral security to a note he gave the bank for a loan made by it to him; while they were so being held, defendant, who owed his mother more than their face value, agreed with her that she should be their owner and transferred them on the respective books which he kept for her and himself. There was no endorsement of the note nor written assignment of the mortgage. Subsequently, plaintiff became a judgment creditor of defendant's and garnished the bank which still had possession of the note and mortgage though the loan they secured had been paid. Defendant's mother intervened. Held, the note could be transferred orally; a physical delivery was not essential to a valid transfer of title thereto, and the mortgage was only an incident to the note. The terms of the oral agreement, supported by the book entries, as between the parties thereto, effectually transferred the title to the intervener, and her rights could not be affected by the plaintiff's garnishment. Watson v Goldstein, 176 M 18, 222 NW 509.

An endorsement of a promissory note is not necessary in order to pass title. It can be transferred by delivery; the new owner, however, not being entitled to the privileges of a bona fide holder. Such owner can successfully maintain an action thereon in his own name upon proof of such ownership by evidence other than the note. Peterson v Swanson, 176 M 246, 223 NW 287.

Plaintiff delivered a note he owned, unendorsed, and the mortgage securing it, together with an assignment of the mortgage in blank, to his agent to be used as collateral for money to be borrowed by the agent for plaintiff. They were so used, the agent giving them as collateral security for his note to a bank for the money borrowed from it for plaintiff. The agent's note was not paid when due,

and the bank sold plaintiff's note and mortgage to defendant, for value. In an action to recover the note or its value, held, conceding that the note was not negotiable paper in the sense that without endorsement it would pass to an innocent purchaser free from defenses, nevertheless it was transferable by assignment and delivery without endorsement; and plaintiff could not recover without making restitution. Rohwer v Young, 182 M 168, 233 NW 851.

Rights of remitter. 12 MLR 584.

Notes payable to the order of the maker. 24 MLR 863.

335.196 WHEN PRIOR PARTY MAY NEGOTIATE INSTRUMENT.

HISTORY. 1913 c. 272 s. 50; G.S. 1913 s. 5862; G.S. 1923 s. 7093; M.S. 1927 s. 7093.

RIGHTS OF THE HOLDER

335.20 HOLDER MAY SUE.

HISTORY. 1913 c. 272 s. 51; G.S. 1913 s. 5863; G.S. 1923 s. 7094; M.S. 1927 s. 7094.

In an action by plaintiff, as executor of his deceased wife's estate, to recover on a promissory note given by defendant to a bank of which plaintiff was the managing officer, and claimed by plaintiff to have been sold and transferred by him to his wife the day before the bank was closed because of insolvency; held, evidence sustained finding of no such sale and transfer. Rosholt v Nelson, 184 M 330, 238 NW 636.

The uniform negotiable instruments act does not control where the vendee of mortgaged premises assumes and agrees to pay the mortgage; the status of the makers of the negotiable notes so secured, changes to that of sureties, and the vendees take their places as makers. When the holder of such notes and mortgage, having knowledge of such conveyance, extends the time of payment without the consent of the makers of the notes, the makers are released; and parties so dealing, must have regard to the equities arising from such transactions. Jefferson Co. Bank v Erickson, 188 M 354, 247 NW 245.

Under the negotiable instruments act, an endorsee "for collection" of a negotiable instrument is not precluded by Minnesota Statutes 1941, Section 540.02, requiring every action to be prosecuted in the name of the real party in interest, from bringing an action on the instrument so held, in his own name. Farmers Nat'l Bank v Brown, 198 M 195, 269 NW 409.

The original note, endorsed to plaintiff by the payee, being valid, a renewal thereof to plaintiff was likewise valid, and could be enforced by him. Becker Co. Nat'l Bank v Davis, 204 M 603, 284 NW 789.

Plaintiff bank held notes in its own right, endorsed in blank, in which another bank had a beneficial interest; in an action on the notes by plaintiff in its own name without joining the other bank; held, there was no defect of parties plaintiff, as plaintiff, as bearer, was a holder who could bring an action in its own name. N. W. Nat'l Bank & Trust Co. v Hawkins, 205 M 490, 286 NW 717.

A nominal payee, or nominal title holder, although he has no beneficial interest, may maintain an action on a promissory note; and under the statute, the payee or endorsee, who is in possession of the note, though not the beneficial owner thereof, may sue thereon in his own name by consent of the owner; it matters not that such nominal holder will receive the amount as trustee, agent, or pledgee. The suit by him holding the paper shows his title to recover. N. W. Nat'l B. & T. Co. v Hawkins, 205 M 490, 286 NW 717.

An action on a bill or note payable to bearer, or endorsed in blank, may be maintained in the name of the nominal holder who is not the owner by the owner's consent; and possession by such nominal holder is prima facie sufficient evidence of his right to sue, and cannot be rebutted by proof that he has no beneficial interest, or by anything else but proof of mala fides. N. W. Nat'l B. & T. Co. v Hawkins, 205 M 490, 286 NW 717.

In an action to recover for bonds stolen from plaintiff's safety deposit box by its treasurer, and deposited by him with defendants as collateral security for the purchase of stocks and bonds which he ordered purchased by defendants on a margin; held, defendants had the burden of proof as to whether they gave value; and that if they did, plaintiff could not recover. Paine v St. P. Union Stockyards Co. 28 F(2d) 463.

Rights of remitters. 12 MLR 584.

Payee's duty to drawee or collecting bank paying check on forged endorsement to notify it of forgeries or irregularities. 14 MLR 171.

335.201 HOLDER IN DUE COURSE.

HISTORY. 1913 c. 272 s. 52; G.S. 1913 s. 5864; G.S. 1923 s. 7095; M.S. 1927 s. 7095.

Where plaintiff bank's cashier, before he purchased a note for the bank, had heard the payee medical institute characterized as a fraudulent one, and had purchased on a 30 per cent investment; held, evidence justified finding that the bank was not a bona fide holder. First State Bank v Pederson, 123 M 374, 143 NW 980.

Whether plaintiff was a bona fide holder of a note, or whether as claimed by defendant, that the turning over of the note and assigning of the mortgage to plaintiff by the payee was only a colorable scheme to avoid the consequences of a former lawsuit on the note to the payee, was a question for the jury. It was for the jury to say whether plaintiff's testimony was contradicted. Cole v Johnson, 127 M 291, 149 NW 466.

The president, who was also the cashier of a bank, being indebted to defendant bank on a note, gave his personal checks on his bank in payment of it, which were deposited by defendant with another bank which sent them to a bank in the president's town for collection. Having overdrawn his account, the president paid the checks from funds of the bank, though he shortly thereafter deposited an amount which after the checks were paid left him a credit balance. Subsequently, a receiver for the bank was appointed who brought action to recover the amount of the checks from defendant, because of having been paid from the bank's funds, claiming that defendant was charged with notice of the president's want of authority. Held, a personal check of an officer of a bank drawn upon such bank and accepted in payment of the note of such officer, does not charge the holder of the note with notice that there is an attempt to misappropriate the funds of the bank; that the checks were presented and paid in the usual course of business; and further, the fact that after the checks were paid, the drawer's deposit account was replenished so as to more than wipe out all prior overdrafts, would seem to cancel any cause of action which might have existed. Pope v Ramsey Co. State Bank, 137 M 46, 162 NW 1051.

Plaintiff, as an accommodation to defendant, endorsed on a note given by him, a guaranty of payment; before its maturity, defendant was adjudged a bankrupt, after which plaintiff was compelled to pay the note; in his schedule of debts in the bankruptcy proceedings, defendant listed the note as owing to plaintiff, but did not name a payee or holder as a creditor, and the note was not filed as a claim. In an action by plaintiff to recover the amount he had paid, held, because the note was not properly scheduled as to the payee or holder, the order of discharge did not extinguish the note, but suit could be maintained thereon; and that plaintiff became subrogated to their rights. Calmenson v Moudry, 137 M 123, 162 NW 1076.

Plaintiff signed a contract with a chemical company for the purchase of stock powder under an agreement that the company would send a man to assist in the re-sale thereof; the man so sent disposed of half of it to defendant, negotiating the sale from the company to him, and taking two notes from him in payment thereof, payable to the order of the company which endorsed the notes to plaintiff. The first note was settled, and in an action on the second, held, evidence warranted submitting the issue to the jury of whether plaintiff was a holder in due course. Hanson v Bulmahn, 154 M 129, 191 NW 586.

Evidence sustained finding that defendant purchased notes and the mortgage securing them, in good faith and without knowledge that they were collateral for a debt other than that evidenced by the notes; as some of them were past due and

no interest had been paid on any, defendant could not claim the rights of an innocent bona fide holder in due course, but as assignee of the mortgage, took the mortgage subject to the defenses of the mortgagor; but that the acts of the mortgagor were such as to estop him from asserting against defendant, any defenses which he might have had against the mortgagee. Park v Hudson, 154 M 471, 192 NW 112.

In an action on a note discounted to plaintiff by the payee, where the evidence showed that the amount of the purchase price had been credited to the payee's account, but it nowhere appeared that it was checked out before notice of a defense to the note, plaintiff was in no position to stress the claim of being a good faith purchaser. Svgs. Bank of Kewanee v Schaal, 156 M 424, 195 NW 141.

In an action on notes endorsed to plaintiffs, held, where evidence was sufficient to make a question for the jury as to whether they were obtained by fraud, plaintiff has the burden of showing that it took the notes in good faith, for value, and without notice of any defect in the title. Goedhard v Folstad, 156 M 453, 195 NW 281.

Whether a holder has established that he is a holder in due course is usually a question for the jury, but where all the facts are shown and are undisputed, and the transaction discloses nothing which would justify an inference of bad faith, there is no question for a jury and it is the duty of the court to direct a verdict or order judgment. Goedhard v Folstad, 156 M 453, 195 NW 281.

In the course of an angry talk between the endorser of notes to plaintiff, and one of the makers, ten months after the notes had been endorsed to plaintiff, defendants claimed the endorser stated that the bank had the notes, but that they were his notes and would be collected; and that plaintiff who was present, said nothing. Plaintiff denied such statement had been made. Held, assuming such statement was made, the mere failure of plaintiff to deny it, and having taken no part in the conversation, would not justify an inference that plaintiffs were not bona fide holders of the notes. Goedhard v Folstad, 156 M 453, 195 NW 281.

A corporation holding plaintiff's note, and bonds pledged as collateral security for it, pledged 20 of the bonds to a bank as collateral to its note to the bank; defendant who was a stockholder in the corporation, was called one Sunday morning to the office of the corporation and informed that unless its note to the bank was paid on the following morning, the bank would be closed. Defendant advanced the money, receiving the corporation's note and the 20 bonds, after which the corporation went into the hands of a receiver. In an action by plaintiff to recover the bonds it was held that defendant took the bonds under such circumstances as to cast suspicion on the corporation's title and lead a prudent man to make inquiries which would have disclosed the true state of facts, which was equivalent to note; and want of notice was essential to being a holder in due course. King Cattle Co. v Joseph, 158 M 481, 198 NW 798, 199 NW 437.

A purchaser of a note or bond does not acquire the rights of a holder in due course unless the instrument is complete and regular upon its face, hence when the language of a bond not only refers to the provisions of the trust deed securing it, but makes the bond subordinate to the conditions of the deed, the bond shows upon its face that it is not a complete and regular instrument. King Cattle Co. v Joseph, 158 M 481, 198 NW 798, 199 NW 437.

Defendant executed and endorsed his note, payable to himself, to a company for its stock, which the company discounted to plaintiff bank; the amount was credited to the company's account and checked out by it. The president of the company was also president of the bank but had no part in the transaction. In an action on a note in renewal of it, the answer alleged that it was obtained by fraud. Held, it conclusively appeared that as to the original note, all the elements of plaintiff's being a holder in due course were present, and being a bona fide holder, defendant was legally bound to pay it. The renewal note was simply a continuation of the original debt and statements made in connection therewith could not affect the status of plaintiff in this respect. First Nat'l Bk. of Minn. Lake v Klimenhagen, 159 M 469, 199 NW 91.

Where it appeared as a matter of law that plaintiff was a holder in due course, it was the imperative duty of the trial court to have granted plaintiff's motion for a directed verdict; and a failure to do so was error. First Nat'l Bank of Minn. Lake v Klimenhagen, 159 M 469, 199 NW 91.

In an action to cancel a note given by plaintiff, which had been endorsed and assigned to defendant, and contained a provision, forbidden by statute, for a higher rate of interest after maturity, plaintiff claimed defendant could not be a holder in due course because the instrument, when taken, was not complete and regular upon its face. Held, Minnesota Statutes 1941, Section 335.02, prescribes the conditions necessary to make an instrument negotiable, and a promissory note which complies with all these requirements, and which on inspection, discloses nothing to indicate that it has been altered or was not intended to be fully operative according to its terms, is complete and regular upon its face within the meaning of the statute. Allen v Cooling, 161 M 10, 200 NW 849.

Plaintiff's contention that a lis pendens notice filed one day before defendant purchased the note, operated as constructive notice of the defenses to the note, was held without merit. Under the statute, actual knowledge, or knowledge of such facts that taking an instrument amounts to bad faith, is required. The statute, by its terms, excludes constructive notice. Allen v Cooling, 161 M 10, 200 NW 849.

The president controlling plaintiff bank, and defendant, were jointly interested in exchanging 960 acres of Minnesota land for land in Montana. To make up the 960 acres, the president purchased 320 acres, taking title in defendant's name, who solely as an accommodation to the president, and upon the agreement with him that he would incur no liability, took the title, conveyed the land to the Montana purchasers, taking their note for the balance of the purchase price, secured by mortgage on the 320 acres, and endorsed and assigned them to plaintiff bank, which with knowledge of the agreement, paid full value for the notes to the president. Held, the negotiable instruments act providing that an accommodation party is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument, knew him to be only an accommodation party, upon the admitted facts, plaintiff must be held a holder in due course. Farmers & Mchts. State Bank v Olson, 161 M 310, 201 NW 440.

The payee named in a promissory note, endorsed in blank by another before delivery by the maker who was to be held, with notice to the payee that such endorsement was made under an oral agreement that the note should not become operative until endorsed by others, is not a holder in due course. Towle-Jamieson Inv. Co. v Brannan, 165 M 82, 205 NW 699.

One holding a note without a valid endorsement, cannot be a holder in due course. Hayes v Midland Credit Co. 173 M 554, 218 NW 106.

Defendants, induced by the false representations of an agent to purchase land, gave him their note for his commission on the sale; when it was two months past due, the agent, in a letter to defendants, asked when he could expect a remittance. In an action on the note by plaintiff, a brother of the agent, held, evidence sustained the finding that plaintiff was not a good faith purchaser of the note for value and before maturity, but took it by endorsement with full knowledge of the facts and with notice of defenses thereto. Sandercock v Evarts, 174 M 115, 218 NW 464.

Where plaintiff claimed to be the holder in due course of notes sued upon, and there was evidence tending to show that his endorser, the payee, did not have possession or control of the notes at the time it was claimed he had endorsed and delivered them to plaintiff, but had pledged them as collateral to his note to another, it was error to direct a verdict for plaintiff as a holder in due course. Tiedt v Larson, 174 M 558, 219 NW 905.

For negotiating the sale of a business property owned by plaintiff, to defendant, and obtaining a loan for defendant after it had made a certain amount of improvements thereon, a real estate and loan agent was to receive a $1,000 commission. After the sale contract was signed, the agent obtained a note from defendant for $500.00, which he endorsed to plaintiff who paid $490.00 for it, after which, by mutual agreement of the vendor and vendee, the sale was rescinded. In an action on the note, held, since an agent, in the absence of conditions to the contrary, earns his commission by procuring a binding contract of sale, there could be no failure of consideration. On the record, it was conclusively shown that plaintiff, who bought the note while the contract in the procurement of which agent's commissions could be earned was in force, was a holder in due course. Andrews v Flour City Paper Box Co. 176 M 52, 222 NW 340.

Defendant, to obtain credit at a bank for the purchase price of a piano, got his father to sign a note with him to the bank, which the bank purchased and credited to the account of the agent of the piano company, who checked it out that day; in an action on the note, fraud was alleged in that the piano was not delivered as promised. Held, as far as the bank was concerned, it made no difference as it was a bona fide holder for value. Moller v Sybilrud, 180 M 326, 230 NW 812.

In an action to replevin bonds which had been stolen, held, since they were payable to bearer, defendant could have prevailed had he proved himself a holder in due course; after plaintiffs had established their loss by theft, defendant had the burden of proving himself a holder in due course. Commercial Union Ins. Co. Ltd. v Connolly, 183 M 1, 235 NW 634.

S mortgaged property he owned to defendant bank, after which he contracted to sell the property to plaintiff on contract for deed, free from encumbrances, payable $1,000 cash and the balance in seven $500.00 annual payments, evidenced by seven promissory notes which he immediately sold to the bank for their face value; the bank purchased the notes with knowledge of the terms of the contract, and that it had the mortgage. Plaintiff paid the notes in full to the bank, but S failed to convey. In an action to recover the money so paid to the bank by plaintiff, held, the bank had a right to assume that S would carry out his contract and pay the mortgage at its maturity, and that evidence sustained the finding that the bank was a holder in due course. Patzwald v Olivia State Bank, 184 M 529, 239 NW 771.

A brokerage company sold plaintiff warrants of a county in Montana; at the company's request, plaintiff left the warrants with it for collection. The company attached the warrants to a draft drawn in its own favor on a Montana bank, and received credit from defendant bank, on its overdrawn checking account with it. The draft and warrants were sent by defendant to a Montana bank, which collected the warrants, and sent the proceeds to defendant, who applied the money on the credit it had given the company. In an action by plaintiff to recover for the warrants as having been converted by defendant bank, held, evidence justified finding that the bank had such knowledge as to put it upon notice of the source of the deposited warrants, and that even though the bank had no actual or constructive notice of the true ownership of the fund deposited in his own name by the agent, it could not apply such fund to the individual debt of such agent where the lack of knowledge had not resulted in any detrimental change in the bank's position and no superior equities had arisen in its favor. Berg v Union State Bank, 186 M 529, 243 NW 696.

The guardian of an estate, by fraudulent representations, procured defendant, as an accommodation, to sign a note with him to the estate, to cover his official shortage; the guardian was thereafter removed, and plaintiff appointed in his place. In an action on the note, held, in effect, the suit was between the original parties to the note, and the defenses of fraud, lack of consideration, and that the note was an accommodation, were available to defendant. Kluczny v Matz, 187 M 93, 244 NW 407.

If the facts established make a defense under Minnesota Statutes 1941, Section 334.12, a purchaser of the note, though in due course, is not protected. M & M Securities Co. v Dirnberger, 190 M 57, 250 NW 801.

Defendant, at the request of her father, an officer of a bank, and to aid the bank, gave her note to the bank, and the bank issued to her shares of its capital stock at its sale price, pursuant to an understanding that the bank would sell the stock and apply it on the note; that the bank would not sell the note, nor require her to pay it. The stock was held by her father for her, and part thereof sold and applied on the note, which was renewed from time to time for a period of ten years. In an action on the note by plaintiff, a trustee for the bank, held, the note was not an accommodation note but was given for value; further that defendant was estopped from claiming that the note was an accommodation note. Thus it was not necessary to decide whether plaintiff was a holder in due course. Searing v Hubbard, 193 M 391, 258 NW 588.

In an action on notes by the endorsee, plaintiff assumed the burden in its case in chief, of showing that it was a holder in due course, and introduced evidence tending to prove that it was. The court refused defendant's offer of evidence to show defenses of the maker of the note against the payee. Held, plaintiff's evidence,

unless contradicted, necessitated a verdict for plaintiff, and that unless such evidence was to be introduced, it was immaterial what defenses were between the original parties to the note. Kintyre Farmers' Co-op. Elev. Co. et al v Midland Nat'l Bank, 2 F(2d) 348.

May the payee of a negotiable instrument be a holder in due course. 9 MLR 101.

Nonpayment of interest as dishonoring note. 9 MLR 272.

Holder in due course; purchase of series of notes after maturity of one. 15 MLR 585.

Holder in due course; notice of infirmity in instrument or defect in title; negligence. 19 MLR 795.

335.202 WHEN NOT HOLDER IN DUE COURSE.

HISTORY. 1913 c. 272 s. 53; G.S. 1913 s. 5865; G.S. 1923 s. 7096; M.S. 1927 s. 7096.

The showing was held conclusive that plaintiff bank received the note before its maturity, that it was taken for value, and that plaintiff was a holder in good faith. Midland Nat'l Bank v Farmers Co-op. Elev. Co. 157 M 348, 196 NW 275.

Where drawer requested delay in presentment of his check until he could deposit funds with which to meet it, he waived his right for prompt presentment, and during the delay, was liable to defendant payee on a negotiable instrument, thus under Minnesota Statutes 1941, Section 571.08, not subject to garnishment. Kullberg Mfg. Co. v Smith, 173 M 504, 216 NW 249, 218 NW 99.

Twenty-two months after its issue, a demand note providing for interest payable annually, was negotiated to plaintiff who took with knowledge that one year's interest had been paid the payee, two and one-half months after a year from the date of the note. In an action on the note, held, under La Due v First Nat'l Bank, 31 M 33, 16 NW 426, and First Nat'l Bank v Forsyth, 67 M 257, 69 NW 909, failure to pay the interest when due dishonored the note, and subsequent payment of the overdue interest did not restore the negotiability of the paper; that plaintiff was not a holder in due course, and that the note was subject to the defense that defendant signed it, after delivery to the payee, as an accommodation and without consideration. Mills v Charlson, 201 M 167, 275 NW 609.

Where demand notes, bearing interest and payable annually, were given as collateral to an open account, their negotiation within 30 days after issue, was held, as a matter of law, within a reasonable time. Kintyre Farmers' Co-op. Elev. Co. v Midland Nat'l Bank, 2 F(2d) 348.

Delay in presentment; effect of, after payment stopped. 17 MLR 320.

