ages is the value of the mortgaged property. In case the mortgage is counterfeit, the purported makers and the security being nonexistent, the false certificate is not the proximate cause of the damage, and there is no liability on the part of the sureties on the notary's official bond. Governor ex rel. Mlekus v. Maryland Cas. Co. 192 W 472, 213 NW 287.

Damages cannot be recovered from a notary public for his negligence unless the damages were proximately caused by such negligence. Governor ex rel. Kadin v. Bristol, 229 W 95, 281 NW 686.

Where the decedent's application for veteran's benefits was certified by a notary public whose certificate, under 137.01, was presumptive evidence of the facts therein stated, it was not necessary to produce the notary or explain the failure to do so, and his certificate and seal made a prima facie case that the decedent's acknowledgment of paternity was signed, as required by 237.06, in the presence of a competent witness, namely, the notary himself. Estate of Schalla, 2 W (2d) 38, 86 NW (2d) 5.

Notaries public may be prosecuted for attaching a false jurat to an affidavit. 5 Atty Gen. 354.

The surety upon the bond of a notary public is liable for the acts of the notary, as such, during his term. Action upon such bond may be begun at any time before the running of the statute of limitations. The surety is not liable for acts committed after the notary has filed his resignation with the secretary of state. 7 Atty. Gen. 55.

An action may be maintained against the sureties on a notary public's bond by a person damaged by his official malfeasance. 9 Atty. Gen. 497.

Words not required by statute on a notarial seal, when added to the device of the seal, form no part of the seal proper, and do not invalidate it if it is not thereby obscured. 11 Atty. Gen. 21.

A woman who was nominated and elected as county officer and who was commissioned as notary public by her maiden surname, who marries subsequently to such nomination and to qualification as notary but prior to such election, is not required to use her husband's surname in her official acts; she may use her husband's surname by qualifying as such officer by that name and by filing a new autograph and impression of a new seal as notary public; a name adopted for official use should be used uniformly during her terms of office. 13 Atty. Gen. 632.

A notary public may be removed by the governor at pleasure. 16 Atty. Gen. 565.

The provision in 137.01 (4) which requires the date of expiration of commission to be shown does not apply to an acknowledgment before a notary public of another state unless the other state requires it. 17 Atty. Gen. 234.

See note to 69.22, citing 32 Atty. Gen. 415.

The governor having discretionary powers of appointment of notaries public under 137.01 may refuse to commission blind persons. The secretary of state's duties relative to notaries public are administrative and strictly controlled by statute. 37 Atty. Gen. 159.

See note to 245.15, citing 55 Atty. Gen. 239.

137.02 History: R. S. 1849 c. 9 s. 1, 4; R. S. 1849 c. 61 s. 1 to 3; R. S. 1858 c. 88 s. 1 to 4; R. S. 1878 s. 182, 183; Stats. 1898 s. 182, 183; 1905 c. 201 s. 1; Supl. 1906 s. 182; 1921 c. 13 s. 9; Stats. 1921 s. 1636—227; 1923 c. 291 s. 3; Stats. 1923 s. 137.02.

CHAPTER 138.

Money and Rates of Interest.

138.01 History: R. S. 1858 c. 62 s. 1; R. S. 1878 s. 1685; Stats. 1898 s. 1685; 1923 c. 291 s. 3; Stats. 1923 s. 115.01; 1967 c. 92 s. 16; Stats. 1967 s. 138.01.

Editor's Note: Ch. 115, Stats. 1965, was renumbered 138 by sec. 16, ch. 92, Laws 1965, but no alterations were made in the contents and sequence of sections.

138.02 History: R. S. 1858 c. 62 s. 2; R. S. 1878 s. 1686; Stats. 1898 s. 1686; 1923 c. 291 s. 3; Stats. 1923 s. 115.02; 1967 c. 92 s. 16; Stats. 1967 s. 138.02.

138.03 History: R. S. 1858 c. 62 s. 3; R. S. 1878 s. 1687; Stats. 1898 s. 1687; 1923 c. 291 s. 3; Stats. 1923 s. 115.03; 1967 c. 92 s. 16; Stats. 1967 s. 138.03.