Nonpayment of interest as dishonoring demand note; liability of accommodation maker to party taking after dishonor. 22 MLR 726.

335.203 NOTICE OF INFIRMITY IN ENDORSEMENT.

HISTORY. 1913 c. 272 s. 54; G.S. 1913 s. 5866; G.S. 1923 s. 7097; M.S. 1927 s. 7097.

Defendant executed his note to the G.L. bank, which endorsed it to plaintiff as collateral to its present and future indebtedness or liability on notes endorsed to plaintiff; shortly thereafter, plaintiff received notice that defendant claimed a defense to the note. The liability of the G. L. bank on notes endorsed to plaintiff was always in excess of the collateral note, but at the time of plaintiff's action on it, plaintiff held no note which it had held when the collateral was taken. Held, the collateral was to secure a continuing liability, and since that liability remained always in excess of the collateral, the collateral note secured it, and that evidence required a holding, as a matter of law, that plaintiff sustained the burden of proof that it was a good faith purchaser. First Nat'l Bk. of Willmar v Malmquist, 158 M 140, 197 NW 271.

Where at the time a draft for $2,000 was deposited by the payee with plaintiff bank and credited to the payee's account, the payee's indebtedness to plaintiff was $1,776.23, to the extent of the indebtedness, plaintiff took the draft for a valuable consideration. St. P. State Bank v Rippe Grain & M. Co. 160 M 102, 199 NW 519.

Where notes were collateral to an open account, it was a fair inference that they were to run for a number of months inasmuch as the open account ran during the grain year. Kintyre Farmers' Co-op. Elev. Co. v Midland Nat'l Bank, 2 F(2d) 348.

May the payee of a negotiable instrument be a holder in due course. 9 MLR 102.

335.21. DEFECTIVE TITLE.

HISTORY. 1913 c. 272 s. 55; G.S. 1913 s. 5866; G.S. 1923 s. 7098; M.S. 1927 s. 7098.

Where the payee, by false representations of the financial standing of a corporation, obtained a note from defendant for bonds of the corporation, the payee's title was defective. First Nat'l Bank of Phillips v Denfeld, 143 M 281, 173 NW 661.

A note given to a corporation, to be used with the notes of others, only as collateral to a note of the corporation, but which was instead, sold and endorsed by the corporation before maturity as an original obligation, was negotiated in breach of faith and under such circumstances as amounted to a fraud within meaning of the statute. McWethy v Norby, 143 M 386, 173 NW 803.

H, the president of plaintiff bank, falsely representing that he owned certain land, induced defendant to execute a contract to buy two promissory notes, in blank as to the name of the payee, under an agreement that the notes would be held in that condition until title would vest in him; unknown to defendant, H wrote in plaintiff bank's name as the payee, and turned the notes over to plaintiff's cashier, in payment of moneys that during the ten preceding days, he as president, had collected from persons indebted to the bank. The cashier then credited the accounts of the said persons with the money collected and paid the balance in cash to H. In an action on the notes, held, evidence amply sustained the finding that they were procured through fraud, and negotiated in breach of faith; and that plaintiff took them in bad faith. State Bank of Rogers v Missia, 144 M 410, 175 NW 614.

A note given in renewal of a valid note is good in the hands of an assignee of the payee, though when the payee took the renewal he promised the maker he would use it only as collateral to a loan he was then negotiating, but failing to procure such loan, negotiated it in violation of his promise. The note having been supported by a consideration, the payee could use it as he pleased. Farmers State Bank of Cologne v Skellet, 149 M 266, 183 NW 831.

If the payee, the agent of the defendants in selling their farm, produced as a purchaser a person who did not complete the contract, the payee agent intending that he would not but using him to get commission notes from the defendants, he was guilty of fraud, and his title to the notes was defective. Albrecht v Rathai, 150 M 256, 185 NW 259.

Where an agent of a corporation agreed with defendant to return his note for stock if within a year, the stock did not go to the value of $100.00 a share, and in an action by plaintiff, who purchased the note, the evidence showed that the agreement was a guaranty to defendant that the stock would go to par within a year, and that the corporation did not agree not to negotiate the note; held, its negotiation to plaintiff was not a fraud within meaning of the statute. Farmers & Mchts. State Bank v Graif, 150 M 315, 185 NW 374.

Where the payee of a note payable in five months, given for guaranteed repairs on a tractor, agreed not to transfer the note, and on the day following, endorsed and delivered it to plaintiff bank as part of that day's deposits and on the next day, checked out the credited amount, it was held the promise not to transfer the note did not make the title defective nor furnish any ground for a defense to the note. First Nat'l Bank of Mankato v Carey, 153 M 246, 190 NW 182.

Defendant gave its note to the payee as collateral to an open account between them, under an oral agreement that it was not to be negotiated; to obtain a loan from plaintiff bank, the payee endorsed the note to it, and checked out the amount of the loan credited to its account. In an action on the note, held, the promise not to transfer did not render the title defective nor furnish a defense to the note. Midland Nat'l Bank of Mpls. v Farmers Co-op. Elev. Co. 157 M 348, 196 NW 275.

Where there is fraud in the inception of a note, so that the endorsee takes through a defective title, the burden is upon him to prove that his purchase was in good faith without notice; plaintiff endorsee having assumed and sustained such burden, it was not error to reject testimony of the defendants offered in proof of fraud in the inception of the note, for, if proved, the result would not be different. First Nat'l Bank of Willmar v Malmquist, 158 M 140, 197 NW 271.

In an action on a draft by the endorsee, the jury was instructed that plaintiff had the burden of showing it became a holder in due course; in an appeal by plaintiff from a verdict for defendant, defendant claimed the instruction as given was not erroneous because the draft was negotiated by the payee in breach of faith and under such circumstances as amounted to fraud, hence the title was defective. Held, the erroneous instruction was not justified on the ground as defendant claimed when, in neither the pleadings nor at the trial, were any such direct allegations made, and such issue litigated. The rule that a case must be considered on appeal in accordance with the theory on which it was tried, must be applied. St. P. State Bank v Rippe Grain & M Co. 160 M 102, 199 NW 519.

Where the manager of an elevator company bonded by plaintiff for faithful performance, without authority drew a draft in the name of the company, attached it to a bill of lading fraudulently obtained from a common carrier covering an empty car but which purported to cover a carload of wheat, naming the company consignor and the drawee in the draft the consignee, and defendant bank in good faith exchanged its cashier's check payable to the company for them, the corporation obtained no title to the check, and its payment by defendant to a holder to whom the manager had negotiated it, was not a conversion of the corporation's funds, and plaintiff's reimbursing the drawee of the draft, with knowledge of the facts, after defendant had paid its cashier's check, was the act of a mere volunteer, giving no right of subrogation. U.S. Fidelity & Guaranty Co. v Citizens State Bank, 161 M 204, 201 NW 431.

Where defendant signed and pinned an order blank and trade acceptance for a truck to a specification sheet, writing on the order that the acceptance was to be attached to the bill of lading and forwarded to a bank for collection when the truck had been shipped to him, and the truck company discounted the acceptance to plaintiff, the facts did not bring the case within meaning of this statute. U. S. Mortgage Co. v Hotel Radisson Co. 161 M 231, 201 NW 318.

Whether the negotiation of the notes to plaintiff was for the joint benefit of defendant and S, or solely for S's accommodation, both parties intended plaintiff to take the notes, hence they were not taken in bad faith. Farmers & Mchts. State Bank v Olson, 161 M 310, 201 NW 440.

One is the holder in due course of a negotiable note, notwithstanding he bought with notice of a warranty, provided he had no notice of a breach of that warranty. State Bank of Swea City v Lovrenz, 163 M 18, 203 NW 427.

If the note was supported by a consideration and was an actual obligation of the maker, the negotiation of it by the payee, though it had promised to keep it in its files, would not be in breach of faith or under such circumstances which amounted to a fraud. Veigel v Johnson, 163 M 288, 204 NW 36.

Where evidence showed a consideration for a note, the title thereto was not defective in the hands of an endorsee before maturity so as to cast upon him the burden of proving he was a holder in due course. Andrews v Flour City Paper Box Co. 176 M 52, 222 NW 340.

Where plaintiff left county warrants with a broker for collection, who deposited them with defendant bank, receiving credit on his overdrawn checking account; held, the bank having had actual or constructive notice of the beneficial ownership of the warrants, it could not apply them upon the debt of the broker; neither had it such right of application, though without notice or knowledge of the true ownership of the warrants, unless it changed its position or acquired a superior equity because of the deposits. Berg v Union State Bank, 186 M 529, 243 NW 696.

The guardian of an estate of an incompetent who by fraud obtained the signature of a comaker to a note to the "estate" to cover his official shortage, is vulnerable to the defense of fraud. Such defense is also available against his successor as guardian. Kluczny v Matz, 187 M 93, 244 NW 407.

One K, owner of a grain elevator, misappropriated money furnished him by a grain commission company with which to buy grain for it; to make up the shortage, he obtained notes from friends, including defendant, by representing to them that they were to be used as collateral to obtain credit to buy grain. The company sold the notes, before maturity, to a bank, which after maturity, sold them to plaintiff. In an action on defendant's note, held, assuming the notes were obtained by K by fraud, the record justifying the conclusion as a matter of law that the company was a holder in due course, it followed that the bank and plaintiff were holders in due course. Case v Fevig, 187 M 127, 244 NW 821.

Where the evidence is insufficient to sustain the verdict of fraud, so that it was the duty of the trial court to direct a contrary verdict and to set aside the verdict rendered, or where the evidence is practically conclusive against the verdict, and the record shows no probability that a new trial would alter the situation, judgment should be ordered. First Nat'l Bank v Fox, 191 M 318, 254 NW 8.

The manager of a company engaged in selling lots at prices eight to ten times their value, urged plaintiff, a 74-year old widow, to sell her home and invest the proceeds in lots which would speedily advance in price, and suggested it could more readily be sold if she placed a mortgage thereon, and that the company would loan her $1,500 on her home. He succeeded. Plaintiff gave the company a $1,500 mortgage securing a note for $1,500, but received from him only $400.00. Shortly thereafter the note and mortgage were turned over to a broker who sold them to defendant for $1,250. In an action to enjoin the foreclosure of the mortgage and cancel the note except as to the $400.00, held, it being shown that the note was procured under conditions making the title defective, the burden was on defendant to prove that he was a holder in due course, and evidence sustained finding that he had not done so; and that the note be canceled as to any amount in excess of $400.00 and interest. Chamberlin v Twin Ports Devel. Co. 195 M 58, 261 NW 577.

Bad faith only on the part of the endorsee, can defeat his title; suspicion of defect of title, or knowledge of circumstances which would excite such suspicion in the mind of a prudent man, or gross negligence on the part of the taker, at the time of the transfer, will not defeat it. Kintyre Farmers' Co-op. Elev. Co. v Midland Nat'l Bank, 2 F(2d) 348.

In an action to recover for bonds stolen from plaintiff by its cashier and deposited by him with defendant as collateral for the purchase price of stocks and bonds which he ordered purchased on a margin, it was held in St. Paul Union Stockyards Co. v Paine, 28 F(2d) 463, that defendants had the burden of proving that it gave value, which decision was modified by 35 F(2d) 624, holding that defendants must show that they actually bought and sold commodities which were subject to transactions involved. Paine v St. P. Union Stockyards Co. 35 F(2d) 624.

May the payee of a negotiable instrument be a holder in due course. 9 MLR 102.

Notes obtained in violation of small loan act, validity in hands of holder in due course. 14 MLR 411.

335.211 ACTUAL KNOWLEDGE OF INFIRMITY NECESSARY TO CHARGE NOTICE.

HISTORY. 1913 c. 272 s. 56; G.S. 1913 s. 5868; G.S. 1923 s. 7099; M.S. 1927 s. 7099.

The fact that a bank draft issued by a small bank was made payable to the order of defendant bank instead of to H who presented it and claimed ownership, was so out of the ordinary mode of doing business, if H was entitled to the proceeds, that it placed a duty upon defendant to take precautions before paying out the money. Bjorgo v First Nat'l Bank of Emmons, 127 M 105, 149 NW 3.

The personal check of an officer of a bank, drawn upon such bank, and accepted in payment of the note of such officer, does not charge the holder of the note with notice that there is an attempt on the part of the officer to misappropriate funds of the bank. Pope v Ramsey Co. State Bank, 137 M 46, 162 NW 1051.

A corporation, proposing to organize a string of country banks, procured defendant's note for $2,100 for stock in a bank to be organized at New London, near

defendant's home; one O, president of plaintiff bank, bought 500 shares of the corporation's capital stock for $500.00 under an agreement that the corporation would re-sell it for him at $1.50 a share. It being impossible for the corporation to get money to pay a contractor finishing a bank building at Echo, and O pressing for a sale of his stock, the corporation agreed with O that if plaintiff bank would buy defendant's note at a ten per cent discount, O could keep out $750.00 for the stock. Accordingly, O drew the bank's draft to the corporation for the amount of the note, less the discount and the $750.00, which he credited to his account at the bank. The corporation becoming bankrupt, no bank was ever organized, and in an action on defendant's note by the bank; held, plaintiff was chargeable with knowledge of its president, and that its president had knowledge of such facts that a jury should be permitted to determine whether he was chargeable with notice of fraud in the inception of the note. State Bank of Morton v Adams, 142 M 63, 170 NW 925.

Notice to an endorsee of the infirmity of a note, must be actual and not constructive. State Bank of Morton v Adams, 142 M 63, 170 NW 925.

A bank is chargeable with knowledge of facts known to an officer transacting its business, even though the officer is himself interested, if he is the sole representative of the bank in the transaction. State Bank of Morton v Adams, 142 M 63, 170 NW 925.

A bank is chargeable with knowledge acquired by its active officer, even though acquired in another transaction, if it appears that the knowledge is actually present in his mind while he is acting for the bank. State Bank of Morton v Adams, 142 M 63, 170 NW 925.

Willful ignorance or gross negligence is evidence of bad faith; the question of what is bad faith is usually a question for the jury. State Bank of Morton v Adams, 142 M 63, 170 NW 925.

A cranberry company and E. E. G. & Co., in both of which E. E. G. was an active officer, were located in Minneapolis. Defendant gave his note to the E. E. G. & Co. for profit sharing bonds in the cranberry company, which the company endorsed to plaintiff bank as collateral to its indebtedness to it. In an action on defendant's note, held, fraud in the inception of the note having been proved, the burden was on plaintiff to show itself a bona fide holder in due course without notice of the fraud; and why two corporations doing business in Minneapolis on the basis of a 50-acre swamp in Jackson county, Wisconsin, should seek out the president and cashier of plaintiff bank in Phillips, 100 miles north of the land, to act as trustees for the bondholders, and the other corporation should have obtained a credit of $2,500 on a note and $1,400 on an overdraft, were circumstances for the jury's consideration, and so was the character of the cranberry enterprise to bankers, and sustained finding for the defendant. First Nat'l Bank of Phillips v Denfeld, 143 M 281, 173 NW 661.

Where plaintiff endorsee, intimate with the payee, took the note without security other than the payee's endorsement, then released the endorsement by failure to protest the note, sending it for collection through a bank, and when fraud was asserted, brought suit on it without even advising the endorser of the fraud or suit, held, plaintiff's conduct with reference to the note after it became due was material, and evidence sustained finding that plaintiff's action in taking the instrument amounted to bad faith. True, plaintiff testified as to his good faith, but evidence not directly contradicted may not command a verdict where inferences to be drawn from all the circumstances may lead to different conclusions by reasonable men. McWethy v Norby, 143 M 386, 173 NW 803.

A bank through its cashier, purchased of the payee two notes which were given under such circumstances that the makers had a defense against the payee and that a purchaser had the burden of proving good faith and want of notice; the payee was brought to the cashier and recommended by the vice-president, who was a member of the discount committee, but not active in bank affairs. In an action on the note, neither the vice-president nor the payee was a witness, nor was there an explanation of their absence. Held, the question of the good faith of the purchasing bank was for the jury, which might draw an unfavorable inference from their absence. First Nat'l Bank of Rolette v Andersen, 144 M 288, 175 NW 544.

Plaintiff knowingly received by mistake of S, the maker, a check for $4,250, greatly in excess of the correct amount, which he presented for payment to defendant bank, receiving at his own request $250.00 in cash and the $4,000 balance in drafts or cashier's checks. Before he presented the drafts to a Winona bank for payment, S notified defendant to stop payment of his check to plaintiff which defendant did, and thereupon stopped payment of its drafts. In an action to recover $4,000 for the drafts on which defendant had stopped payment, S intervened and asked for a cancelation of his check to plaintiff. Held, the transaction between plaintiff and defendant, in law, constituted a payment of the check given by S, and neither S nor defendant had a defense. Johnson v First State Bank of Rollingstone, 144 M 363, 175 NW 612.

Defendant gave a tractor company his note for guaranteed repairs on a tractor which the company endorsed to plaintiff bank on its deposits made that day, checking out the credited amount the following day. In an action on the note, the defense was a breach of warranty of which plaintiff was chargeable with knowledge because its president and cashier were officers of the tractor company. It appeared plaintiff's officers took no active part in the management of the company or had anything to do with transactions between the company and its patrons, but it did appear that its cashier understood in a general way that the notes deposited by the company were taken for merchandise or repairs, and that the company usually gave its customers a standard warranty. Held, assuming the cashier had actual knowledge of the special warranty and that his knowledge was the knowledge of plaintiff bank, the defense of breach of warranty was not available against plaintiff unless it was shown that plaintiff had knowledge of the warranty and of its breach before it parted with the consideration of the note. First Nat'l Bank of Mankato v Carey, 153 M 246, 190 NW 182.

Plaintiff purchased stock powder from a chemical company under an agreement that an agent would be sent from the company to assist in its re-sale; plaintiff had little success in re-selling, and an agent sent by the company, sold about half of it to defendant, who gave his note for it payable to the order of the company, which was endorsed by the agent to plaintiff. In an action on the note, the defense was fraud, alleging that the agent acting on behalf of plaintiff, falsely represented the powder was useful and would sell readily. Held, the evidence was sufficient to warrant the court in submitting to the jury the question whether plaintiff was a bona fide holder of the note, and affirmed order for plaintiff. Hanson v Bulmahn, 154 M 129, 191 NW 586.

The evidence that the notes had their inception in fraud was sufficient to cast upon plaintiffs the burden of showing that they were holders in due course; but, as they disclosed fully the transaction in which they acquired them, and the record discloses nothing which would justify a finding of bad faith, it became the duty of the court to direct a verdict. Goedhard v Folstad, 156 M 453, 195 NW 281.

Where note given by defendant to the payee as collateral security to the open account between them, under an oral agreement that it was not to be negotiated, but was negotiated to plaintiff bank in the usual course of business; held, the mere fact that the payee was a regular patron of the bank was, of itself, no evidence of bad faith on the part of the bank in acquiring the note. Midland Nat'l Bank v Farmers Co-op. Elev. Co. 157 M 348, 196 NW 275.

Unless and until it was shown that the title of the payee was defective, the endorsee was not obliged to prove that it became a holder in due course, and an instruction to the contrary was erroneous; and such instruction cannot be justified on the ground that the payee negotiated the draft in breach of faith and under such circumstances as amounted to a fraud upon the drawer, when neither in the pleadings nor at the trial was that issue presented for litigation. The rule that a case must be considered on appeal in accordance with the theory on which it was tried, must be applied. St. Paul State Bank v Rippe Grain & M. Co. 160 M 102, 199 NW 519.

The doctrine of lis pendens does not apply to negotiable paper; and the lis pendens, in an action to cancel a note and mortgage securing it, filed before defendant purchased the note, did not operate as constructive notice of defenses to the note. The statute, by its terms, excludes constructive notice. Allen v Cooling, 161 M 10, 200 NW 849.

Where one N, cashier of a bank, by fraud obtained a note from defendant which he endorsed to plaintiff bank, of which he was president, taking from the bank of which he was cashier the amount of the note; held, in the transaction N acted adversely and in hostility to plaintiff and represented the bank of which he was the cashier. Not being the sole representative of plaintiff bank, his knowledge could not be imputed to plaintiff by virtue of his being its president. Harwood State Bank v Hendrum Co-op. Elev. Co. 166 M 400, 208 NW 24.

Following a special endorsement on the back transferring a six per cent promissory note were the words, "To draw seven per cent from 3-5-1920". Held, this memorandum was surplusage without legal significance as between the endorsee and the maker, and was not of such character as to put the endorsee upon inquiry. Olsen v Hoffman, 175 M 287, 221 NW 10.

Where as a scheme to raise money, plaintiff issued notes and mortgages to a payee who held only as an accommodation, and they were sold by a broker at a sufficient discount to constitute usury; held, in an action for their cancelation on the ground of usury, that under such circumstances the ordinary rules for determining whether one is a bona fide purchaser of negotiable paper do not control. In such case, the mere fact that circumstances might have put the purchaser upon inquiry is not sufficient; he is charged only with actual knowledge. Martin v Hallen, 177 M 491, 225 NW 443.

Where defendant, with knowledge that the cashier of a bank from whom he purchased a note and mortgage held by the cashier as trustee for the owner, had embezzled money, was trying to make up the shortage, and was menaced by a criminal prosecution; held, defendant had knowledge which was sufficient to prevent the acquisition of the paper by commercially honest men without further inquiry, and sustained finding that he acted in bad faith in their acquisition. Fortier v McRae, 190 M 571, 252 NW 833.

Mere negligence is not of itself sufficient to support a finding of bad faith. Fortier v McRae, 190 M 571, 252 NW 833.

A custom in the grain trade, of commission firms doing business with grain shippers on open account, taking collateral promissory notes with the agreement that such notes should not be negotiated but held in the files, cannot be shown to impeach the title of banks to whom the notes were negotiated in due course, where it is not shown that the banks had actual knowledge that the notes were such collateral notes, or that the custom was so general as to charge them with knowledge. Kintyre Farmers' Co-op. Elev. Co. v Midland Nat'l Bk. 2 F(2d) 348.

Uniform fraudulent conveyance act. 7 MLR 544.

Knowledge imputed to corporation as affecting director in purchasing note from corporation. 8 MLR 336.

Recorded assignment of mortgage as constructive notice to an otherwise good faith purchaser of note and mortgage. 8 MLR 347.

Payee as a holder in due course. 9 MLR 102.

Act to be performed in the future; effect on negotiability. 17 MLR 540.

Notice of infirmity in instrument or defect in title; negligence. 19 MLR 795, 796.

335.22 RIGHTS OF HOLDER IN DUE COURSE.

HISTORY. 1913 c. 272 s. 57; G.S. 1913 s. 5869; G.S. 1923 s. 7100; M.S. 1927 s. 7100.

In an action on a note given for guaranteed repairs on a tractor, and endorsed by the payee to plaintiff, held, the defense of breach of warranty was not available against the transferee, unless it was shown he had knowledge of the warranty and of its breach before he parted with the consideration for the note. First Nat'l Bk. of Mankato v Carey, 153 M 246, 190 NW 182.

If the facts necessary to establish the defense given by section 335.12 are proved, a holder in due course cannot recover from the maker of a promissory note whose signature thereto was obtained by fraudulent representations. Mchts. State Bank of Elizabeth v Unlauf, 160 M 255, 199 NW 819.

Plaintiff, to secure S against loss by reason of his suretyship on her bond to appear in federal court, executed her $1,500 note and a mortgage securing it, and

left them with her attorney to deliver to S. The attorney, representing to S that they were to be used to raise money for his attorney's fees, caused S to take the note and mortgage to defendant bank and use them as collateral to his, S's, own note for $1,200 which he received and delivered to the attorney. In an action by plaintiff to cancel the note and mortgage, held, the evidence was conclusive that the bank made the loan in good faith taking the $1,500 note for value as collateral before maturity and without being chargeable with knowledge of its infirmity, hence as a matter of law, was a holder in due course and entitled to enforce payment of the note. Loring v Swanson, 180 M 104, 230 NW 277.

It being shown that the promissory note was procured under conditions making the title defective, the burden was on holder to prove that he was a holder for value in due course, and finding was sustained that he had not so proved by a preponderance of evidence. Chamberlin v Twin Ports Development Co. 195 M 58, 261 NW 577.

Where it was shown that defendant, appearing to be one of the makers of a note, received no consideration and was not an accommodation party, plaintiff had the burden of proving himself a holder in due course; and his acquiescence in an instruction that, if defendant received no consideration plaintiff could not recover against her, made the instruction the law of the case, since it did not conclusively appear that defendant was not entitled to prevail. Parkin v Sykes, 203 M 249, 280 NW 849.

Notes obtained in violation of small loan act; validity in hands of holder in due course. 14 MLR 411.

Insanity as a defense against a bona fide holder. 14 MLR 679.

Bills and notes; checks; delay in presentment; effect of, after payment stopped. 17 MLR 320.

Uniform stock transfer act; negotiability of shares; right of subsequent transferee to sue. 23 MLR 490.

Assignment of conditional sales contract and note. 28 MLR 413.

335.221 HOLDER OTHER THAN IN DUE COURSE.

HISTORY. 1913 c. 272 s. 58; G.S. 1913 s. 5870; G.S. 1923 s. 7101; M.S. 1927 s. 7101.

Defendant gave a note for stock which was transferred by the payee, overdue, to plaintiff. After plaintiff had commenced an action on it against defendant, defendant brought an action against the payee claiming he was defrauded in the sale of the stock, and recovered a judgment. In his original answer in plaintiff's action, defendant pleaded as a defense or offset, the same cause of action he alleged in his action for damages, and after judgment, pleaded it in a supplemental answer. Held, since defendant's demand arose before the transfer of the note, it was a proper matter of defense or offset notwithstanding it had been subsequently reduced to judgment. Gould v Svendsgaard, 141 M 437, 170 NW 595.

Defendant gave his notes to one E under such circumstances that he had a defense and that the burden was upon a purchaser to show good faith. E used them as collateral to his note to a bank, which after his note was overdue, sold them to plaintiff. E had been brought to the bank's cashier and recommended by the bank's vice-president who was a member of the discount committee, but not active in bank affairs. In an action on the notes plaintiff did not claim protection as an innocent purchaser from the bank, and the question was whether the bank was an innocent purchaser; neither the vice-president nor E was called as a witness, nor was there any explanation of their absence. Held, the question of the good faith of the purchasing bank was for the jury. Sustained finding for defendant. First Nat'l Bank of Rolette v Andersen, 144 M 288, 175 NW 544.

In an action on defendant's note given the payee for guaranteed repairs on a tractor, held, a defense of breach of warranty is not available against the transferee, unless it is shown that he had knowledge of the warranty and of its breach before he parted with the consideration for the note. First Nat'l Bank of Mankato v Carey, 153 M 246, 190 NW 182.

Defendant gave notes to a corporation for the subscription price of its stock. It went into the hands of a receiver, who sold its business and assets, including

defendant's notes, to plaintiff. In an action on the notes the defense was fraud and a rescission of the stock purchase and the notes. Held, the superior position of the receiver is protected the same as of a holder in due course, and he can pass whatever title he has to a purchaser. If defendant had not rescinded against the payee corporation before insolvency proceedings, he could not rescind against the receiver, or a purchaser from him. Wilcox Trux, Inc. v Rosenberger, 156 M 487, 195 NW 489.

The negotiable instruments law makes an accommodation maker primarily liable to a holder for value; in consequence, he cannot avail himself of the defense of an extension of time of payment without his consent, which is available only to a surety. Vernon Center Bank v Mangelsen, 166 M 472, 208 NW 186.

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

Where plaintiff purchased notes after maturity, held, since plaintiff's endorser, the bank, from whom plaintiff bought the notes, was a holder in due course, plaintiff as a matter of law, was a holder in due course. Case v Fevig, 187 M 127, 244 NW 821.

Evidence held not to show duress in obtaining a check from defendant for the indebtedness of his son. General Motors Accept. Corp. v Jobe, 188 M 598, 248 NW 213.

335.222 BURDEN OF PROOF AS TO TITLE.

HISTORY. 1913 c. 272 s. 59; G.S. 1913 s. 5871; G.S. 1923 s. 7102; M.S. 1927 s. 7102.

Evidence failed to show such fraud in the transaction leading up to the execution of the note that the onus of proving good faith developed on plaintiff where the only defense attempted to be proved was an offset to the note arising from the breach of an alleged warranty in the sale of the automobile. First Nat'l Bank v McNairy, 122 M 215, 142 NW 139.

Defendant purchased the transfer business, including six horses, of E, giving his note secured by a mortgage on the horses, as part of the purchase price. Thereafter E brought an action for possession of the horses for a violation of the mortgage in which defendant set up the defense of fraud inducing the sale, the note was received and marked as an exhibit, and defendant recovered a verdict. In plaintiff's action on the note, held, evidence and facts made it a question for the jury whether plaintiff was a good faith purchaser of the note for value before maturity, or whether the turning of the note over to him by E was a scheme to avoid the consequences of the former lawsuit, and it was error for the court to instruct the jury that there was no testimony to contradict plaintiff's. Cole v Johnson, 127 M 291, 149 NW 466.

Fraud in the inception of the note having been proved, it rested with the plaintiff, the endorsee, to prove that he was a purchaser in good faith and for value. Stevens v Pearson, 138 M 72, 163 NW 769.

A bank through its cashier purchased two notes of the payee which were given under such circumstances that the makers had a defense against the payee. The payee was brought to the cashier and recommended by the vice president. The bank sold the notes to plaintiff who in an action on them did not claim protection as an innocent purchaser, and the question was whether the bank from whom he bought, was. Held, bearing in mind that the burden of proof was upon plaintiff to show that the bank was a purchaser in good faith, and that neither the vice-president nor the payee was called as a witness, nor the absence of either explained, the question was for the jury. Verdict sustained for defendant. First Nat'l Bank of Rolette v Andersen, 144 M 288, 175 NW 544.

In an action on notes purchased by the cashier of plaintiff bank from the president of plaintiff whose title to the notes was defective, held, plaintiff had the burden of proving it was an innocent holder in due course; but that the evidence sustained finding that plaintiff took the notes in bad faith because of

failure to make inquiries called for by the circumstances surrounding the transaction. State Bank of Rogers v Missia, 144 M 410, 175 NW 614.

Where there was evidence of fraud, though defendants were negligent so that Minnesota Statutes 1941, Section 334.12, was not a defense, still if fraud was found, the burden was on plaintiff to prove that he was an innocent purchaser, and he offered no evidence; therefore a verdict should not have been directed for plaintiff though an element essential to a defense against an innocent purchaser under section 334.12 was wanting. Albrecht v Rathai, 150 M 256, 185 NW 259.

Where evidence showed the payee did not agree not to negotiate a note, its negotiation to plaintiff was not a fraud which put upon plaintiff the burden of proof of good faith in purchasing. Farmers & Mchts. State Bank v Graif, 150 M 315, 185 NW 374.

Proving a warranty and its breach or a failure of consideration does not show a defective title which places the burden upon the transferee of proving that he was a holder in due course. To sustain such defenses, the maker must prove not only a warranty and its breach or failure of consideration, but that the transferee had knowledge that the warranty had been breached or that the consideration had failed when he acquired the instrument or parted with the consideration for it. Held, defendant had failed to overcome the statutory presumption in favor of the note. First Nat'l Bank of Mankato v Carey, 153 M 246, 190 NW 182.

The evidence that the notes had their inception in fraud was sufficient to cast upon plaintiff's the burden of showing that they were holders in due course, but, as they disclosed fully the transaction in which they acquired them and the record discloses nothing which would justify a finding of bad faith, it became the duty of the court to direct a verdict. Goedhard v Folstad, 156 M 453, 195 NW 281.

Where a promissory note was given as collateral to an open account under an alleged oral agreement that it was not to be negotiated, but where the payee thereafter negotiated it to an innocent purchaser, the transaction was held not to render the title to the note defective; and that the record showed conclusively that plaintiff, the purchaser, received the note for value before maturity and in the usual course of business. Midland Nat'l Bank v Farmers Co-op. Elev. Co. 158 M 348, 196 NW 275.

County warrants drawn on a special fund and endorsed by the treasurer, "not paid for want of funds", were not negotiable, and where such warrants, endorsed in blank by the payee, were sold to a person who thereafter placed them in the hands of an agent for collection, who instead, wrongfully sold them to a good faith purchaser, the owner could recover them from such purchaser. Cardozo v Fawcett, 158 M 57, 196 NW 809.

Where there is fraud in the inception of a note, so that the endorsee takes through a defective title, the burden is upon him to prove that his purchase was in good faith without notice; but held, the evidence required a holding, as a matter of law, that the plaintiff bank, which took by endorsement from a bank an accommodation note as security for such bank's endorsements of paper discounted, sustained such burden. First Nat'l Bank of Willmar v Malmquist, 158 M 140, 197 NW 271.

Where a broker held bonds, made non-negotiable by such reference to a trust deed securing them that the deed became a part of them, as collateral to a note he had paid for the issuer of the bonds, and separated them from the note and repledged them to secure his debt to another, this amounted to a conversion of the bonds repledged, and the subpledgee got no better title than the broker; and the owner could recover them. King Cattle Co. v Joseph, 158 M 481, 198 NW 798, 199 NW 437.

There was a presumption that the draft was issued for a valuable consideration and that the endorsee was a holder in due course. Unless and until it was shown that the title of the payee was defective, the endorsee was not obliged to prove that it became a holder in due course, and an instruction to the contrary was erroneous. St. Paul State Bank v Rippe Grain & M. Co. 160 M 102, 199 NW 519.

Evidence did not sustain defendant's claim that plaintiff, the purchaser of a draft, and the drawer of the draft accepted by defendant as a trade acceptance, were together conducting a business in connection with which the draft was drawn so that plaintiff was not a good faith purchaser; and that plaintiff, though it had the burden of proving good faith, as a matter of law, was an innocent purchaser. U. S. Mortgage Co. v Hotel Radisson Co. 161 M 231, 201 NW 318.

Fraud in the inception of the note being conceded, the plaintiff's burden of showing that he was a holder in due course was not fully met merely by proof that he acquired it before maturity and for value; he must show that he acquired the note in good faith, i.e., in ignorance of the fraud, and that in this case, proof was adequate. Harwood State Bank v Hendrum Co-op. Elev. Co. 166 M 400, 208 NW 24.

An endorsement is presumed to be based upon a consideration; and the fact that it was endorsed without recourse does not change the presumption. Hall v Oleson, 168 M 308, 210 NW 84.

In an action on a note, alleged to have assigned to plaintiff "prior to the commencement of this action," plaintiff offered the note in evidence, testified that he owned it, and rested; defendant's offers to show fraud in the inception of the note, unless it was first shown that plaintiff had knowledge of such fraud, and that the note was transferred after maturity and without consideration, were rejected. Held, it is only where the holder of a note has proven affirmatively that he was a holder in due course that the maker is required to show bad faith on the part of the holder before proving a defense to it, and that defendant was entitled to prove plaintiff acquired the note after maturity and without consideration. Burghart v Sausele, 169 M 132, 210 NW 869.

When title to note has been procured by fraud, burden of proof is on holder to prove he, or his predecessor in ownership, is holder in due course; where plaintiff's case rested on his exhibits and testimony that he purchased the notes from the payee, his banker friend, having confidence in him, without making investigations as to the maker, held, record showed his testimony was not impeached nor inherently improbable, and that he acquired the notes in ignorance of the fraud and in good faith, and for value and before maturity, hence it was the duty of the court to direct a verdict for him. Olsen v Hoffmann, 175 M 287, 221 NW 10.

Unless there are facts and circumstances which constitute "red lights ahead," a purchaser of negotiable paper need not make inquiry or investigation as to the maker. Olsen v Hoffman, 175 M 287, 221 NW 10.

The fact that the notes were endorsed by the payee "without recourse," does not indicate bad faith. Worth Svgs. Bank v Foster, 175 M 293, 221 NW 12.

Where plaintiffs credited the amount of a note given by defendant to the payee, on the payee's account with plaintiffs, held, evidence was conclusive that plaintiffs were holders in due course. Calvin v Moshier, 177 M 477, 225 NW 383.

Where plaintiff's note to the payee was to be held by him as security for his suretyship on plaintiff's bond, but was instead, used by him as collateral to secure his personal note to a bank for a loan, held, evidence being conclusive that the bank made the loan in good faith, taking plaintiff's note for value as collateral before maturity and without being chargeable with knowledge of its infirmity, the bank was, as a matter of law, a holder in due course. Loring v Swanson, 180 M 104, 230 NW 277.

Where the maker of a negotiable note, after the payee had sold it to a holder in due course, made payments on the note to the payee who had neither possession of the note nor authority to receive payment, without requiring the production and surrender of the note, held, such payments were not a payment of the note. Gordon v Oberle, 183 M 188, 235 NW 875.

Where evidence covering plaintiff's claim was clear, positive, and not improbable or contradictory, standing unimpeached, it was binding on the trier of fact and could not be arbitrarily disregarded; and was held conclusive that plaintiff was a holder in due course. First Nat'l Bank v Van de Putte, 187 M 96, 244 NW 416.

Where plaintiff purchased notes after maturity, because of that fact alone he would not be a holder in due course; but since plaintiff's endorser, the bank, from whom plaintiff bought the notes, was a holder in due course, the notes remain

such in the hands of plaintiff, who was no party to any fraud affecting the notes. Case v Fevig, 187 M 127, 244 NW 821.

If the facts established make a defense under Minnesota Statutes 1941, Section 334.12, a purchaser of the note, though in due course, is not protected. M & M Securities Co. v. Dirnberger, 190 M 57, 250 NW 801.

Where a purchaser of negotiable paper takes it without actual knowledge of the vendor's defective title, but with knowledge of facts which would deter a commercially honest person from acquiring title without investigation, his acquisition is tainted with bad faith. Fortier v McRae, 190 M 571, 252 NW 833.

In an action to recover on note executed by husband and wife, where it appeared that the wife received no consideration and was not an accommodation party, plaintiff had burden of proving himself a holder in due course. Parkin v Sykes, 203 M 249, 280 NW 849.

One receiving stolen bonds as collateral security had burden of proving he gave value for them. Paine v St. P. Union Stockyards Co. 28 F(2d) 463.

Burden of proof as to bona fide holdership; meaning of the term "burden of proof" as used in the negotiable instruments law. 6 MLR 313.

Payee as a holder in due course. 9 MLR 102.

Possession of unendorsed note payable to order as prima facie evidence of ownership in suit against maker. 14 MLR 806.

LIABILITY OF PARTIES

335.23 LIABILITY OF MAKER.

HISTORY. 1913 c. 272 s. 60; G.S. 1913 s. 5872; G.S. 1923 s. 7103; M.S. 1927 s. 7103.

Giving notes for an antecedent debt is presumed to be conditional payment only, and does not discharge the debt unless expressly given and received as absolute payment; and the rule is the same though third parties join in the notes. Empire Cream Sep. Co. v Marshall, 158 M 236, 197 NW 216.

Defendant had on hand implements purchased from plaintiff, for which he owed part of the purchase price; by agreement between a representative of plaintiff, defendant, and one H, H purchased the stock from defendant, giving his note to plaintiff for the amount defendant owed plaintiff, which was endorsed by defendant. H not paying the note, plaintiff brought action against defendant to recover for goods sold. Held, the evidence was sufficient to make the question whether the note was given and accepted for the purpose and with the intention of releasing defendant from liability for the original debt, a question of fact for the jury. Empire Cream Sep. Co. v Marshall, 158 M 236, 197 NW 216.

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

Where by a written agreement, the time of payment of a note had been extended, proof of a contemporaneous oral agreement for a further extension is inadmissible. Dakota State Bank v Winona Wagon Co. 162 M 445, 203 NW 212.

Where notes or other securities have been executed to a bank for the purpose of making an appearance of assets so as to deceive the examiner, although the circumstances may have been such that the bank itself could not have collected them, upon the insolvency of the bank, the receiver representing the creditors can maintain an action thereon and the makers are estopped to take advantage of the fraudulent agreement. German-American Finance Corp. v Merch. & Mech. State Bank, 177 M 529, 225 NW 891.

Plaintiff, to get a higher rate of interest than she received on her certificates of deposits from a bank, exchanged them for a note made by the president of the bank, to the bank, bearing upon its back an endorsement to her and a guaranty of payment executed in the name of the bank by the president. In an action on the note, held, evidence sustained finding that the transaction was with the bank and

not with the president individually, and that the bank was liable to plaintiff for the amount of the note. Rasmussen v Forbes, 178 M 476, 227 NW 659.

Where an insane person had not received the benefit of a note signed by her as a surety or accommodation maker to the other signer, who did receive the whole thereof from the payee, her guardian established a good defense by proving that she was insane and incompetent to transact any business when she signed the note. Hughes v Crean, 178 M 545, 227 NW 654.

The negotiable instruments act does not govern the negotiation of securities or mortgages given as part of the same transaction in which promissory notes are executed; so where defendant gave his note, secured by a mortgage, and thereafter conveyed the mortgaged land to a vendee who assumed and agreed to pay the mortgage, as between defendant and the vendee, defendant became the surety and the vendee the principal. When plaintiff, the assignee of the mortgagee, with knowledge of the conveyance and without the consent of defendant, extended the time of payment of the mortgage debt, he released defendant. Jefferson Co. Bank v Erickson, 188 M 354, 247 NW 245.

Where evidence sustained finding that C, one of the coowners of a farm, without authority or knowledge of his coowners, signed their surnames as a partnership, to a note, held, the names affixed by him as maker of the note was his assumed name, and the note became his obligation, and that defendant who held the note, had a right to set off or apply plaintiff's claim against defendant based on an assignment to her by C of his claim against defendant, thereon. Though the note read "I promise to pay," it was a several obligation, even if it be conceded to be a partnership note, and a several judgment could be entered against C and he could be sued alone. Campbell v State Bank, 194 M 502, 261 NW 1.

335.231 LIABILITY OF DRAWER.

HISTORY. 1913 c. 272 s. 61; G.S. 1913 s. 5873; G.S. 1923 s. 7104; M.S. 1927 s. 7104.

In an action to recover the amount of a check drawn by plaintiff on one bank and deposited in another, which credited it to plaintiff's account, but charged it back to plaintiff on finding the drawee insolvent and unable to pay, plaintiff claimed that the payee was negligent in failing to collect; defendant claimed that the drawee was not able to pay at any time after the check reached the payee, and for that reason its negligence had not resulted in any loss to plaintiff. Held, evidence sustained verdict for defendant. Old Colony Life Ins. Co. v Amer. S. & T. Co. 165 M 417, 206 NW 725.

Acceptance of bills by conduct. 12 MLR 130.

335.232 LIABILITY OF ACCEPTOR.

HISTORY. 1913 c. 272 s. 62; G.S. 1913 s. 5874; G.S. 1923 s. 7105; M.S. 1927 s. 7105.

Where a draft drawn generally will not of itself operate as assignment of anything in the hands of the drawee, yet, if the drawee is given notice that the draft was intended to give the payee an interest in or entitle him to receive funds coming into the drawee's hands from the sale of designated goods, and with such notice, the drawee takes possession and sells them, he becomes liable to the payee, the payee being an equitable assignee of that portion of the fund called for by the draft. Baird v Simonstad, 193 M 79, 258 NW 570.

Conflict of laws applicable to bills and notes. 1 MLR 132.

Estoppel raised by acceptance; forgery. 6 MLR 405.

Right of drawee to recover the amount paid on a raised check. 11 MLR 69.

Acceptance; retention of a forged instrument. 22 MLR 880.

Inapplicability of the doctrine of Brice v Neal to postal money orders. 25 MLR 517.