138.04 History: R. S. 1858 c. 61 s. 1; 1859 c. 160 s. 1; 1866 c. 120 s. 1; R. S. 1878 s. 1688; 1893 c. 61; Stats. 1898 s. 1688; 1923 c. 291 s. 3; Stats. 1923 s. 115.04; 1945 c. 84; 1957 c. 610; 1961 c. 431; 1967 c. 92 ss. 16, 22; Stats. 1967 s. 138.04.

"Legal interest," when the term is used in a pleading, may mean the highest legal rate or that rate fixed by law, in the absence of contract. Towslee v. Durkee, 12 W 480.

Upon an agreement to reduce the rate of interest on a note, on condition of prompt payment, interest at the stipulated rate is due, on failure to perform the condition, from the day of the last previous payment. Mowry v. Mosher, 16 W 46.

Where the stipulation was "with interest * * * until the time when the principal sum will be payable," the statutory rate only could be collected after due. Spaulding v. Lord, 19 W 533.

All money judgments, whether of the state or federal courts, bear interest from date. Booth v. Ableman, 20 W 602.

The phrase "shall be expressed in writing" refers only to cases of loans and not to other relations, such as agency, partnership or quasi-partnership, etc. Case v. Fish, 58 W 56, 15 NW 808.

A surety who recovers against a co-surety for contribution is entitled to only the legal rate of interest, regardless of the rate contracted to be paid. Bushnell v. Bushnell, 77 W 435, 46 NW 442.

Where a demand is capable of ascertainment by reference to reasonably certain market values of the various items, and has been duly and adequately presented and its payment demanded before suit commenced, the claimant is entitled to interest from the time of such demand. Laycock v. Parker, 103 W 161, 79 NW 327.

When there is no agreement to pay interest on a loan, and it is repaid on demand, the

borrower is not liable to pay interest. Ehrlich v. Brucker, 121 W 495, 99 NW 213.

The seller is entitled to recover interest in accordance with invoices reciting, "Terms net cash 10 days. No discount," where the recovery is on quantum valebant, and the buyer made payments on account, without objection to the terms. National C. P. Federation v. J. S. Hoffman Co. 213 W 84, 250 NW 775.

115.04 and 115.05, Stats. 1939, do not require that the interest rate be stated in a loan agreement in percentage, and it may be stated either in dollars or in percentage; but in whichever form stated, the interest rate should be stated separately and not included in the monthly instalments due on the principal. Randall v. Home Loan & Investment Co. 244 W 623, 12 NW (2d) 915.

In ascertaining the present worth of the amount by which the decedent would have increased her estate from her wages if she had lived, the jury was not bound to use the interest rate of 5% specified in 115.04, since this section applies only to contract liabilities and liabilities reduced to judgment. Miller v. Tainter, 252 W 266, 31 NW (2d) 531.

The general rule is that, in the absence of agreement to the contrary, liquidated damages bear interest, whereas unliquidated damages do not. There must be a fixed and determinate amount which could have been tendered and interest thereby stopped; the amount of the claim must be known and determined, or readily determinable. Maslow Cooperage Corp. v. Weeks Pickle Co. 270 W 179, 70 NW (2d) 577.

The legislative declaration of the legal rate of interest is construed as being declaratory of the common law as it now exists and as applicable to all legal entities, including all branches of government, unless specifically exempted by legislative enactment. Milwaukee v. Firemen Relief Asso. 42 W (2d) 23, 165 NW (2d) 384.

A claim against the state does not bear interest. 4 Atty. Gen. 370.

For discussion of the legal rate of interest and effect of 115.04 to 115.06, Stats. 1965, on 5 types of charge accounts see 54 Atty. Gen. 235.

138.05 History: R. S. 1858 c. 61 s. 2; 1859 c. 160 s. 2; 1868 c. 60; R. S. 1878 s. 1689; Stats. 1898 s. 1689; 1923 c. 291 s. 3; Stats. 1923 s. 115.05; 1961 c. 431; 1963 c. 210, 459; 1967 c. 92 ss. 16, 22; Stats. 1967 s. 138.05.

A, having entered public land and not being able to pay for it at the receiver's sale, got B to bid it off and take the title for him, agreeing to pay him twice the cost. The transaction was not usurious, because it was an everyday transaction, made with no intention of evading law, money being scarce and land cheap. Pratt v. Ayer, 3 Pin. 236.