335.24 WHEN PERSON DEEMED ENDORSER.

HISTORY. 1913 c. 272 s. 63; G.S. 1913 s. 5875; G.S. 1923 s. 7106; M.S. 1927 s. 7106.

Rule formerly in force has been abrogated by statute, and third party who places his signature upon a note before its delivery is an endorser, unless he indicates by appropriate words that he signs in some other capacity. G. Sommers & Co. v Tintah Co-op. Merc. Co. 155 M 107, 192 NW 492.

In an action against a bank on a guaranty of payment endorsed on a note, secured by a mortgage, taken in the name of the bank and assigned by its president and cashier to plaintiff's testate for value before maturity, the bank's defense was that the instruments were the individual property of its president, taken in the name of the bank for his own accommodation, and that the endorsement was unauthorized by the bank; held, the evidence showing that the entire management of the bank's business was left to its president and cashier, as to plaintiff's testate, a purchaser in good faith for value before maturity, the bank was estopped to deny their authority, and the endorsement was binding on the bank. Beyl v Swanson, 165 M 278, 206 NW 453.

The negotiable instruments act makes an accommodation maker primarily liable on the instrument to a holder for value so he is liable as a maker and not as a mere surety; in consequence he cannot avail himself of the defenses, such as extension of time of payment without his consent, which are available only to a surety, otherwise he would not be liable on the instrument, but on an extraneous and implied contract of different tenor, one of the benefits of which may not be reserved even to an endorser without appropriate words indicating his intention to be bound in some other capacity. Vernon Center State Bank v Mangelsen, 166 M 472, 208 NW 186.

In an appeal by a codefendant endorser from a judgment, held, the endorser was not a comaker; but where his status as such was at no time suggested until after judgment, and the case was tried and submitted upon the issues expressly presented, such submission automatically excluded what it did not include. Therefore, after decision responsive to all their contentions, it was too late for counsel to raise a new fact issue by motion for amended findings or a new trial. Allen v Central Motors, Inc. 204 M 295, 283 NW 490.

Acceptance of bills by conduct. 12 MLR 129.

Signature in blank for identification. 13 MLR 308.

Ambiguity as to capacity in which person signed note; when signer is deemed to be an endorser. 20 MLR 819.

335.245 LIABILITY OF IRREGULAR ENDORSER.

HISTORY. 1913 c. 272 s. 64; G.S. 1913 s. 5876; G.S. 1923 s. 7107; M.S. 1927 s. 7107.

Where one signs his name in blank on the back of a note, made by another, before delivery, the debt for which the note was given is a consideration to support his promise; but if he signs after the note is delivered, a new consideration is necessary. American Multigraph Sales Co. v Grant, 135 M 208, 160 NW 676.

A third party who places his signature upon a promissory note before delivery to give it credit is an endorser, unless he indicates by appropriate words that he signs in some other capacity. G. Sommers & Co. v Tintah Co-op. Merc. Co. 155 M 107, 192 NW 492.

In an action on two notes against defendant, an accommodation endorser for his son, where the defense proved that the son executed and delivered the notes absolutely and unconditionally to plaintiff, for his past-due indebtedness for which defendant was in no way liable, and that after such delivery, without any new consideration, defendant endorsed the notes; held, a verdict was rightly directed for defendant. A new consideration is necessary to support an endorsement made after an unconditional delivery of a note by the maker to the payee. Parlin & Orendorff Plow Co. v Evenson, 158 M 348, 197 NW 489.

Signature in blank for identification. 13 MLR 380.

Extension of time to principal debtor as releasing accommodation maker. 24 MLR 853.

335.25 WARRANTY WHERE NEGOTIATION BY DELIVERY OR QUALIFIED ENDORSEMENT.

HISTORY. 1913 c. 272 s. 65; G.S. 1913 s. 5877; G.S. 1923 s. 7108; M.S. 1927 s. 7108.

Where a bank cashed negotiable state vouchers on which the payees' endorsements had been forged, endorsed them, and received their payment from a bank in which state funds were deposited, which endorsed and redeemed them from the state treasurer's office; held, in an action by the state to recover its funds so paid, both banks were liable, the first primarily, as by its endorsements it guaranteed that all previous endorsements were genuine and that it had good title to them; the second, as when it presented them to the treasurer's office, it warranted the genuineness of prior endorsements. State v Mchts. Nat'l Bank of St. Paul, 145 M 322, 177 NW 135.

The purpose of an endorsement is the promise to do what the maker undertakes to do if the maker fails, and that is to pay the note where it is payable. Healy-Owen-Hartzell Co. v Montevideo F. & M. Elev. Co. 165 M 330, 206 NW 646.

A bank sold plaintiffs a mortgage note, endorsed without recourse; as part of the same transaction, its president and cashier made to them a guaranty of payment in which no reference was made to consideration. In an action on the guaranty the question was whether it sufficiently expressed the consideration, in writing, to satisfy the statute of frauds. Held, the note and guaranty were to be construed as one instrument, and that the endorsement, though qualified, imported a consideration, which satisfies the statute of frauds. Hall v Oleson, 168 M 308, 210 NW 84.

In an action to recover damages for loss sustained because of false representations made in the sale to plaintiff of a note and mortgage and for a breach of a warranty to collect the same; held, evidence amply supported a verdict for plaintiff. Eidem v Dahl, 185 M 163, 240 NW 531.

335.255 WARRANTY OF ENDORSER WITHOUT QUALIFICATION.

HISTORY. 1913 c. 272 s. 66; G.S. 1913 s. 5878; G.S. 1923 s. 7109; M.S. 1927 s. 7109.

A land company gave plaintiff bank its note, secured by a mortgage on Montana land, by which the time of payment of a past due debt was extended one year. Defendants individually guaranteed payment of the note by an endorsement on the back thereof. The bank foreclosed the mortgage in the Montana courts, obtained a deficiency judgment against the land company, and brought action against the guarantors who were not parties to the foreclosure action. They claimed there was no consideration for the guaranties, and that under the Montana statutes plaintiff could maintain only one action upon the debt; held, the extension of time was a sufficient consideration to support the guaranties, executed before the delivery of the note; and that the note was a Minnesota contract, governed by the laws of our state in an action upon it in our courts, the statutes of another state having no application. Mchts. State Bank v Sunset Orchard L. Co. 158 M 108, 196 NW 963.

In an action on guaranties of notes, payable to defendant who had transferred them to plaintiff bank with a guaranty of payment of each, defendant's offer to prove the bank's cashier had agreed to look to the security, thereby releasing him from his guaranties, was rejected; held, defendant having guaranteed payment of the notes unconditionally, the bank had the right to require him to pay them on default of the makers, and was under no obligation to resort to the security or see that it was preserved for his benefit; and that the bank's cashier, though its chief officer, was without power to release a guarantor from his liability, and the offer was properly rejected. Central State Bank v Hanson, 158 M 269, 197 NW 283.

The purpose of an endorsement is the promise to do what the maker undertakes to do if the maker fails, and that is to pay the note where it is payable. Healy-Owen-Hartzell Co. v Montevideo F. & M. Elev. Co. 165 M 330, 206 NW 646.

Defendant bank sold a note to plaintiff bank, endorsing it, and renewals thereof until, in connection with a renewal note, it ceased being an endorser and executed

a separate guaranty of all notes held by plaintiff then or later, waiving demand and notice of protest. Later when a renewal was given, defendant's cashier and assistant cashier individually gave plaintiff a general guaranty of all notes purchased from the bank. In an action on the two guaranties, after answering, defendant bank went into the hands of a receiver, and filed an amended answer claiming plaintiff's only remedy was to file its claim with the receiver. Held, the court having acquired jurisdiction prior to the liquidation proceedings, plaintiff was entitled to have the issue litigated; that defendant bank's liability on its endorsement was absolute; the consideration for the endorsement was the money plaintiff gave for the note; the relinquishment of the liability as an endorser was a consideration for the guaranty; the extension of the note upon which defendant bank was such endorser, made at the time and part of the transaction in which the guaranty was given was also consideration for the guaranty; under the facts the obligation of defendant bank was a continuing one and rested upon the money paid for the note; and that the extension of time of payment and surrender of the note maturing for the new note was the consideration for the individual guaranties. Farmers & Merchants State Bank v Mellum, 173 M 325, 217 NW 381.

Where a person stole a certificate of deposit issued to plaintiff by K bank, forged her endorsement thereon and cashed it at B bank, which in turn delivered it to K and received the amount thereof, it was held both banks were liable to plaintiff in an action for conversion; that as between the banks, B was liable on its endorsement, to K. Moler v State Bank of Bigelow, 176 M 449, 223 NW 780.

The endorser's warranty, under Minnesota Statutes 1941, Section 335.255, relates to the face of the instrument and not to the endorsements upon the back thereof. Moler v State Bank of Bigelow, 176 M 449, 223 NW 780.

An absolute guarantor may be joined as defendant in the same action with the principal obligor. Townsend v Milaca Motor Co. 194 M 423, 260 NW 525.

In an action by the payee bank on defendant's endorsement of a note given by the maker to the bank to cover an overdraft and checks drawn by him on the bank that day, held, there being no evidence that any check not covered by that guaranty went into the amount of the note, defendant's counterclaim on the guaranty failed. Welcome Nat'l Bank v Halkney, 195 M 518, 263 NW 544.

Stock owned by plaintiffs was pledged to a bank as collateral security for the promissory note of another, which was endorsed by the two defendants; in an action by plaintiffs to have their equities declared superior to those of the endorsers, held, evidence warranted a finding that the stock was so pledged as to become, as to the endorsers, a cosurety, hence the stock and each of the endorsers were ultimately liable, as between themselves, for one-third of the debt. Stewart v Bowman, Jr. 195 M 543, 263 NW 618.

Where not until after the decision in a trial was defendant's status as an endorser even suggested, it was too late then to raise the point in a motion for amended findings. Allen v Central Motors, Inc. 204 M 295, 283 NW 490.

In an action by the payee against an endorser, for the amount of the note less the dividend received from the referee in bankruptcy, for which the payee gave a receipt that it was for 25 per cent of and in full settlement of its claim, held, confirmation of a composition in bankruptcy discharges the bankrupt from his debts by preventing a remedy against him and leaving the debt as an unenforceable legal obligation, but it does not affect the liability of the bankrupt's endorsers; but that the receipt was a settlement of the payee's claim, a renunciation of its rights under the instrument which discharged all parties. Northern Drug Co. v Abbett, 205 M 65, 284 NW 881.

The agreement of the payee to endorse a note, guarantying it, which he had sold to plaintiff, was a guaranty of payment, not of collection; and there was no obligation on the transferee's part to exhaust legal remedies to collect the note against the maker. Holbert v Wermerskirchen, 210 M 119, 297 NW 327.

Conflict of laws applicable to bills and notes. 1 MLR 132.

Oral waiver contemporaneous with endorsement. 12 MLR 70.

Prophesy of rules to be adopted generally in signature in blank for identification. 13 MLR 315.

Effect of an assignment endorsed on the back of commercial paper; liability of transferor. 16 MLR 702.

335.26 LIABILITY OF ENDORSER WHERE PAPER NEGOTIABLE BY DELIVERY.

HISTORY. 1913 c. 272 s. 67; G.S. 1913 s. 5879; G.S. 1923 s. 7110; M.S. 1927 s. 7110.

335.261 ENDORSERS PRIMA FACIE LIABLE IN ORDER OF ENDORSEMENT.

HISTORY. 1913 c. 272 s. 68; G.S. 1913 s. 5880; G.S. 1923 s. 7111; M.S. 1927 s. 7111.

Plaintiff and defendant, at the same time and as part of the same transaction, as an accommodation, endorsed a note of a company in which both were interested, to a bank. The bank recovered a judgment, against the maker of the note. Plaintiff paid and took an assignment of the judgment, and brought suit against defendant for contribution. Held, the circumstances indicated plaintiff and defendant intended to become equally liable for the payment of the note; it was well found that they were joint endorsers: and that defendant should reimburse plaintiff for one-half of the amount paid. Waldref v Dow, 172 M 52, 214 NW 767.

Where plaintiff's three-year delay after the payment of the debt before bringing suit for contribution was not prejudicial to the defendant, the defense of laches could not be successfully asserted. Waldref v Dow, 172 M 52, 214 NW 767.

In an action for contribution by one of two accommodation makers against the other, held, an accommodation maker is as directly liable to a holder for value as the accommodated maker, and the order in which the signatures appear is immaterial. The statutory rule of successive liability does not apply as between joint makers of a note who are primarily liable on the instrument. Deden v Grosse, 185 M 278, 240 NW 909.

335.262 LIABILITY OF AN AGENT OR BROKER.

HISTORY. 1913 c. 272 s. 69; G.S. 1913 s. 5881; G.S. 1923 s. 7112; M.S. 1927 s. 7112.

Plaintiff, through a broker, purchased a carload of vegetables from a Chicago company, which when received, were in a deteriorated condition; the broker paid the company, and by order of the commissioner of agriculture, plaintiff paid the broker. In an action to recover the amount so paid by plaintiff, held, a broker who acts for a disclosed principal is not liable for breach of the resulting contract. Only the principal is bound. Ammon v W. A. White Brokerage Co. 183 M 71, 235 NW 533.

PRESENTMENT FOR PAYMENT

335.27 PRESENTMENT, WHEN NECESSARY.

HISTORY. 1913 c. 272 s. 70; G.S. 1913 s. 5882; G.S. 1923 s. 7113; M.S. 1927 s. 7113.

When a note is payable on demand after date, suit may be maintained though a demand has not been made. First State Bank of Grand Rapids v Utman, 136 M 103, 161 NW 398.

A demand of payment is not a prerequisite to the enforcement of a note payable on demand. Horan v Keane, 164 M 57, 204 NW 546.

Where the holder of a draft, payable on demand, negligently fails to present the same for payment within a reasonable time, there being funds for its payment, and thereafter the drawer fails, the holder must suffer the loss; and when such draft has been sent by a debtor to his creditor on account, such negligence on the part of the creditor makes the draft his own and operates as a payment. Commercial Inv. Trust v Lundgren-Wittensten Co. 173 M 83, 216 NW 531.

Generally, the six year statute of limitations does not begin to run against action on the bank's negotiable certificate of deposit, payable on demand or the return of the certificate properly endorsed, until demand for payment is actually made. State v Northwestern National, 219 M 471, 18 NW(2d) 569.

Notes payable at a bank; effect of holder's failure to present for payment at maturity on liability of persons primarily liable. 18 MLR 734.

Presentment of instruments falling due on Saturday. 20 MLR 670.

Running of the statute of limitations against the holder of a check. 25 MLR 371.

335.271 PRESENTMENT WHERE INSTRUMENT IS NOT PAYABLE ON DEMAND AND WHERE PAYABLE ON DEMAND.

HISTORY. 1913 c. 272 s. 71; G.S. 1913 s. 5883; G.S. 1923 s. 7114; M.S. 1927 s. 7114.

Defendant endorsed an overdue note to plaintiff, who two days later made formal presentment and demand for payment of the makers, which was refused, no notice of which was given defendant; six months later, after the makers had turned over their property for the benefit of creditors, presentment and demand was again made, which was refused, which was followed by a proper notice of dishonor to defendant. In an action on the endorsement, held, the note, though overdue when so endorsed and transferred, as to the parties in that transaction, became payable on demand, and to charge the endorser with continued liability, it was incumbent on the endorsees to demand payment within a reasonable time, and if not paid, to give notice thereof to the endorser within the time fixed by the negotiable instruments act; the necessary notice was not given, which discharged the endorser, and the subsequent presentation and demand followed by proper notice did not revive his liability; and that the first presentment and demand could not be excused on the theory that it was only an informal sounding out of the makers or that the endorser was in no way injured. Torgerson v Ohnstad, 149 M 46, 182 NW 724.

Where demand for payment of a note was made the day after it became due, such demand was not effective to charge endorsers; the demand must be made on the day on which an instrument falls due. G. Sommers & Co. v Tintah Co-op. Merc. Co. 155 M 107, 192 NW 492.

Defendant sent plaintiff a draft which plaintiff held, awaiting a reply to its letter to defendant concerning a compromise on a claim for attorney's fees; for 13 days after issuing the draft the drawer had funds with the drawee bank in excess of it, but thereafter suspended payment. Held, the circumstances supported the conclusion that plaintiff was guilty of negligence; that where the holder of a draft, payable on demand, negligently fails to present it for payment within a reasonable time, there being funds for its payment, and thereafter the drawer fails, the holder must suffer the loss; and that such negligence on plaintiff's part made the draft his own and operated as a payment. Commercial Inv. Trust v Lundgren-Wittensten Co. 173 M 83, 216 NW 531.

Presentment of instruments falling due on Saturday. 20 MLR 671.

Running of the statute of limitations against the maker and the endorser of a demand note. 22 MLR 725.

Running of the statute of limitations against the holder of a check. 27 MLR 371.

335.275 SUFFICIENT PRESENTMENT.

HISTORY. 1913 c. 272 s. 72; G.S. 1913 s. 5884; G.S. 1923 s. 7115; M.S. 1927 s. 7115.

Plaintiff gave his check to a bank in a town where he was visiting and well known, on defendant, a Minneapolis bank where he had on deposit more than sufficient funds to pay it; the payee bank endorsed it to a bank through which it came to a bank member of the Minneapolis Clearing House, which presented it to another bank, also a member, with which bank defendant, not a member, had an agreement under which that bank acted as defendant's agent to clear its checks through the clearing house, defendant to keep sufficient funds deposited with it to care for its obligations. The day plaintiff's check was presented to such member, defendant's deposit was insufficient to cover the day's clearings, and payment was refused. In plaintiff's action for damages for the dishonor of his check, defendant claimed it should have been presented at its banking house during bank-

ing hours, and the question was of due presentment. Held, the presentment of plaintiff's check to defendant's agent was a good presentment, with the same effect as if it had been taken to defendant's bank and presented there. Geibe v Chgo. Lake State Bank, 160 M 89, 199 NW 514.

Under the established practice of banks to exchange checks and adjust balances through the clearing house, the presentment of a check held by a member bank and drawn upon another member bank, when made at the clearing house in accordance with the regulations of the association, is a sufficient presentment to subject the drawee bank to all the consequences of a wrongful refusal to pay a depositor's check. Geibe v Chgo. Lake State Bank, 160 M 89, 199 NW 514.

When an outside bank, by arrangement with a member bank of a clearing house association, gains admission to the association and enjoys its privileges, the member bank becomes its agent, and the nonmember is bound by all rules of the association of which it has knowledge, and is chargeable with the acts of its agent within the scope of its authority; and presentment of its checks through the clearing house to its representative is a good presentment, and of the same effect as if it had been taken to its banking house and presented during banking hours. Geibe v Chgo. Lake State Bank, 160 M 89, 199 NW 514.

335.276 PRESENTMENT AT PROPER PLACE.

HISTORY. 1913 c. 272 s. 73; G.S. 1913 s. 5885; G.S. 1923 s. 7116; M.S. 1927 s. 7116.

Conflict of laws as to domicile; the restatement and Minnesota decisions compared. 15 MLR 668.

335.28 INSTRUMENT MUST BE EXHIBITED.

HISTORY. 1913 c. 272 s. 74; G.S. 1913 s. 5886; G.S. 1923 s. 7117; M.S. 1927 7117.

Geibe v Chgo. Lake State Bank, 160 M 89, 199 NW 514, see note under section 335.275.

Endorser's liability; presentment for payment; waiver of presentment; sufficiency of presentment by telephone. 11 MLR 554.

Identification and receipt. 13 MLR 297.

335.281 DURING BANKING HOURS.

HISTORY. 1913 c. 272 s. 75; G.S. 1913 s. 5887; G.S. 1923 s. 7118; M.S. 1927 s. 7118.

Geibe v Chgo. Lake State Bank, 160 M 89, 199 NW 514, see note under section 335.275.

335.282 IN CASE OF DEATH.

HISTORY. 1913 c. 272 s. 76; G.S. 1913 s. 5888; G.S. 1923 s. 7119; M.S. 1927 s. 7119.

335.29 PRESENTMENT TO PERSONS LIABLE AS PARTNERS.

HISTORY. 1913 c. 272 s. 77; G.S. 1913 s. 5889; G.S. 1923 s. 7120; M.S. 1927 s. 7120.

335.291 PRESENTMENT TO JOINT DEBTORS.

HISTORY. 1913 c. 272 s. 78; G.S. 1913 s. 5890; G.S. 1923 s. 7121; M.S. 1927 s. 7121.

335.30 IN ORDER TO CHARGE DRAWER.

HISTORY. 1913 c. 272 s. 79; G.S. 1913 s. 5891; G.S. 1923 s. 7122; M.S. 1927 s. 7122.

335.301 IN ORDER TO CHARGE ENDORSER.

HISTORY. 1913 c. 272 s. 80; G.S. 1913 s. 5892; G.S. 1923 s. 7123; M.S. 1927 s. 7123.

335.31 DELAY, WHEN EXCUSED.

HISTORY. 1913 c. 272 s. 81; G.S. 1913 s. 5893; G.S. 1923 s. 7124; M.S. 1927 s. 7124.

Where defendant mailed plaintiff a draft, which plaintiff held, awaiting defendant's reply to its letter concerning a compromise as to a claim for attorney's fees, during which time the drawer bank suspended payment; held, defendant was under no legal duty to answer the letter, and plaintiff's holding the draft for 12 days during which time it could have had the money by presenting the draft, was without legal excuse; and that the circumstances supported conclusion that plaintiff was guilty of negligence which caused the loss, such negligence making the draft its own, and operating as a payment. Commercial Inv. Trust v Lundgren-Wittensten Co. 173 M 83, 216 NW 531.

Conflict of laws; time and mode of presentment; protest and notice. 1 MLR 414.

335.311 WHEN DISPENSED WITH.

HISTORY. 1913 c. 272 s. 82; G.S. 1913 s. 5894; G.S. 1923 s. 7125; M.S. 1927 s. 7125.

Where endorser waived presentment for payment, held, suit on a note payable on demand after date could be maintained though a demand had not been made. First State Bank of Grand Rapids v Utman, 136 M 103, 161 NW 398.

In an action by the endorsee of a check against the endorser, held, where both the parties had knowledge when the check was endorsed that it was not good at the bank, and would not be, and there was evidence that after the endorsement and after presentment should have been made, the endorser recognized his liability and promised to pay, the evidence established an implied waiver of presentment and notice of dishonor. Lieberman v Fox, 160 M 449, 200 NW 468.

A verbal agreement to waive presentment and dishonor made at the time a negotiable instrument is endorsed, is inadmissible. Lieberman v Fox, 160 M 449, 200 NW 468.

Where evidence showed defendant bank not only endorsed a note, but that it waived presentment and notice of dishonor, its liability was absolute. Farmers & Mchts. State Bank v Mellum, 173 M 325, 217 NW 381.

Conflict of laws as to time and mode of presentment, protest and notice. 1 MLR 414.

Running of the statute of limitations against the maker and the endorser of a demand note. 22 MLR 725.

335.32 DISHONORED BY NON-PAYMENT, WHEN.

HISTORY. 1913 c. 272 s. 83; G.S. 1913 s. 5895; G.S. 1923 s. 7126; M.S. 1927 s. 7126.

335.33 RIGHT OF RECOURSE OF HOLDER.

HISTORY. 1913 c. 272 s. 84; G.S. 1913 s. 5896; G.S. 1923 s. 7127; M.S. 1927 s. 7127.

335.331 WITHOUT GRACE; MATURITY.

HISTORY. 1913 c. 272 s. 85; G.S. 1913 s. 5897; 1917 c. 204 s. 1; G.S. 1923 s. 7128; M.S. 1927 s. 7128.

Presentment of instruments falling due on Saturday. 20 MLR 670.

335.332 TIME; HOW COMPUTED.

HISTORY. 1913 c. 272 s. 86; G.S. 1913 s. 5898; G.S. 1923 s. 7129; M.S. 1927 s. 7129.

335.333 RULE WHERE PAYABLE AT BANK.

HISTORY. 1913 c. 272 s. 87; G.S. 1913 s. 5899; G.S. 1923 s. 7130; M.S. 1927 s. 7130.

The relevance of the negotiable instruments law and the law of bills and notes. 13 MLR 284.

Notes payable at a bank. 18 MLR 736.

335.34 PAYMENT IN DUE COURSE.

HISTORY. 1913 c. 272 s. 88; G.S. 1913 s. 5900; G.S. 1923 s. 7131; M.S. 1927 s. 7131.

Defendant ordered some cream separators from plaintiff, for which plaintiff was to draw a sight draft with bill of lading attached; plaintiff accepted the order, shipped the separators, attached the bill of lading to the sight draft, and sent it to a local bank named by defendant on the order. Defendant gave his check to the local bank against his account, and it drew and mailed its draft on another bank, to plaintiff, but before the draft was cleared, the local bank closed. Held, the local bank was plaintiff's and not defendant's agent, and that the sight draft was paid. De Laval Separator Co. v Hildahl, 180 M 199, 230 NW 467.

Where the maker of a negotiable note made payment to the payee, after he had transferred it to a holder in due course, and had neither possession of the note nor authority from the holder to receive payment, and the maker did not require the production or return of the note, held, such payment did not operate as payment of the note. Gordon v Oberle, 183 M 188, 235 NW 875.

NOTICE OF DISHONOR

335.35 NOTICE OF DISHONOR; HOW GIVEN.

HISTORY. 1913 c. 272 s. 89; G.S. 1913 s. 5901; G.S. 1923 s. 7132; M.S. 1927 s. 7132.

Waiver of demand and notice by the endorser. 9 MLR 279.

Premature set-off; liability of bank to depositor. 25 MLR 941.

335.351 BY WHOM GIVEN.

HISTORY. 1913 c. 272 s. 90; G.S. 1913 s. 5902; G.S. 1923 s. 7133; M.S. 1927 s. 7133.

335.352 NOTICE GIVEN BY AGENT.

HISTORY. 1913 c. 272 s. 91; G.S. 1913 s. 5903; G.S. 1923 s. 7134; M.S. 1927 s. 7134.

335.353 SUBSEQUENT HOLDERS.

HISTORY. 1913 c. 272 s. 92; G.S. 1913 s. 5904; G.S. 1923 s. 7135; M.S. 1927 s. 7135.

335.354 NOTICE ON BEHALF OF ENTITLED PARTY.

HISTORY. 1913 c. 272 s. 93; G.S. 1913 s. 5905; G.S. 1923 s. 7136; M.S. 1927 s. 7136.

335.355 WHEN AGENT MAY GIVE NOTICE.

HISTORY. 1913 c. 272 s. 94; G.S. 1913 s. 5906; G.S. 1923 s. 7137; M.S. 1927 s. 7137.

335.36 CHARACTER OF NOTICE.

HISTORY. 1913 c. 272 s. 95; G.S. 1913 s. 5907; G.S. 1923 s. 7138; M.S. 1927 s. 7138.

335.365 FORM OF NOTICE.

HISTORY. 1913 c. 272 s. 96; G.S. 1913 s. 5908; G.S. 1923 s. 7139; M.S. 1927 s. 7139.

Oral notice of presentment and dishonor is enough. Allen v Central Motors, Inc. 204 M 295, 283 NW 490.

335.37 TO WHOM NOTICE MAY BE GIVEN.

HISTORY. 1913 c. 272 s. 97; G.S. 1913 s. 5909; G.S. 1923 s. 7140; M.S. 1927 s. 7140.

335.371 NOTICE WHEN PARTY IS DEAD.

HISTORY. 1913 c. 272 s. 98; G.S. 1913 s. 5910; G.S. 1923 s. 7141; M.S. 1927 s. 7141.

335.372 NOTICE TO PARTNERS.

HISTORY. 1913 c. 272 s. 99; G.S. 1913 s. 5911; G.S. 1923 s. 7142; M.S. 1927 s. 7142.

335.373 NOTICE TO PERSONS JOINTLY LIABLE.

HISTORY. 1913 c. 272 s. 100; G.S. 1913 s. 5912; G.S. 1923 s. 7143; M.S. 1927 s. 7143.

335.374 NOTICE TO BANKRUPT.

HISTORY. 1913 c. 272 s. 101; G.S. 1913 s. 5913; G.S. 1923 s. 7144; M.S. 1927 s. 7144.

335.38 WHEN GIVEN.

HISTORY. 1913 c. 272 s. 102; G.S. 1913 s. 5914; G.S. 1923 s. 7145; M.S. 1927 s. 7145.

335.381 WHERE PARTIES RESIDE IN SAME PLACE.

HISTORY. 1913 c. 272 s. 103; G.S. 1913 s. 5915; G.S. 1923 s. 7146; M.S. 1927 s. 7146.

335.382 WHERE PARTIES RESIDE IN DIFFERENT PLACES.

HISTORY. 1913 c. 272 s. 104; G.S. 1913 s. 5916; G.S. 1923 s. 7147; M.S. 1927 s. 7147.

335.39 BY MAIL.

HISTORY. 1913 c. 272 s. 105; G.S. 1913 s. 5917; G.S. 1923 s. 7148; M.S. 1927 s. 7148.

Liability of bank to depositor. 25 MLR 941.

335.391 DEPOSIT IN POST-OFFICE; WHAT CONSTITUTES.

HISTORY. 1913 c. 272 s. 106; G.S. 1913 s. 5918; G.S. 1923 s. 7149; M.S. 1927 s. 7149.

335.40 NOTICE TO ANTECEDENT PARTY; TIME OF.

HISTORY. 1913 c. 272 s. 107; G.S. 1913 s. 5919; G.S. 1923 s. 7150; M.S. 1927 s. 7150.

335.41 WHERE TO BE SENT.

HISTORY. 1913 c. 272 s. 108; G.S. 1913 s. 5920; G.S. 1923 s. 7151; M.S. 1927 s. 7151.

335.42 WAIVER OF NOTICE.

HISTORY. 1913 c. 272 s. 109; G.S. 1913 s. 5921; G.S. 1923 s. 7152; M.S. 1927 s. 7152.

In an action against the endorsers of a bank's certificate of deposit, held, the jury could find that with full knowledge of the omission of due presentment and notice of dishonor the endorsers agreed to pay the obligation, and find an implied waiver of notice of dishonor. Johnson v Anderson, 172 M 574, 216 NW 237.

Presentment and notice of dishonor may be waived. Allen v Central Motors, Inc. 204 M 295, 283 NW 490.

Waiver of demand and notice by the endorser. 9 MLR 279.

Implied waiver by endorsement of renewal note. 22 MLR 266.

Running of the statute of limitations against the maker and the endorser of a demand note. 22 MLR 725.

335.421 WAIVER IN INSTRUMENT.

HISTORY. 1913 c. 272 s. 110; G.S. 1913 s. 5922; G.S. 1923 s. 7153; M.S. 1927 s. 7153.

The waiver in a note by makers, endorsers, and guarantors of presentment for payment and notice of non-payment and protest, is a part of the contract and binding upon endorsers who do not protect themselves by restricted endorsement. Lewis v Small, 172 M 405, 215 NW 785.

Waiver of demand, protest, and notice of protest; whether terms on the back of a note are "embodied in the instrument" within meaning of the negotiable instruments law. 7 MLR 344.

335.422 WAIVER OF PROTEST.

HISTORY. 1913 c. 272 s. 111; G.S. 1913 s. 5923; G.S. 1923 s. 7154; M.S. 1927 s. 7154.

335.423 NOTICE, WHEN DISPENSED WITH.

HISTORY. 1913 c. 272 s. 112; G.S. 1913 s. 5924; G.S. 1923 s. 7155; M.S. 1927 s. 7155.

Conflict of laws; moratory; vis major. 1 MLR 414.

335.424 DELAY, WHEN EXCUSED.

HISTORY. 1913 c. 272 s. 113; G.S. 1913 s. 5925; G.S. 1923 s. 7156; M.S. 1927 s. 7156.

Conflict of laws; moratory; vis major. 1 MLR 414.

335.43 NOTICE TO DRAWER, WHERE NOT REQUIRED.

HISTORY. 1913 c. 272 s. 114; G.S. 1913 s. 5926; G.S. 1923 s. 7157; M.S. 1927 s. 7157.

A note, though overdue when endorsed and transferred, became, as to the parties in that transaction, payable on demand, and it was incumbent upon the endorsees, to charge the endorsers with continued liability, to demand payment of the makers within a reasonable time, and, if not paid, to give notice thereof to the endorser within the time fixed by the negotiable instruments act. Torgerson v Ohnstad, 149 M 46, 182 NW 724.

335.431 NOTICE TO ENDORSER, WHERE NOT REQUIRED.

HISTORY. 1913 c. 272 s. 115; G.S. 1913 s. 5927; G.S. 1923 s. 7158; M.S. 1927 s. 7158.

Where there has been a presentment to and dishonor by the endorser himself, notice is not necessary. Allen v Central Motors, Inc., 204 M 295, 283 NW 490.

Conflict of laws as to presentment for payment and notice. 1 MLR 413.

335.432 NOTICE OF SUBSEQUENT DISHONOR.

HISTORY. 1913 c. 272 s. 116; G.S. 1913 s. 5928; G.S. 1923 s. 7159; M.S. 1927 s. 7159.

335.433 OMISSION TO GIVE NOTICE.

HISTORY. 1913 c. 272 s. 117; G.S. 1913 s. 5929; G.S. 1923 s. 7160; M.S. 1927 s. 7160.

335.44 PROTEST, WHEN MUST BE MADE.

HISTORY. 1913 c. 272 s. 118; G.S. 1913 s. 5930; G.S. 1923 s. 7161; M.S. 1927 s. 7161.

DISCHARGE OF NEGOTIABLE INSTRUMENTS

335.45 WHEN AND HOW DISCHARGED.

HISTORY. 1913 c. 272 s. 119; G.S. 1913 s. 5931; G.S. 1923 s. 7162; M.S. 1927 s. 7162.

In a suit brought to cancel a note, held, evidence justified finding that at the time of its execution, it was agreed between the maker and the payee that when the maker assigned and delivered a certain mortgage to the payee, the note should be surrendered. Stucke v Radke, 158 M 119, 196 NW 962.

A tender of money by the maker of a note, which was not his to tender and in which his interest at the most was only a lien, did not discharge the note; without the consent of the owner of the money, such a tender was not unconditional. Vernon Center State Bank v Mangelsen, 166 M 472, 208 NW 186.

In an action by the payee of a note against the endorser, the defense was that the payee was a party to an executed oral contract with the maker and third parties which released the maker; the jury found for defendant. Held, the evidence being conflicting, the verdict must stand. It was therefore a case where the endorser was discharged because the maker had been discharged. It was immaterial that the discharge was not in writing as it was not a case of renunciation, under Minnesota Statutes 1941, Section 335.46. McGlynn v Granstrom, 169 M 164, 210 NW 892.

The renewal of a note and mortgage does not necessarily, and under ordinary circumstances does not, discharge the first note and mortgage; and the writing of the word "renewed" upon the first note did not operate as a cancelation under Minnesota Statutes 1941, Section 335.45. Munson v Bensel, 169 M 434, 211 NW 838.

In an action on a note given for an automobile purchased on a conditional sales contract under which it was agreed that title to the automobile was to remain in the payee until fully paid for by furniture demanded of the maker, held, the evidence not showing that title to the furniture ever passed to the payee, the note was not thereby paid. Johnson v Peterson, 172 M 16, 214 NW 479.

The giving of a renewal note is a conditional payment of the old note, only, in the absence of an express agreement. First Nat'l Bank v Olson, 188 M 87, 246 NW 542, 247 NW 387.

The negotiable instruments act does not govern the negotiation of securities or mortgages given as part of the same transaction in which promissory notes are executed; so where defendant gave his note, secured by a mortgage, and thereafter conveyed the mortgaged land to a vendee who assumed and agreed to pay the mortgage, as between defendant and the vendee, defendant became the surety

and the vendee the principal; and when plaintiff, the assignee of the mortgagee, with knowledge of the conveyance and without the consent of defendant, extended the time of payment of the mortgage debt, he released defendant. Jefferson Co. Bank v Erickson, 188 M 354, 247 NW 245.

A promissory note given for an antecedent debt does not discharge the debt, unless expressly given and received as absolute payment; and the burden of proof is upon the party asserting the fact to show that it was so given and received, the presumption being to the contrary; this is also the rule where a third party joins in the execution of the new note. Taking a new mortgage is not payment of the old debt unless it was so intended. Hirleman v Nickels, 193 M 51, 258 NW 13.

An equitable assignment affected by the drawing of a draft and the conduct of the parties, was not nullified simply because the draft, which was but part of the proof, was surrendered for cancelation where a new draft was immediately issued in its place and for the same fund. Baird v Simonstad, 193 M 79, 258 NW 570.

In an action on a note, defendant's counter-claim for merchandise and money furnished plaintiff, was allowed. Kubat v Zika, 193 M 522, 259 NW 1.

Where mortgage bonds were paid in full by foreclosure sale for full amount of outstanding bonds so that mortgagor was no longer a debtor under bonds, mortgagor's subsequent purchase of certain outstanding bonds did not cancel bonds purchased even though purchase was made before redemption period expired, and mortgagor was entitled to participate in subsequent distribution of proceeds of trustee's sale of land. Olmstead Bank v Pesch, 218 M 428, 16 NW(2d) 470.

Assumption of mortgage by grantee; mortgagor's right of subrogation; effect of negotiable instruments law. 15 MLR 818.

Extension of time of payment by mortgagee to grantee as releasing mortgagor. 17 MLR 222.

Requirement that renunciation be written. 19 MLR 335.

Transfer of note to maker as collateral security as constituting a discharge. 20 MLR 308.

Surety defenses under the negotiable instruments law; extension of time to principal debtor as releasing accommodation maker. 24 MLR 864.

335.451 DISCHARGE FROM SECONDARY LIABILITY.

HISTORY. 1913 c. 272 s. 120; G.S. 1913 s. 5932; G.S. 1923 s. 7163; M.S. 1927 s. 7163.

An extension of a promissory note which will release a non-consenting surety must, like any other contract, be based upon a consideration; a promise by a debtor to pay a past-due debt is not a legal consideration. Thysell v Holm, 124 M 541, 145 NW 164.

The negotiable instruments law makes an accommodation maker primarily liable to a holder for value; in consequence he cannot avail himself of the defenses, such as extension of time of payment without his consent, which are available only to a surety. Vernon Center State Bank v Mangelsen, 166 M 472, 208 NW 186.

McGlynn v Granstrom, 169 M 164, 210 NW 892, see note under section 335.45.

Defendant endorsed a maker's note to plaintiff. The maker thereafter delivered to plaintiff a note he held against F, and in taking it plaintiff said "Let this note (the first) run, and when the F note is paid we will give you credit." In plaintiff's action against the endorser the defense was an extension of time without his consent, by the payee to the maker. Held, the mere expression of a willingness to let a note run pending the collection of another note, there being no agreement to forbear collection for any definite period, does not constitute a promise to extend time of payment. Lake St. State Bank v Hunter, 170 M 128, 212 NW 2.

Notes providing that guarantors consented to time of payment being extended or the note renewed without affecting their liability, were assigned by the payee to plaintiff; defendants, by a separate written instrument, guaranteed their payment when due to plaintiff; after maturity of the notes, the makers executed re-

newals to the payee which it, without the knowledge of defendants, transferred to plaintiff. Held, the guarantors' liability was not determined by the terms of the note and their stipulations could not be read into the separate and independent contract of guaranty unless they were set forth or were identified by reference; and that plaintiff's acceptance of the renewals which extended the time of payment for a definite period, constituted a definite agreement of extension of time of payment to the maturity of the notes which released the guarantors. Farmers & Mer. Nat'l Bank of Cannon Falls v Doffing, 171 M 53, 213 NW 375.

The mere taking of another note as collateral to the original note does not discharge a guarantor. Farmers & Mer. Nat. Bank of Cannon Falls v Doffing, 171 M 53, 213 NW 375.

A renewal note is not payment of the original, unless given and received as such. First State Bank of Odessa v First St. Bank of Correll, 172 M 223, 214 NW 781.

Plaintiff took over the business and assets of a bank; defendants, stockholders of the bank, August 25, 1925, guaranteed payment of all the bank's paper so taken by plaintiff, the guaranty by its terms not to be enforced until the commissioner of banks, in possession from that date, took such steps as he deemed advisable to enforce stockholders liability for any obligations of the bank, providing further that enforcement of the guaranty should in no event be postponed more than two years after date thereof. The commissioner commenced such proceedings, a 100 per cent assessment against the stockholders was made, a 30-day notice for payment given which expired July 21, 1927, and in October thereafter plaintiff began an action on the guaranty. Held, the contract was an absolute guaranty of payment, and plaintiff owed defendants no duty of diligence in making collections; that the two-year clause referred to the prior one regarding the acts of the commissioner, and that because of his acts in making the assessment and the giving of notice within the two years, plaintiff's cause of action accrued. Marquette Trust Co. v Doyle, 176 M 529, 224 NW 149.

One who makes an absolute guaranty of commercial paper is not relieved because the holder fails to exercise diligence in collecting from the maker or others. Marquette Trust Co. v Doyle, 176 M 529, 224 NW 149.

Evidence sustained finding that a maker's note to plaintiff, endorsed by defendant, was to secure plaintiff for his endorsing the maker's note, also endorsed by defendant, to a bank; and that subsequent notes by the maker to plaintiff were not received and accepted as payment of the note, therefore there was no intent on plaintiff's part to extend time of payment of the note which would release defendant. Malkin v Bearman, 177 M 325, 225 NW 113.

Jefferson County Bank v Erickson, 188 M 354, 247 NW 245, see note under section 334.45.

Plaintiff was the grantee and trustee for the bondholders in a trust deed securing bonds guaranteed by one J. L. and another. J. L. died, and after the one-year-and-six-months period allowed by Minnesota Statutes 1941, Section 525.411, for extension of time to file claims against his estate in the probate court, default occurred on the bonds, and plaintiff petitioned the court for an extension of time, and leave to file a claim on behalf of the bondholders against J. L.'s estate on his guaranty on the bonds, claiming it was admissible as a contingent claim. Held, the guaranty was a definite, unconditional contract to pay at maturity and there was nothing contingent as the bonds fixed the amount and the dates of maturity of principal and interest; and that plaintiff's claim, as a claim not due at the death of the guarantor, must have been presented to the probate court for allowance against the estate of the guarantor within the period allowed by section 525.411. State ex rel v Fosseen, 192 M 108, 255 NW 816.

The effect of a release of principal debtor by statute of limitations upon liability of guarantor. 3 MLR 535.

Payment of interest in advance after maturity as extension of time of payment and discharge of parties secondarily liable. 11 MLR 461.

Effect of demand for a receipt as a condition of payment in non-banking situations. 13 MLR 293.

Extension of time of payment by mortgagee to grantee as releasing mortgagor. 17 MLR 222.

Suretyship defenses under the negotiable instruments law; extension of time to principal debtor as releasing accommodation maker. 24 MLR 864.

335.452 RIGHT OF PARTY WHO DISCHARGES INSTRUMENT.

HISTORY. 1913 c. 272 s. 121; G.S. 1913 s. 5933; G.S. 1923 s. 7164; M.S. 1927 s. 7164.

335.46 RENUNCIATION OF RIGHTS BY HOLDER.

HISTORY. 1913 c. 272 s. 122; G.S. 1913 s. 5934; G.S. 1923 s. 7165; M.S. 1927 s. 7165.

The renunciation required by this section to be in writing applies only to the unilateral act of the holder, usually if not always without consideration, whereby he expresses the intention of abandoning his rights on the instrument or against one or more parties thereto. McGlynn v Granstrom, 169 M 164, 210 NW 892.

Defendant endorsed a maker's note to plaintiff; thereafter from the referee in bankruptcy proceedings against the maker, plaintiff received a dividend check for which it gave a receipt that it was 25 per cent of "and in full settlement of" its claim allowed in the composition proceedings. In an action for the notes amount less the dividend check, held, confirmation of a composition in bankruptcy discharges the bankrupt from his debts by operation of law by preventing a remedy against him and leaving the debt as an unenforceable legal obligation, but it does not affect the liability of the bankrupt's endorsers; but that the receipt was a settlement of plaintiff's claim, a renunciation of its rights under the instrument which discharged all parties. Northern Drug Co. v Abbett, 205 M 65, 284 NW 881.

Requirement that renunciation be written. 19 MLR 335.

335.47 CANCELATION BY MISTAKE; BURDEN OF PROOF.

HISTORY. 1913 c. 272 s. 123; G.S. 1913 s. 5935; G.S. 1923 s. 7166; M.S. 1927 s. 7166.

335.48 ALTERATION OF INSTRUMENT; EFFECT OF.

HISTORY. 1913 c. 272 s. 124; G.S. 1913 s. 5936; G.S. 1923 s. 7167; M.S. 1927 s. 7167.

K and B, president and secretary of a company, executed a note payable to the order of "ourselves" by signing their individual names upon the face of the note and endorsing them upon the back thereof; subsequently K changed the signatures on the face and the back by inserting above his name with a rubber stamp, "K-B Mercantile Co. per" and adding after his name, "Pres." and after B's name, "Sec." so that the changed signatures read: "K-B Mercantile Co. per K, Pres., B, Sec." and purported to be the note of the company endorsed by its officers instead of the individuals. Thereafter it was negotiated to a holder in due course. Held, under Minnesota Statutes 1941, Section 335.48, B was liable upon the note according to its original tenor, notwithstanding the alteration. Public Bank of New York City v Burchard, 137 M 171, 160 NW 667.

Evidence sustained finding that the words "without recourse" above the payee's endorsement of a note were erased and the words "demand and protest waived" substituted; that such change was a material alteration under Minnesota Statutes 1941, Section 335.481; and that under Minnesota Statutes 1941, Section 335.48, it avoided the instrument as to plaintiff who purchased under such circumstances that it was charged with the effect of the alteration. Waltham State Bank v Tuttle, 160 M 250, 199 NW 970.

Where one of several endorsers of a promissory note, as surety, after endorsing the note, intrusts it to the maker, and the maker, before delivery to the payee, permits such endorser to mark his name off by drawing a pen through it, without the knowledge or consent of the other endorsers, there is not such an alteration of the instrument as to discharge the other endorsers where the payee had no notice or knowledge, when he took the note, of the circumstances under

which the name was so marked off. Healy-Owen-Hartzell Co. v Montevideo F. & M. Elev. Co. 165 M 330, 206 NW 646.

Where an erasure of the name of one of several endorsers of a note is apparent upon the back of the note, the legal presumption is that the erasure was made prior to the delivery of the note. Healy-Owen-Hartzell Co. v Montevideo F. & M. Elev. Co. 165 M 330, 206 NW 646.

The burden of proof that a material alteration, apparent upon the face of a note, was made after delivery is upon the defendant asserting it. Schlesinger v Erickson, 167 M 507, 209 NW 632.

Material alteration of the paper destroys the property by avoiding the instrument, subject only to the exception of Minnesota Statutes 1941, Section 335.48. First Trust Co. of St. Paul v Matheson, 187 M 473, 246 NW 1.

Where plaintiff's claim against defendant was not liquidated and he accepted and cashed a check which provided on its face, "This check is on (sic) payment of items as per statement following. Endorsement of payee will constitute a receipt in full," his acceptance and cashing of the check amounted to an accord and satisfaction, and he could not, by striking out the words "in full," change the offer or make the payment one on account. Ball v Thornton, 193 M 469, 258 NW 831.

A chattel mortgage is not a negotiable instrument and the question of its alteration is not controlled by the negotiable instruments law. Hannah v State Bank of Wood Lake, 195 M 54, 261 NW 583.

Alteration of instruments. 9 MLR 569.

Holder in due course may recover according to original tenor of instrument. 12 MLR 287.

Prophesy of rules to be adopted generally in signature in blank for identification. 13 MLR 314.

Alteration of interest provision contained in separate agreement. 15 MLR 234.

335.481 WHAT CONSTITUTES A MATERIAL ALTERATION.

HISTORY. 1913 c. 272 s. 125; G.S. 1913 s. 5937; G.S. 1923 s. 7168; M.S. 1927 s. 7168.

Defendant executed notes to a company for machines which the company refused to deliver without a surety on the notes; plaintiff, interested in a commission on the sale, without defendant's knowledge, to give the notes additional credit, signed beneath defendant's signature. Before maturity plaintiff paid money or its equivalent to a collecting agent for the company who delivered the notes to plaintiff. Held, plaintiff's signing, under the circumstances, was not such a material alteration as discharged defendant, and plaintiff was entitled to recover the amount he paid for the notes subject to such defenses as the defendant had against the company. Kiefer v Tolbert, 128 M 519, 151 NW 529.

Alteration of instruments; original debt sufficient consideration to support the renewal of a void note. 9 MLR 569.

Holder in due course may recover according to original tenor of instrument. 12 MLR 287.

BILLS OF EXCHANGE; FORM; INTERPRETATION

335.49 BILL OF EXCHANGE.

HISTORY. 1913 c. 272 s. 126: G.S. 1913 s. 5938; G.S. 1923 s. 7169; M.S. 1927 s. 7169.

Defendant drew a general draft, payable to a bank, on a live stock company for cattle he shipped to it for sale. The draft was received by the company after it had sold the cattle and applied the proceeds on defendant's account, and after plaintiff, in an action against defendant on a note, had served a garnishee summons on it. When the draft was drawn the company had no funds in its hands belonging to defendant, and it had no knowledge or notice of the draft until after the summons. Held, the draft not being drawn on a particular fund, did not create an equitable or other assignment of prospective funds to come into the

company's hands in the future, or create any liability on the part of the company until acceptance; parol evidence that the parties intended the draft as against a particular fund was inadmissible; there was no implied acceptance of the draft by the company in receiving and selling the cattle; and that plaintiff's lien was paramount to that of the bank. Live Stock State Bank v Hise, 150 M 301, 185 NW 498.

A draft or bill of exchange, not drawn against a specific fund in the hands of the drawee, does not constitute an assignment of general funds in his hands, and the drawee is not liable thereon until he accepts the same. Live Stock State Bank v Hise, 150 M 301, 185 NW 498.

A check is a bill of exchange within the definition of the negotiable instruments act. Miller v Farmers State Bank of Arco, 165 M 339, 206 NW 930.

The draft was an inland bill of exchange, payable on demand; and where its holder negligently failed to present it for payment within a reasonable time, there being funds for its payment, and thereafter the drawer failed, the holder was held to suffer the loss; and where it had been sent by a debtor to his creditor on account, such negligence on the part of the creditor made the draft his own and operated as a payment. Commercial Inv. Trust v Lundgren-Wittensten Co. 173 M 83, 216 NW 531.

A check is not money within meaning of sections 246.15, 246.16. OAG Jan. 5, 1935 (349h).

335.491 NOT AN ASSIGNMENT OF FUNDS.

HISTORY. 1913 c. 272 s. 127; G.S. 1913 s. 5939; G.S. 1923 s. 7170; M.S. 1927 s. 7170.

The rule that, before acceptance, a draft payable generally and not out of any particular fund, will not operate as an assignment, is subject to the exception that, if the facts and circumstances show clearly that the parties intended that it should so operate and that the drawee had notice of that fact and consented, the law will give to the transaction the effect the parties intended it should have. Carlson v Stafford, 166 M 481, 208 NW 413.

Defendant sold and agreed to deliver certain forest products to G; to secure payment to J, of a team of horses needed by defendant, G agreed that defendant could draw an order on him, to J, and that he would pay it out of moneys to become due defendant under the timber contract, whereupon J made the sale and took the order. The order was in the form of a bill of exchange but was not accepted by G in writing. Defendant thereafter delivered a shipment of a carload of railroad ties to G and was credited with its amount, after which G was served with a garnishee summons. Held, the transaction between defendant, G, and J, operated as an equitable assignment to J of G's indebtedness to defendant, in the amount represented by the order; and that J, not defendant, was the creditor of G. Carlson v Stafford, 166 M 481, 208 NW 413.

Defendant was financed by a North Dakota bank in buying a carload of cattle he shipped for sale to a South St. Paul live stock broker, under an agreement with the bank by which he drew a draft on the stock broker to the bank, against which credit he drew checks on the bank to farmers for cattle purchased from them; the bank sent the draft to a St. Paul bank whose messenger, when he presented it to the broker for payment on Saturday, was told that the cattle had not yet arrived but that when they did, the draft would be paid. The stock arrived the following day, Sunday, but on Monday morning before the draft was again presented, plaintiff in an action against defendant on a note, had garnished the broker. Held, the facts showed a case of equitable assignment by defendant, as drawer of the draft, to the bank, the payee, of the draft's amount of the proceeds of the shipment. Baird v Simonstad, 193 M 79, 258 NW 570.

This section, providing that "a bill of itself does not operate as an assignment of the funds in the hands of the drawee", does not affect the capacity of a bill of exchange, plus other sufficiently potent circumstances, to create an equitable assignment of funds in the hands of the drawee. Baird v Simonstad, 193 M 79, 258 NW 570.

Death of a drawer of a check. 14 MLR 127.

When does a check operate as an equitable assignment. 14 MLR 158.

335.492 ADDRESS OF BILL.

HISTORY. 1913 c. 272 s. 128; G.S. 1913 s. 5940; G.S. 1923 s. 7171; M.S. 1927 s. 7171.

335.50 INLAND AND FOREIGN BILL.

HISTORY. 1913 c. 272 s. 129; G.S. 1913 s. 5941; G.S. 1923 s. 7172; M.S. 1927 s. 7172.

Commercial Inv. Trust v Lindgren-Wittensten Co. 173 M 83, 216 NW 531, see note under section 335.49.

335.501 WHEN BILL MAY BE TREATED AS PROMISSORY NOTE.

HISTORY. 1913 c. 272 s. 130; G.S. 1913 s. 5942; G.S. 1923 s. 7173; M.S. 1927 s. 7173.

Rights of remitters and other owners not within the tenor of negotiable instruments. 12 MLR 587.

335.502 REFEREE IN CASE OF NEED.

HISTORY. 1913 c. 272 s. 131; G.S. 1913 s. 5943; G.S. 1923 s. 7174; M.S. 1927 s. 7174.

Acceptance of bills by conduct. 12 MLR 133.

ACCEPTANCES

335.51 ACCEPTANCE, HOW MADE.

HISTORY. 1913 c. 272 s. 132; G.S. 1913 s. 5944; G.S. 1923 s. 7175; M.S. 1927 s. 7175.

The general rule is that, before acceptance, a draft payable generally and not out of any particular fund, will not operate as an assignment; but, if a consignee receives and sells goods for the consignor, with notice that a draft drawn upon him by the consignor was intended to give the payee an interest in and the right to receive part of the proceeds of the sale, he becomes liable to the payee for such proceeds. Under such circumstances, sections 335.491 and 335.51, providing that the drawee in a bill of exchange is not liable to the payee unless and until he accepts the bill in writing, do not defeat a recovery by the payee as the acceptance of the consignment is the equivalent of a promise to accept the bill, which may not then be repudiated by the drawee. He receives the proceeds of sale, for the use of the payee and is liable to him as for money had and received. First Nat'l Bank v Rogers-Amundson-Flynn Co. 151 M 243, 186 NW 575.

The retention by the drawee bank of a check for more than 24 hours after its presentment, constitutes acceptance. Miller v Farmers State Bank of Arco, 165 M 339, 206 NW 930.

Carlson v Stafford, 166 M 481, 208 NW 413, see note under section 335.491.

Acceptance of bills by conduct. 12 MLR 131.

335.511 HOLDER MAY REQUIRE ACCEPTANCE IN WRITING.

HISTORY. 1913 c. 272 s. 133; G.S. 1913 s. 5945; G.S. 1923 s. 7176; M.S. 1927 s. 7176.

Acceptance of bills by conduct. 12 MLR 131.

335.512 ACCEPTANCE BY SEPARATE INSTRUMENT.

HISTORY. 1913 c. 272 s. 134; G.S. 1913 s. 5946; G.S. 1923 s. 7177; M.S. 1927 s. 7177.

Conflict of laws applicable to bills and notes. 1 MLR 137.

Acceptance of bills by conduct. 12 MLR 137.

335.513 PROMISE IN WRITING.

HISTORY. 1913 c. 272 s. 135; G.S. 1913 s. 5947; G.S. 1923 s. 7178; M.S. 1927 s. 7178.

Conflict of laws applicable to bills and notes. 1 MLR 117.

Acceptance of bills by conduct. 12 MLR 138.

335.52 TIME ALLOWED FOR ACCEPTANCE.

HISTORY. 1913 c. 272 s. 136; G.S. 1913 s. 5948; G.S. 1923 s. 7179; M.S. 1927 s. 7179.

Under the provisions of the negotiable instruments act the retention by the drawee bank of a check for more than 24 hours after its presentment, constitutes acceptance. Miller v Farmers State Bank of Arco, 165 M 339, 206 NW 930.

335.53 REFUSAL OR FAILURE TO RETURN.

HISTORY. 1913 c. 272 s. 137; G.S. 1913 s. 5949; G.S. 1923 s. 7180; M.S. 1927 s. 7180.

Miller v Farmers State Bank of Arco, 165 M 339, 206 NW 930, see note under section 334.52.

Acceptance by retention of check by drawee. 10 MLR 529.

Acceptance of bills by conduct. 12 MLR 131.

Acceptance; retention of a forged instrument. 22 MLR 879.

335.531 ACCEPTANCE BEFORE SIGNING.

HISTORY. 1913 c. 272 s. 138; G.S. 1913 s. 5950; G.S. 1923 s. 7181; M.S. 1927 s. 7181.

335.532 KINDS OF ACCEPTANCES.

HISTORY. 1913 c. 272 s. 139; G.S. 1913 s. 5951; G.S. 1923 s. 7182; M.S. 1927 s. 7182.

335.533 WHAT CONSTITUTES A GENERAL ACCEPTANCE.

HISTORY. 1913 c. 272 s. 140; G.S. 1913 s. 5952; G.S. 1923 s. 7183; M.S. 1927 s. 7183.

335.54 QUALIFIED ACCEPTANCE.

HISTORY. 1913 c. 272 s. 141; G.S. 1913 s. 5953; G.S. 1923 s. 7184; M.S. 1927 s. 7184.

335.541 RIGHTS OF PARTIES AS TO QUALIFIED ACCEPTANCE.

HISTORY. 1913 c. 272 s. 142; G.S. 1913 s. 5954; G.S. 1923 s. 7185; M.S. 1927 s. 7185.

PRESENTMENT FOR ACCEPTANCE.

335.55 PRESENTMENT FOR ACCEPTANCE; WHERE MADE.

HISTORY. 1913 c. 272 s. 143; G.S. 1913 s. 5955; G.S. 1923 s. 7186; M.S. 1927 s. 7186.

Conflict of laws applicable to bills and notes. 1 MLR 405.

335.551 EFFECT OF FAILURE TO PRESENT OR NEGOTIATE.

HISTORY. 1913 c. 272 s. 144; G.S. 1913 s. 5956; G.S. 1923 s. 7187; M.S. 1927 s. 7187.

Conflict of laws applicable to bills and notes. 1 MLR 406.

335.56 PRESENTMENT, WHEN AND WHERE MADE.

HISTORY. 1913 c. 272 s. 145; G.S. 1913 s. 5957; G.S. 1923 s. 7188; M.S. 1927 s. 7188.

335.561 ON WHAT DAYS PRESENTMENT MAY BE MADE.

HISTORY. 1913 c. 272 s. 146; G.S. 1913 s. 5958; G.S. 1923 s. 7189; M.S. 1927 s. 7189.

335.57 DELAY, WHEN EXCUSABLE.

HISTORY. 1913 c. 272 s. 147; G.S. 1913 s. 5959; G.S. 1923 s. 7190; M.S. 1927 s. 7190.

Conflict of laws; moratory; doctrine of vis major. 1 MLR 414.

335.571 WHERE PRESENTMENT IS EXCUSED.

HISTORY. 1913 c. 272 s. 148; G.S. 1913 s. 5960; G.S. 1923 s. 7191; M.S. 1927 s. 7191.

Conflict of laws; moratory; doctrine of vis major. 1 MLR 414.

335.58 WHEN DISHONORED.

HISTORY. 1913 c. 272 s. 149; G.S. 1913 s. 5961; G.S. 1923 s. 7192; M.S. 1927 s. 7192.

335.581 RECOURSE, WHERE LOST.

HISTORY. 1913 c. 272 s. 150; G.S. 1913 s. 5962; G.S. 1923 s. 7193; M.S. 1927 s. 7193.

Acceptance of bills by conduct. 12 MLR 133.

Acceptance; retention of a forged instrument. 22 MLR 879.

335.582 WHEN RECOURSE ACCRUES.

HISTORY. 1913 c. 272 s. 151; G.S. 1913 s. 5963; G.S. 1923 s. 7194; M.S. 1927 s. 7194.

PROTEST.

335.59 PROTEST, WHEN NECESSARY.

HISTORY. 1913 c. 272 s. 152; G.S. 1913 s. 5964; G.S. 1923 s. 7195; M.S. 1927 s. 7195.

335.591 SPECIFICATION OF PROTEST.

HISTORY. 1913 c. 272 s. 153; G.S. 1913 s. 5965; G.S. 1923 s. 7196; M.S. 1927 s. 7196.

335.592 PROTEST; BY WHOM MADE.

HISTORY. 1913 c. 272 s. 154; G.S. 1913 s. 5966; G.S. 1923 s. 7197; M.S. 1927 s. 7197.

335.593 PROTEST; WHEN TO BE MADE.

HISTORY. 1913 c. 272 s. 155; G.S. 1913 s. 5967; G.S. 1923 s. 7198; M.S. 1927 s. 7198.

335.594 PROTEST; WHERE MADE.

HISTORY. 1913 c. 272 s. 156; G.S. 1913 s. 5968; G.S. 1923 s. 7199; M.S. 1927 s. 7199.

335.60 PROTEST FOR NON-ACCEPTANCE AND NON-PAYMENT.

HISTORY. 1913 c. 272 s. 157; G.S. 1913 s. 5969; G.S. 1923 s. 7200; M.S. 1927 s. 7200.

335.61 PROTEST BEFORE MATURITY WHERE ACCEPTOR A BANKRUPT.

HISTORY. 1913 c. 272 s. 158; G.S. 1913 s. 5970; G.S. 1923 s. 7201; M.S. 1927 s. 7201.

335.62 WHEN PROTEST DISPENSED WITH.

HISTORY. 1913 c. 272 s. 159; G.S. 1913 s. 5971; G.S. 1923 s. 7202; M.S. 1927 s. 7202.

Plaintiff, a farmer living seven and one-half miles from Austin, about 4:00 P. M. on a Tuesday, received a check from defendant drawn on an Austin bank. During the rest of the week until Sunday he stacked corn fodder, and on Monday following, about 4:00 P. M. he deposited the check to the credit of his account in another bank in Austin which could not present it as the following day the drawee bank failed to open. Defendant had more than sufficient funds on deposit to pay for the check. Plaintiff owned an automobile and there was a good road from his home to Austin. Held, when the drawer and holder do not live in the same city, what is a reasonable time for presentment is a question of fact under all the circumstances of the particular case; and sustained a verdict for plaintiff. Russell v Buxton, 181 M 104, 231 NW 789.

Conflict of law; moratory; doctrine of vis. major. 1 MLR 414.

335.621 LOST BILL.

HISTORY. 1913 c. 272 s. 160; G.S. 1913 s. 5972; G.S. 1923 s. 7203; M.S. 1927 s. 7203.

ACCEPTANCE FOR HONOR.

335.63 ACCEPTANCE SUPRA PROTEST FOR HONOR.

HISTORY. 1913 c. 272 s. 161; G.S. 1913 s. 5973; G.S. 1923 s. 7204; M.S. 1927 s. 7204.

335.631 ACCEPTANCE FOR HONOR TO BE IN WRITING.

HISTORY. 1913 c. 272 s. 162; G.S. 1913 s. 5974; G.S. 1923 s. 7205; M.S. 1927 s. 7205.

335.632 FOR DRAWER, WHEN.

HISTORY. 1913 c. 272 s. 163; G.S. 1913 s. 5975; G.S. 1923 s. 7206; M.R. 1927 s. 7206.

335.633 LIABILITY OF ACCEPTOR FOR HONOR.

HISTORY. 1913 c. 272 s. 164; G.S. 1913 s. 5976; G.S. 1923 s. 7207; M.S. 1927 s. 7207.

335.634 ENGAGEMENT OF ACCEPTOR FOR HONOR.

HISTORY. 1913 c. 272 s. 165; G.S. 1913 s. 5977; G.S. 1923 s. 7208; M.S. 1927 s. 7208.

335.64 BILL PAYABLE AFTER SIGHT; ACCEPTED FOR HONOR.

HISTORY. 1913 c. 272 s. 166; G.S. 1913 s. 5978; G.S. 1923 s. 7209; M.S. 1927 s. 7209.

335.641 ACCEPTANCE OF DISHONORED BILL.

HISTORY. 1913 c. 272 s. 167; G.S. 1913 s. 5979; G.S. 1923 s. 7210; M.S. 1927 s. 7210.

335.65 PRESENTMENT TO ACCEPTOR; HOW MADE.

HISTORY. 1913 c. 272 s. 168; G.S. 1913 s. 5980; G.S. 1923 s. 7211; M.S. 1927 s. 7211.

335.651 DELAY; SECTION 335.31 APPLIES.

HISTORY. 1913 c. 272 s. 169; G.S. 1913 s. 5981; G.S. 1923 s. 7212; M.S. 1927 s. 7212.

335.66 DISHONOR OF BILL BY ACCEPTOR FOR HONOR.

HISTORY. 1913 c. 272 s. 170; G.S. 1913 s. 5982; G.S. 1923 s. 7213; M.S. 1927 s. 7213.

PAYMENT FOR HONOR.

335.67 SUPRA PROTEST.

HISTORY. 1913 c. 272 s. 171; G.S. 1913 s. 5983; G.S. 1923 s. 7214; M.S. 1927 s. 7214.

335.671 NOTARIAL ACT OF HONOR WHERE NECESSARY.

HISTORY. 1913 c. 272 s. 172; G.S. 1913 s. 5984; G.S. 1923 s. 7215; M.S. 1927 s. 7215.

335.672 FOUNDATION OF NOTARIAL ACT.

HISTORY. 1913 c. 272 s. 173; G.S. 1913 s. 5985; G.S. 1923 s. 7216; M.S. 1927 s. 7216.

335.673 PREFERENCE OF PARTIES OFFERING TO PAY FOR HONOR.

HISTORY. 1913 c. 272 s. 174; G.S. 1913 s. 5986; G.S. 1923 s. 7217; M.S. 1927 s. 7217.

335.674 PAYER FOR HONOR ENTITLED TO SUBROGATION.

HISTORY. 1913 c. 272 s. 175; G.S. 1913 s. 5987; G.S. 1923 s. 7218; M.S. 1927 s. 7218.

335.68 HOLDER'S REFUSAL, SUPRA PROTEST.

HISTORY. 1913 c. 272 s. 176; G.S. 1913 s. 5988; G.S. 1923 s. 7219; M.S. 1927 s. 7219.

335.69 RIGHTS OF PAYER FOR HONOR.

HISTORY. 1913 c. 272 s. 177; G.S. 1913 s. 5989; G.S. 1923 s. 7220; M.S. 1927 s. 7220.

BILLS IN A SET.

335.70 BILLS IN SETS CONSTITUTE ONE BILL.

HISTORY. 1913 c. 272 s. 178; G.S. 1913 s. 5990; G.S. 1923 s. 7221; M.S. 1927 s. 7221.

335.701 RIGHTS OF HOLDERS WHERE PARTS ARE NEGOTIATED.

HISTORY. 1913 c. 272 s. 179; G.S. 1913 s. 5991; G.S. 1923 s. 7222; M.S. 1927, s. 7222.

335.702 LIABILITY OF HOLDER WHO ENDORSES TWO OR MORE PARTS OF A SET TO DIFFERENT PERSONS.

HISTORY. 1913 c. 272 s. 180; G.S. 1913 s. 5992; G.S. 1923 s. 7223; M.S. 1927 s. 7223.

335.703 ACCEPTANCE ON ANY PART.

HISTORY. 1913 c. 272 s. 181; G.S. 1913 s. 5993; G.S. 1923 s. 7224; M.S. 1927 s. 7224.

335.704 LIABILITY OF ACCEPTOR IN PAYING PART.

HISTORY. 1913 c. 272 s. 182; G.S. 1913 s. 5994; G.S. 1923 s. 7225; M.S. 1927 s. 7225.

335.71 EFFECT OF DISCHARGING ONE OF SET.

HISTORY. 1913 c. 272 s. 183; G.S. 1913 s. 5995; G.S. 1923 s. 7226; M.S. 1927 s. 7226.

PROMISSORY NOTES AND CHECKS.

335.72 PROMISSORY NOTE.

HISTORY. 1913 c. 272 s. 184; G.S. 1913 s. 5996; G.S. 1923 s. 7227; M.S. 1927 s. 7227.

H mortgaged property to defendant, negotiating the mortgage through a real estate broker; plaintiff bought the property subject to the mortgage, and paid interest instalments as they accrued, to the broker who remitted them to defendant. There was a renewal of the mortgage which extension agreement the broker retained. Subsequently plaintiff paid the principal to the broker who converted it to his own use. At no time did the broker have possession of the original note, or mortgage. In plaintiff's action to restrain the foreclosure of the mortgage the question was whether the broker was authorized to collect the principal for defendant. Held, a written agreement for the extension of a loan secured by a mortgage on real estate does not supplant the original note as the primary evidence of the debt to such extent that its possession by a broker, nothing more appearing, is any evidence of authority to collect on behalf of the mortgagee. Anderson v Goetze, 176 M 399, 223 NW 459.

Defendants entered into a contract with a receiver for the purchase of land; in closing the transaction they gave their note for the amount remaining due, to a bank, of which the receiver was the vice president and the managing head. Subsequently, the contract was canceled by the receiver and defendants leased the land from him. In an action on the note, the bank was held to have understood what the receiver did; and that the cancelation of the contract released defendants from liability on the note. Moorhead Inv. v Carlson, 177 M 174, 224 NW 842.

In an action on a note, evidence as to a claimed extension of time was held insufficient to warrant submission of that issue to the jury. Northwestern Nat'l Bank v Chas. H. Wood Co. 195 M 93, 262 NW 161.

Acceptance of bills by conduct. 12 MLR 133.

Notes payable to the order of the maker. 27 MLR 861.

335.73 CHECK IS BILL OF EXCHANGE.

HISTORY. 1913 c. 272 s. 185; G.S. 1913 s. 5997; G.S. 1923 s. 7228; M.S. 1927 s. 7228.

When, by mutual consent, a bank not a member of a clearing house association, is represented at the clearing house by a member bank and thus gains admission to the clearing house and enjoys its advantages, a presentment of its checks through the clearing house is a sufficient presentment to charge it with the consequences of a dishonor of one of its depositor's checks, upon the principles of the law of agency. Geibe v Chicago Lake State Bank, 160 M 89, 199 NW 514.

J sent defendant a bill for $717.00 for materials he furnished for defendant's building; two later items were claimed by J aggregating $19.09 which made his claim total $736.09. Defendant gave J a check of $717.00 on which was written "Paid in full", did not concede the $19.09 claim, but said he would pay it if he owed it. In an action to foreclose a mechanic's lien defendant claimed an accord and satisfaction. Held, there was no settlement or compromise as to the $717.00 bill as it was concededly owing, nor of the $19.09 claim as it was left unpaid and unsettled; there was thus no settlement or compromise of the disputed claim or a consideration for it, and the notation on the check and its retention by J did not make an accord and satisfaction. Thompson Yards, Inc. v Jastrow, 163 M 329, 203 NW 960.

A check is a bill of exchange within the definition of the negotiable instruments act. Miller v Farmers State Bank of Arco, 165 M 339, 206 NW 930.

In an action to recover the amount of a check drawn by plaintiff on one bank, and deposited in another which credited it to plaintiff's account, but charged it back to plaintiff on finding the drawee bank insolvent and unable to pay, plaintiff claimed that the payee was negligent in failing to collect; defendant claimed that the drawee was not able to pay at any time after the check reached the payee, and for that reason its negligence had not resulted in any loss to plaintiff. Held, evidence sustained verdict for defendant. Old Colony Life Ins. Co. v American Sav. & T. Co. 165 M 417, 206 NW 725.

F delivered his check to defendant for an amount owing, with a request that defendant hold it until notified by F that there were sufficient funds in the bank to meet it, after which plaintiff served a garnishee summons on F. Held, no person shall be adjudged a garnishee by reason of any liability incurred as maker or otherwise upon any check or bill of exchange; and that the check having been unconditionally delivered, parol evidence was inadmissible to show an oral agreement postponing time of presentment for payment as a condition qualifying the operation of the check. Kullberg Mfg. Co. v Smith, 173 M 504, 216 NW 249, 218 NW 99.

A check is not money within meaning of sections 246.15, 246.16. OAG Jan. 5, 1935 (349h).

A postdated check, even if issued on a bank without funds to meet it, does not warrant criminal prosecution. OAG Dec. 5, 1944 (133b-43).

Statute of frauds; check; payment. 2 MLR 474.

Identification of the holder and tender of receipt on the counter-presentation of checks. 13 MLR 281.

335.74 WITHIN WHAT TIME A CHECK MUST BE PRESENTED.

HISTORY. 1913 c. 272 s. 186; G.S. 1913 s. 5998; G.S. 1923 s. 7229; M.S. 1927 s. 7229.

Plaintiff sent a check drawn on a Chicago bank to defendant for collection. Defendant had no correspondent bank in Chicago, which plaintiff knew, and forwarded the check to Chicago through a Mankato bank; before presented for payment by that bank's Chicago correspondent, the payee bank had closed its doors. Had it been presented a day earlier it would have been paid. It was

customary for Minneapolis banks without Chicago correspondents to forward Chicago checks for collection through central Minneapolis banks. Had this been done in the customary way, no time would have been gained. Held, no liability arose from defendant's forwarding the check from Minneapolis to Mankato where no time was lost thereby. Richardson Grain Sep. Co. v East Hennepin St. Bank, 143 M 420, 174 NW 415.

A check is intended for payment, not for circulation. A collecting bank must forward out-of-town checks for collection within a reasonable time and by a reasonably direct route. The usual commercial route is sufficient. The customary speed of banks similarly situated is all the check holder may expect. Richardson Grain Sep. Co. v East Hennepin St. Bank, 143 M 420, 174 NW 415.

A school teacher received in exchange for school orders issued to her for wages, two checks drawn by the district treasurer on a bank located four and a half miles from the place where she taught, and five and a half miles from where she boarded. She received one on Monday, the tenth, and the other on the 11th. She taught all the days of the week except the 14th which was Good Friday when the bank was not open for business. When not teaching she lived with her parents in the village where the bank was located. On Saturday morning, the 15th, she learned that the bank was closed, that day, because of insolvency, and that she could not cash her checks. Held, whether presentment of the checks was made within a reasonable time was a question for the jury. Finding sustained for plaintiff. Peterson v School District No. 14, 162 M 357, 203 NW 46.

Defendant sent plaintiff a draft on an account, which plaintiff held 12 days awaiting a reply from defendant to its letter concerning its claim for attorney's fees in connection with the account during which time plaintiff could have had the money by presenting the draft; after which time the drawer, not having sufficient funds with the drawee, suspended payment of the draft. Held, the circumstances and facts supported the conclusion that plaintiff was guilty of negligence, and that such negligence was the cause of the loss occasioned by the closing of the bank; and that such negligence made the draft his own and operated as a payment. Commercial Inv. Trust v Lundgren-Wittensten Co. 133 M 83, 216 NW 531.

Defendant drew her check on the First National Bank at Big Lake, to plaintiff in Minneapolis, which received it on a Saturday, July 9th. Unknown to defendant, the liabilities and assets of that bank, including her more than sufficient deposit, had been taken over by the Farmers State Bank at Big Lake. On the 13th plaintiff deposited the check for collection with the Minneapolis Mercantile State Bank which on the 14th sent it to the Federal Reserve Bank. That bank, on the 15th, returned it to the Mercantile bank because the Federal bank collected only from national banks. The Mercantile bank on the 16th delivered the check to the Northwestern National Bank for collection which sent it to the Farmers State Bank at Big Lake where it was received on the 18th and retained untitl the 23rd, when that bank was closed by the bank commissioner. In an action on the check, held; plaintiff, and plaintiff's agents for collection, exercised due diligence in presenting the check for payment; whatever delay occurred by sending it to the Federal Reserve Bank was due to defendant's error; there was no negligence in th Northwestern Bank's sending it to the Farmers State Bank for there was no other bank at Big Lake; and that defendant was not released from liability as the delay and default was that of her agent, the custodian of her funds who owed her the duty of promptly paying her check. Joerns Bros. Mfg. Co. v Burns, 173 M 389, 217 NW 506.

An agreement that a check should not be presented for payment until the drawer should notify the payee that a deposit had been made to meet it, may amount to a waiver by the drawer of prompt presentment; and during the period of delay the drawer is liable upon the check as a negotiable instrument, and is not subject to garnishment. Kullberg Mfg. Co. v Smith, 173 M 504, 216 NW 249, 218 NW 99.

Plaintiff, a farmer living seven and one-half miles from Austin, about 4:00 P. M. on a Tuesday, received a check from defendant drawn on an Austin bank. During the rest of the week until Sunday he stacked corn fodder, and on Monday following, about 4:00 P. M. he deposited the check to the credit of his account in another bank in Austin, which could not present it as the following day the

drawee bank failed to open. Defendant had more than sufficient funds on deposit to pay for the check. Plaintiff owned an automobile and there was a good road from his home to Austin. Held, when the drawer and holder do not live in the same city, what is a reasonable time for presentment is a question of fact under all the circumstances of the particular case; and sustained a verdict for plaintiff. Russell v Buxton, 181 M 104, 231 NW 789.

Plaintiff, at the village of Holdingford, received defendant's check drawn on a bank in Hillman, 40 miles away. Though plaintiff also did business with a bank at Holdingford, it immediately upon receipt of the check, sent it for collection to its depository, a bank in Albany which forwarded it for clearance and collection to its correspondent, the First National Bank of Minneapolis, which in the usual course of business forwarded it to the Hillman bank, the only one there, which stamped it paid and charged it to defendant's account. It paid no money, but instead forwarded its draft to cover the check and other items to the First National of Minneapolis. Before the draft was received, the Hillman bank was closed for liquidation. Held, plaintiff and its agents (the depository bank and its correspondent) used due diligence in presenting the check; under Minnesota Statutes 1941, Section 335.75, the correspondent was authorized to direct the drawee bank to remit by exchange and could charge the check back; and that there was no payment of the check, which was the fault of defendant's agent, the Hillman bank. Holdingford Milling Co. v Hillman F. Co-op. Cr'y, 181 M 212, 231 NW 928.

Death of a drawer of a check. 14 MLR 124.

Duty of carrier to make due presentment of check received in payment of freight charges. 15 MLR 702.

Checks; delay in presentment as payment of debt. 16 MLR 701.

Delay in presentment; effect of; after payment stopped. 17 MLR 320.

Effect of holder's failure to present for payment at maturity on liability of persons primarily liable. 18 MLR 735.

Running of the statute of limitations against the holder of a check. 25 MLR 371.

335.741 CERTIFIED CHECK.

HISTORY. 1913 c. 272 s. 187; G.S. 1913 s. 5999; G.S. 1923 s. 7230; M.S. 1927 s. 7230.

One Paquin submitted his bid to sell coal to a city, accompanied by his check to the city in lieu of a bond, as security for the contract if his bid were accepted; defendant bank, first taking security, had certified the check under an agreement that Paquin was to deposit the check as security for his bid and if it were rejected, return and surrender the check to it, whereupon the bank was to cancel and release the security. The city rejected the bid and held the check subject to Paquin's order, but during the ten days elapsing between the opening and closing of the bids a judgment creditor of Paquin's garnisheed the bank, and plaintiff was appointed receiver of the check in the garnishment proceedings. Held, as between the immediate parties and as regards a remote party other than a holder in due course, delivery of a negotiable instrument may be for a special purpose only and not for the purpose of transferring the property in the instrument, and where the delivery is for a special purpose only, the taking of security by a party liable on the instrument does not change the nature or effect of the transaction; under this rule, the certified check, since in effect it was an accepted bill of exchange, could be delivered for a special purpose only. Plaintiff was not a holder in due course but acquired only Paquin's rights against the bank; Paquin had no right to the check against the bank because of the contract under which it was delivered; and that parol evidence was admissible to show that the check was certified for a special purpose only. Gilbert v Pioneer Nat'l Bank, 206 M 213, 288 NW 153.

In the application of Laws 1943, Chapter 620, Subdivision 6, the statute of limitations is not available to a bank in respect to cashier's checks, certified checks, or certificates of deposit overruling Mitchell v Easton, 37 M 335, 33 NW 910, insofar as it holds to the contrary. State v Northwestern National, 219 M 471, 18 NW(2d) 569.

335.742 EFFECT WHERE HOLDER OF CHECK PROCURES IT TO BE CERTIFIED.

HISTORY. 1913 c. 272 s. 188; G.S. 1913 s. 6000; G.S. 1923 s. 7231; M.S. 1927 s. 7231.

Acceptance of bills by conduct. 12 MLR 133.

Cancelation of certification made by mistake. 14 MLR 678.

335.743 CHECK NOT ASSIGNMENT OF FUNDS.

HISTORY. 1913 c. 272 s. 189; G.S. 1913 s. 6001; G.S. 1923 s. 7232; M.S. 1927 s. 7232.

Plaintiffs contracted to sell a farm to a land agency, which in turn contracted to sell it to B. It was arranged that the deed was to run direct from plaintiffs to B; that B should make a cash payment of $5,000, at which time the deed and a mortgage back to plaintiffs from B for the deferred part of the purchase price, should be delivered. The land agency deposited in defendant bank a check drawn by B on another bank for $5,720, payable to itself, which amount was credited to its account; at the same time the land agency drew a check for $5,020 on and payable to defendant bank, "for plaintiffs". Pursuant to instructions, defendant bank wrote plaintiffs that the land agency had deposited its check for the payment, that it wished to examine the deed, and that if the deed was found all right, it would make the payment. Plaintiffs sent the deed but before it arrived the land agency had checked out its funds so they were not sufficient to cover the payment due, and later withdrew its entire deposit. In an action on the check, *held*, a deposit made for a special purpose remains the property of the depositor until applied to that purpose and, until so applied, is held by the depository as agent of the depositor who may withdraw it or revoke the authority to apply it to the specified purpose at any time before it has been so applied; that the land agency's withdrawing of the entire deposit operated to revoke the authority of defendant bank to apply it as originally directed, and it was not liable to plaintiffs for the amount of the check. Pierson v Swift Co. Bank, 163 M 344, 204 NW 31.

Pursuant to the customary shorter way of collecting checks drawn by live stock commission men at South St. Paul on South St. Paul banks to stock shippers, a commission association drew its check representing the proceeds of live stock belonging to and sold by it on the South St. Paul market for plaintiff, on the Stock Yards National Bank of South St. Paul, payable to the order of defendant, a South St. Paul bank, which credited it to plaintiff's home bank in South Dakota, against which credit plaintiff was entitled to draw. The commission men, as plaintiff's agent, deposited the check with defendant on a Saturday, the 12th, directing that it be credited to plaintiff's home bank, which defendant did; it was cleared and paid by the drawee on Monday, the 14th. On the 12th the home bank was closed because of insolvency. In an action for money had and received by defendant for the use of plaintiff, *held*, the authorized direction operated as an absolute assignment of the title of the check and its proceeds to defendant. Sisseton Live Stock Ass'n v Drovers State Bank, 164 M 484, 205 NW 447, 206 NW 394.

Where a depositor draws a check upon one bank and deposits it in another which credits it to his account, the credit is deemed provisional only, and if the check is not paid it may be charged back to his account, unless the failure to collect from the drawee was due to some fault or neglect on the part of the payee or holder which resulted in loss to him. Old Colony Life Ins. Co. v Amer. Sav. & T. Co. 165 M 417, 206 NW 725.

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. 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. Mchts. Nat'l Bank v State Bank, 172 M 24, 214 NW 750.

Although a check does not of itself operate as an assignment of any part of the funds to the credit of the drawer with the bank upon which the check is drawn, if the drawer of the check intends to give the payee an interest in or lien upon a fund in the hands of the drawee bank and to appropriate a specific portion of the fund to the payment of the check, an equitable assignment of the fund results as between the drawer and the payee; and a receivership does not affect parties who deal in good faith and without notice with the party over whose property the receiver is appointed. Mchts. Nat'l Bank v State Bank, 172 M 24, 214 NW 750.

A bank agreed with defendant, a dealer in automobiles and customer of the bank, that it would pay his check on it to plaintiff for an automobile purchased for sale to a customer provided that by the time the check was presented defendant should have deposited the proceeds of the sale with it. Pursuant to the agreement, defendant issued his check for the automobile and deposited the proceeds of the sale with the bank which the bank applied upon a demand note it held against defendant, and refused payment of the check when presented by plaintiff. Held, while a check, of itself does not operate as an assignment of the funds in the bank to the credit of the drawer, yet a check, together with the surrounding circumstances, may amount to an assignment of such fund, and plaintiff could recover notwithstanding nothing was said at the time of the deposit about the application of the funds so deposited. Joy v Grasse, 173 M 289, 217 NW 365.

Where warrants numbers 157 and 91, issued by defendant were transferred by the payee to plaintiff bank, after which defendant mailed a check with the notation on its face "For Warrant 157, 91 and int." to the payee as a payment on the warrants, and the payee appropriating the check to its own use, deposited it with plaintiff in the usual course of business; held, the notation did not bind plaintiff or in any way affect its rights. First Nat'l Bank of Duluth v School District No. 15, 173 M 383, 217 NW 366.

Plaintiff gave defendant his check for the amount of his indebtedness to it, drawn on a bank wherein he had money to pay the check; defendant presented the check to the drawee bank, accepted its draft for the check instead of the available money, and the check was stamped "paid", and charged to plaintiff's account. Before the draft was collected the drawer, being insolvent, closed. Held, plaintiff's indebtedness to defendant was paid. Tobiason v First State Bank of Ashby, 173 M 533, 217 NW 934.

Plaintiff's agent deposited moneys collected as rents from plaintiff's property, in his own name, in defendant bank, on which he drew a check in favor of plaintiff but, before it was presented for payment, the agent had died and defendant refused payment. In an action to recover the deposit, held, under Minnesota Statutes 1941, Section 335.743, the check did not operate as an assignment of the funds on deposit, and that the defendant, not having accepted or certified the check, was not liable on it; and that there were no unusual circumstances affecting an equitable assignment. Lambrecht v Midland Nat'l Bank & T. Co. 182 M 442, 234 NW 869.

An unpaid check in the hands of the payee, an attorney, upon the proceeds of which he has a lien but part of which belongs to his client, does not constitute garnishable money or property, as the attorney's liability to his client is contingent upon the check's being paid. Lundstrom v Hedge, 185 M 40, 239 NW 664.

A check or bill of itself, does not amount to an assignment; but a check plus circumstances outside the mere issuance of the order may create an equitable assignment. Baird v Simonstad, 193 M 79, 258 NW 570.

While a draft, drawn generally, will not of itself operate as assignment of anything in the hands of the drawee, yet if the drawee is given notice that the draft was intended to vest in the payee an interest in, or a right to receive funds coming into the drawee's hands from designated goods, and with such notice the

drawee takes the goods and sells them, he is liable to the payee, the payee being an equitable assignee of that portion of the fund called for by the draft. Baird v Simonstad, 193 M 79, 258 NW 570.

Check; payment. 2 MLR 474.

Check as an assignment of funds. 8 MLR 547.

Right of drawee bank to debit drawer's account when paying a stopped check. 13 MLR 373.

Death of a drawer of a check. 14 MLR 127.

When does a check operate as an equitable assignment. 14 MLR 158.

335.75 BANKS RECEIVING ITEMS FOR DEPOSIT OR COLLECTION; ACTING ONLY AS COLLECTING AGENT FOR DEPOSITOR; LIABILTY.

HISTORY. 1927 c. 138 s. 1; M.S. 1927 s. 7233-1.

Defendant, the Federal Reserve Bank of Minneapolis, accepted for collection from the First National Bank of Chicago, a member bank of the Federal Reserve Bank of Chicago, two cashier's checks issued by a South Dakota bank, a member bank of defendant, to plaintiff, bearing plaintiff's unrestricted endorsement, under an arrangement as expressed in regulation J, series of 1917 of the federal reserve board and defendant's circular No. 193, existing between the Chicago banks and defendant, that it might forward them to the payer bank with instruction to remit by draft upon a Minneapolis bank. A South Dakota statute authorized a collecting bank to send checks direct to the payer bank; the court found an established custom, existing in Minnesota and South Dakota, to forward items for collection direct to the payer bank with instruction to remit by draft. Defendant sent the checks to the South Dakota bank and it sent defendant its draft drawn on a Minneapolis bank, which refused payment for lack of funds to the credit of the South Dakota bank. Had the checks been presented over the counter of the South Dakota bank, they would have been paid. Held, defendant was not guilty of negligence in sending the checks direct to the payer bank, nor in instructing the payer bank to remit by draft on a bank in Minneapolis. Transcontinental Oil Co. v Federal Reserve Bank, 172 M 58, 214 NW 918.

Plaintiff paid defendant bank money for Russian rubles to be purchased and remitted by defendant to plaintiff's wife, in Russia; defendant employed a responsible New York bank engaged in transmitting foreign currency to foreign countries, to effect the purchase and remittance, and it shortly thereafter informed defendant that they had been advised abroad that they were never delivered to plaintiff's wife and he brought action to recover the money so paid defendant. Held, the relation of principal and agent existed between plaintiff and defendant, not that of creditor and debtor; the agreement to remit was not to deliver; the New York bank, employed by authority express or implied by defendant as plaintiff's agent, became plaintiff's subagent; and defendant having used due care in its selection, was not liable for its negligence. Rosenberg v N. W. Nat'l Bank, 180 M 110, 230 NW 280.

Defendant mailed its check on the bank at Hillman, to plaintiff at the village of Holdingford, 40 miles away, which though it also did business at a bank at Holdingford, immediately sent the check for collection to its depository bank at Albany, which forwarded it for clearance and collection to its Minneapolis correspondent which sent it to the Hillman bank, the only one there, for payment, indicating that payment might be made in the usual manner between banks and not in cash; the Hillman bank stamped the check paid and charged defendant's account therewith, and instead of paying money, forwarded its draft covering the check to the Minneapolis bank but before it was received, the Hillman bank was closed and the draft was not paid. Held, plaintiff and its agent (its depository bank and that bank's correspondent) used due diligence in presenting the check for payment; that under Minnesota Statutes 1941, Section 335.75, the correspondent bank was authorized to direct the Hillman bank to remit by exchange and could charge the check back; and that the check was not paid even though so marked. Holdingford Milling Co. v Hillman F. Co-op. Cr'y, 181 M 212, 231 NW 928.

Plaintiff, an Iowa bank and the payee, sent for collection two checks drawn on a North Dakota bank, to the Corn Exchange National Bank of Chicago, a member

of the Federal Reserve Bank there, which sent them directly to defendant, the Minneapolis Federal Reserve Bank; defendant sent them to the payor North Dakota bank, on its par list. The drawer had sufficient funds on deposit and they were charged to his account and returned to him marked paid. The North Dakota bank sent its draft on a St. Paul bank to defendant, but it was not paid because of insufficient funds. In an action to recover on the checks, held defendant, under regulation J, series 1920, of the federal reserve board, and its own circular 228, and the custom of the region in which it operated, was authorized to forward in its district, for payment and return of proceeds, checks sent it by another federal reserve bank or directly by a member bank. It was not required to exact currency in payment, and might accept exchange. If defendant was negligent in forwarding the checks, or in securing payment, it was liable, but evidence sustained finding that it was not negligent. Osage Nat'l Bank v Federal Reserve Bank, 184 M 111, 238 NW 44.

The rule pronouncing liability when the transmitting bank sends directly to the payor bank or receives payment in the draft of the payor bank instead of in currency is abrogated in Minnesota by Minnesota Statutes 1941, Section 335.75. Osage Nat'l Bank v Federal Reserve Bank, 184 M 111, 238 NW 44.

In the concurring opinion in the case of Hommerland v State Bank of Slayton, 170 M 17, 212 NW 16, holding that "a collecting agent was without authority to accept in payment for his principal's debt anything but that which the law declared to be legal tender or which was, by common consent, treated as money, and that it was liable to the payee named in a check where it accepted a draft in payment of such check", it was suggested that the rule was harsh and out of harmony with modern banking practice; and that case may have suggested this statute. Osage Nat'l Bank v Federal Reserve Bank, 184 M 122, 238 NW 44.

In an action on a note given in renewal of an accommodation note to the plaintiff bank signed by defendant at the request of its cashier, held, evidence was insufficient to justify submitting to the jury whether a transaction between the cashier and the bank discharged the note claimed by the bank to have been given for the accommodation of its cashier. First Nat'l Bank v Blaha, 187 M 38, 244 NW 340.

A check payable to "N. W. Reed and Rattan Co." came into the possession of H, the receiver of the Northwestern Reed and Fibre Co. who endorsed it, "H, Receiver N. W. Reed and Rattan Co." and deposited it with a bank, which collected and credited it to H's account as receiver of the N. W. Reed and Fibre Co. The two companies were separate corporations. Seven years before the Northwestern Reed and Rattan Co. had changed its name to Northwestern Upholstering Co. the name of plaintiff, which should have received the proceeds of the check. In an action for conversion against the bank, held, though the bank in receiving the check for collection acted as agent for H, the depositor, it was guilty of conversion for it had notice by the check itself that the N. W. Reed and Rattan Co. was the payee and not the N. W. Reed and Fibre Co. whom H represented, and to whose account he deposited the check. N. W. Upholstering Co. v First Nat'l B. & T. Co. 193 M 338, 258 NW 724.

Plaintiff drew a draft on a company in Akron, Ohio, to the order of a Minneapolis bank, and deposited it for collection with the Minneapolis bank, which forwarded it to a bank in Cleveland, Ohio, which according to the custom between the two banks, collected it and credited the amount to the account of the Minneapolis bank, the same day sending advice of collection to the Minneapolis bank; on the morning of the day it was received the Cleveland bank failed to open for business. The Minneapolis bank was not negligent in selecting the Cleveland bank. Held, Minnesota Statutes 1941, Section 335.75, has changed the common law, and a collecting bank without negligence in selecting an agent is not responsible for its default, or responsible for accepting collections other than in cash; the Minneapolis bank could have accepted a draft, and on the same basis, could accept credit, and was not liable to plaintiff until it had had an opportunity to withdraw the funds collected and credited to it by its correspondent bank; such withdrawal, however, must be accomplished as quickly as a draft could be collected in the ordinary course of business, had the collection been remitted by draft instead of being credited to the forwarding bank's account. Bay State Milling Co. v Hartford A. & I. Co. 193 M 517, 259 NW 4.

Plaintiff, on the 16th, deposited a check for $2,000 drawn on another bank, with C bank which credited it to plaintiff's account; the next morning C was closed and the commissioner of banks that day took possession of its assets. On the 17th the check was in process of collection and had not been paid, but on the 18th, through regular clearing channels, it was paid to the bank commissioner who thereafter retained possession of the $2,000. Plaintiff's request that its claim be given a preferred status was refused, whereupon, on the advice of the bank commissioner's agent, plaintiff filed a general claim and received two dividends, after which it brought an action against the bank commissioner to have the $2,000 declared a preferred claim. Held, under Minnesota Statutes 1941, Section 335.75, C bank was plaintiff's agent for collecting the check, and when the bank because of insolvency failed to open its doors, the agency was revoked; since the check at the time of this revocation of authority had not been collected, neither the bank nor the banking commissioner had authority to complete collection thereof, consequently the money collected belonged to plaintiff and the claim was a preferred one; and that by filing a general claim, on the advice of the bank commissioner's agent, plaintiff did not effect an election even though dividends were received and retained. Bethesda Old Peoples Home v Benson, 193 M 589, 259 NW 384.

A fruit company gave its check drawn on the N. W. Bank & Trust Co. to plaintiff which deposited the check to its account in that bank, the teller making a notation in plaintiff's passbook showing the deposit. About an hour later and before the bank had charged the amount of the check to the account of the fruit company, which had a sufficient balance to cover the check, the bank received a notice from the fruit company to stop payment on the check, and it charged back the check's amount on the account of plaintiff. In an action by plaintiff against the bank and the fruit company, held, by Minnesota Statutes 1941, Section 335.75, it was not intended that a bank upon which a check was drawn was to be a "collecting agent" to collect from itself, and the statute does not change in this state the general common law rule that, absent an agreement to the contrary, a depository bank upon which a check is drawn becomes the debtor of one who deposits such check to his account in such bank when the amount of the deposit is entered in the depositor's passbook; and that the agreement between the parties did not alter the rule. W. A. White Brokerage Co. v Cooperman, 207 M 239, 290 NW 790.

Defendant, the payee of a $6,297.32 check, endorsed and deposited it with C bank where it was credited to his account and took up a $352.00 overdaft; C bank sent it for collection and credit to the M bank where it was credited to the C bank's account and took up an overdraft of $3,875.60. M bank forwarded it for collection to the B bank, which refused payment because the drawer had stopped payment; B charged it back to M, but M could not charge it back to C as C was closed. In an action against defendant on the theory that he had parted title to the check and was liable on his endorsement, held: under Minnesota Statutes 1941, Section 333.75, there being no written agreement to the contrary, there was a conclusive presumption that C bank receiving the check for deposit, became merely defendant's collecting agent, that the relation of debtor and creditor never existed between it and the defendant, and that it never owned the check; thus the M bank never became anything more than the collecting agent for C; and that defendant and the drawer stopping payment thereon therefore did not become liable to the M bank on its failure to make collection and inability to recover the amount of the check previously credited to the C bank. Schram v Askegaard, 34 F(2d) 348.

Continued course of dealing as raising an agency for collection. 12 MLR 176.

Collection; sending check directly to drawee bank by mail. 12 MLR 744.

Acceptance by collecting bank of draft of drawee bank in lieu of cash. 15 MLR 231.

Sending checks directly to drawee bank and accepting draft in payment; effect of federal reserve regulations on liability of collecting bank. 16 MLR 432.

Collections; liability of correspondent bank for default of subagent. 16 MLR 582.

Collections; right of insolvent depository bank to set-off against claim of insolvent correspondent. 18 MLR 792.

Collections; right of insolvent depositttory bank to set-off against claim of insolvent correspondent. 18 MLR 801.

Drawee bank as depository; point at which payment is complete. 24 MLR 983.

Liability of collecting bank. 27 MLR 585.

GENERAL PROVISIONS.

335.76 SHORT TITLE.

HISTORY. 1913 c. 272 s. 190; G.S. 1913 s. 6002; G.S. 1923 s. 7234; M.S. 1927 s. 7234.

335.77 PERSON PRIMARILY LIABLE ON INSTRUMENT.

HISTORY. 1913 c. 272 s. 192; G.S. 1913 s. 6004; G.S. 1923 s. 7236; M.S. 1927 s. 7236.

A husband, alone, signed a note for his pre-existing individual indebtedness; the wife, with him, signed a mortgage containing a covenant to pay the money represented by his note. The husband died, and within the period fixed for the presentation and allowance of claims against his estate, which was amply sufficient to pay the debt, plaintiff to whom the mortgage had been assigned, made no claim, but several months after the expiration of such period, brought an action to foreclose the mortgage and to recover from the wife personally any deficit upon a sale of the mortgaged property. Held, the debt was primarily the husband's, which the mortgagee knew; since the wife did not contract for or receive either in person or estate, any part of the consideration for the note, although she was a joint principal she was also a surety and entitled to a surety's rights; and that when the estate of the principal debtor was released by the omission of the creditor to file a claim for allowance, the wife, the surety for that debt, was released. Siebert v Quesnel, 65 M 107, 67 NW 803.

Plaintiff, certain other parties, and one Samels, now deceased, signed a contract whereby Samels agreed to pay within five years certain notes of plaintiff aggregating $4,000, to a bank, provided the other parties saved him harmless upon a $12,000 indebtedness to an investment company upon which he was liable under a collateral agreement. The other parties did not do so, and liability on the $12,000 was asserted against his estate and to some extent cared for, after which plaintiff asserted a claim for $4,000 against Samel's estate. Held, the contract did not impose an absolute and direct liability upon Samels to pay the notes at all events, and was not his only remedy by way of indemnity after payment; he was not liable for the $4,000 since liability on the $12,000 was asserted against him and he was compelled to care for it, and plaintiff could not recover. In re Estate of F. A. Samels, 151 M 347, 286 NW 698.

The negotiable instruments law makes an accommodation maker primarily liable to a holder for value. Vernon Center State Bank v Mangelsen, 166 M 472, 208 NW 186.

Under the negotiable instruments law accommodation parties are liable in the capacity in which they appear upon the instrument, whether as makers or as endorsers. Lake St. State Bank v Hunter, 170 M 128, 212 NW 2.

All makers, both those accommodated and those accommodating, are primarily liable. Deden v Grosse, 185 M 278, 240 NW 909.

Anyone unconditionally agreeing to pay a note or bond or other obligation, is primarily liable thereon; endorser of note, waiving protest, etc., is primarily liable, and so is a guarantor. State ex rel v Fosseen, 192 M 108, 255 NW 816.

Release of principal debtor by statute of limitations; effect upon liability of guarantor. 3 MLR 535.

Extension of time of payment by mortgagee to grantee as releasing mortgagor; effect of the negotiable instruments law. 17 MLR 222.

335.78 REASONABLE TIME, WHAT CONSTITUTES.

HISTORY. 1913 c. 272 s. 193; G.S. 1913 s. 6005; G.S. 1923 s. 7237; M.S. 1927 s. 7237.

Plaintiff deposited for collection a check on a Chicago bank with defendant, an outlying Minneapolis bank which had no Chicago correspondent as plaintiff; though it was customary for outlying Minneapolis banks without Chicago correspondents to forward Chicago checks for collection through central Minneapolis banks, defendant forwarded the check through a Mankato bank. When presented for payment, the payee bank had closed its doors though had it been presented a day earlier it would have been paid. Had the check been forwarded in the customary way no time would have been gained. Held, a collecting bank must forward out-of-town checks for collection within a reasonable time and by a reasonably direct route; the usual commercial route is sufficient; the customary speed of banks similarly situated is all the check-holder may expect; and that no liability arises from forwarding a check from Minneapolis to Chicago through a bank in Mankato where no time is lost thereby. Richardson Grain Sep. Co. v East Hennepin State Bank, 143 M 420, 174 NW 415.

The record shows conclusively that the plaintiff received the note for value, before maturity and in the usual course of business. Midland Nat'l Bank v Farmers Co-op. Elev. Co. 157 M 348, 196 NW 275.

A schoolteacher, on a Monday, received in exchange for school orders issued to her for wages, two checks drawn by the district treasurer on a bank at B, about five miles from the place where she taught and boarded; she held them during that week while she continued to teach, and on Saturday morning learned that she could not cash them as the bank had failed to open. Held, under the facts it was for the jury to determine whether the checks were presented within a reasonable time, and sustained finding for the teacher. Peterson v School District No. 14, 162 M 357, 203 NW 46.

Plaintiff, a farmer living about seven and one-half miles from Austin about 4:00 P. M. on a Tuesday, received a check from defendant, drawn on a bank at Austin; he stacked corn on the following days of the week, and on Monday following, about 4:00 P. M. drove to Austin and deposited it to his credit in another bank in Austin where he carried his account, which could not collect it as the drawee bank had failed to open. Until its closing, defendant had sufficient money in the drawee bank to pay the check. Plaintiff owned an automobile and there was a good road from his farm home to Austin. Held, upon the facts the question whether plaintiff presented the check within a reasonable time was for the jury. Verdict sustained for plaintiff. Russell v Buxton, 181 M 104, 231 NW 789.

Plaintiff, at the village of Holdingford, received defendant's check for goods purchased from plaintiff, drawn on a bank at Hillman, 40 miles away; plaintiff, though it also did business at a bank in Holdingford, deposited the check for collection with its depository bank at Albany, a few miles away and a larger place, which forwarded it for collection and clearance to its correspondent in Minneapolis, which forwarded it for payment to the Hillman bank, the only one there, which stamped it paid, charged defendant's account therewith, and sent its draft to cover the check to the Minneapolis bank. Before it was received, the Hillman bank was closed and the draft was not paid. In an action to recover for the goods sold, the question was whether the check was presented for payment wtihin a reasonable time. Held, plaintiff, though it took a circuitous route in collecting by depositing the check in the bank at Albany, did the usual thing under modern business methods; and that plaintiff and its agents (the Albany bank and its correspondent) used due diligence, and that plaintiff could recover. Holdingford Milling Co. v Hillman F. Co-op. Cr'y, 181 M 212, 231 NW 928.

Where notes payable on demand, bearing interest payable annually, and given as collateral to an open account, were negotiated by the holder within 30 days after issue, their negotiation was held within a reasonable time. Kintyre Farmers' Co-op. Elev. Co. v Midland Nat'l Bank, 2 F(2d) 348.

Delay in presentment as payment of debt. 16 MLR 701.

Delay in presentment; effect of; after payment stopped. 17 MLR 320.

335.781 TIME, HOW COMPUTED; WHEN LAST DAY FALLS ON HOLIDAY.

HISTORY. 1913 c. 272 s. 194; G.S. 1913 s. 6006; G.S. 1923 s. 7238; M.S. 1927 s. 7238.

335.79 APPLICATION.

HISTORY. 1913 c. 272 s. 195; G.S. 1913 s. 6007; G.S. 1923 s. 7239; M.S. 1927 s. 7239.

A good faith purchaser of a note procured by the payee by fraud of the character defined in Minnesota Statutes 1941, Section 334.12, is not protected as a bona fide holder. Albrecht v Rathai, 150 M 256, 185 NW 259.

Minnesota Statutes 1941, Section 334.12, was expressly retained by this section. Farm Mtge. & Loan Co. v Pederson, 164 M 425, 205 NW 286.

In an action to recover on a judgment of the municipal court of Chicago entered upon a warrant of attorney to confess judgment, held, under proper pleadings, in a suit in Minnesota on a judgment entered on a cognovit note in Illinois, the 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.

If the facts making a defense under section 334.12 are established, a purchaser of the note in due course is not protected. M & M Securities Co. v Dirnberger, 190 M 57, 250 NW 801.

335.80 CASES NOT PROVIDED FOR.

HISTORY. 1913 c. 272 s. 196; G.S. 1913 s. 6008; G.S. 1923 s. 7240; M.S. 1927 s. 7240.

Where the negotiability of bonds was held destroyed because by reference to the trust deed securing them they expressly made the deed part of them, and they became subject to its terms, held, whether a particular note or bond is negotiable is a question to be determined by consulting the negotiable instruments act, which prescribes the tests to which an instrument must be submitted when it is presented for admission to the class of negotiable paper; and proof of the existence in the business world of a custom under which the particular instrument is generally treated as negotiable is not admissible under Minnesota Statutes 1941, Section 335.80. King Cattle Co. v Joseph, 158 M 481, 198 NW 798, 199 NW 437.

The negotiable instruments act does not govern the negotiation of securities or mortgages given as part of the same transaction in which the promissory notes were executed; and makers of promissory notes, secured by mortgages executed by them become sureties upon conveying the mortgagd premises to vendees who assume and agree to pay the debt or notes, and when the holder of the notes and mortgage, having knowledge of such conveyance, extends the time of payment without the consent of the makers of the notes, the latter are released. Holders of such notes in handling the mortgages securing the same, after obtaining knowledge of the change wrought by the assumption agreements, must have regard to the equities arising therefrom. Jefferson County Bank v Erickson, 188 M 354, 247 NW 245.

Where it was claimed that notes payable on demand and bearing interest annually, given as collateral to an open account and negotiated by the holder within 30 days after issue, were dishonored when taken by a bank, held, the prior Minnesota statutory rule as to what constituted reasonable time being probably repealed by the negotiable instruments act, the law merchant governed; and under it and Minnesota Statutes 1941, Section 335.78, the court was fully justified in holding that the notes were not dishonored when taken. Kintyre Farmers' Co-op. Elev. Co. v Midland Nat'l Bank, 2 F(2d) 348.

Holder in due course. 1 MLR 447.

Acceptance of bills by conduct. 12 MLR 145.

Rights of remitters. 12 MLR 588.

Death of a drawer of a check. 14 MLR 136.

Double forgers; right of drawee to recover amount paid. 14 MLR 283.

Purchase of series of notes after maturity of one. 15 MLR 586.

Extension of time of payment by mortgagor to grantee as releasing mortgagor; effect of the negotiable instruments law. 17 MLR 222.