When a debtor does not apply a general payment the law applies it to the valid portion of a contract, and the creditor cannot apply it to an illegal part. If the debtor applies it to the illegal part he may repudiate it and have the money applied to redeem the valid part. A payment of excess may always be recovered back, however applied. Gill v. Rice, 13 W 549; Wood v. Lake, 13 W 84; Lee v. Peckham, 17 W 383.

A, acting as the agent of the borrower, takes a commission which would avoid the note if the lender had participated. The agent A buys the note. This does not make it usurious. Fay v. Lovejoy, 20 W 407.

The debtor alone and those standing in his place in a representative capacity can avoid a usurious contract. Draper v. Emerson, 22 W 147.

Where a note drew the highest legal rate an agreement by the holder to extend the time of payment for a definite period in consideration of the payment of a bonus is usurious. Hamilton v. Prouty, 50 W 592, 7 NW 659.

Under the facts the transaction was an equitable mortgage at usurious interest. Schriber v. Le Clair, 66 W 579, 22 NW 570.

If a mortgagor agrees in writing to pay interest upon deferred payments of interest the agreement may be enforced in foreclosure proceedings. Gibson v. Southwestern L. Co. 89 W 49, 61 NW 282.

Where the holder of an option note has declared the whole amount due, interest coupons subsequently maturing do not bear interest, without a written agreement to that effect. Stubbings v. O'Connor, 102 W 352, 78 NW 577.

Where neither the interest coupons nor any other writing provided that interest due on bonds should bear interest after maturity, no interest on such coupons is recoverable. First S. & T. Co. v. Cazenovia & S. C. R. Co. 159 W 344, 150 NW 405.

Although a note secured by a mortgage contains an agreement to pay 10% interest per annum upon interest instalments in arrears, the maximum amount of interest recoverable must not exceed 10% per annum simple interest. Ogden v. Bradshaw, 161 W 49, 150 NW 399, 152 NW 654.

A loan agreement, whereby money was advanced to a member of a partnership and the lender, taking the risk of whether there would be earnings, was to share in the earnings of the partnership business in lieu of interest, was not rendered usurious by the fact that the lender's share of the earnings of the business amounted to more than the maximum rate of interest permitted by statute. Hirsch v. Smith, 262 W 75, 53 NW (2d) 769.

Where no usurious interest was provided for in the original note or loan agreement, and none was contemplated between the parties at the time of the inception of the transaction, a subsequent payment made by the borrower for the use of the money borrowed in excess of the rate permitted by law does not constitute usury. Zang v. Schumann, 262 W 570, 55 NW (2d) 864.

For discussion of the effect of a prior statute on the right of a corporation charged usurious interest, see County Motors v. Friendly Finance Corp. 13 W (2d) 475, 109 NW (2d) 137.

The usury laws of Wisconsin: a study in legal and social history. Friedman, 1963 WLR 515.

138.06 History: 1871 c. 93 s. 2; R. S. 1878 s. 1690; Stats. 1898 s. 1690; 1923 c. 291 s. 3; Stats. 1923 s. 115.06; 1961 c. 431; 1967 c. 92 ss. 16, 22; Stats. 1967 s. 138.06.

138.07 History: R. S. 1858 c. 61 s. 3; 1859 c. 160; 1866 c. 120; 1868 c. 60; 1871 c. 43, 93;

R. S. 1878 s. 1691; 1895 c. 327; Stats. 1898 s. 1691; 1905 c. 278; Supl. 1906 s. 1691; 1907 c. 412; 1913 c. 115; 1915 c. 450; 1923 c. 291 s. 3; Stats. 1923 s. 115.07; 1937 c. 284 s. 3; 1947 c. 411 s. 11 (220.02 (5)); 1947 c. 462, 612; 1955 c. 363; 1961 c. 431; 1963 c. 158; 1967 c. 92 ss. 16, 22; Stats. 1967 s. 138.07; 1969 c. 276 s. 592 (7); 1969 c. 376.

Under sec. 1691, R. S. 1878, the delivery of the property as for usurious interest must be such a delivery as passes the title, and a delivery of possession of real estate under an agreement to transfer the title is not a sufficient delivery to sustain an action under the statute. Howe v. Carpenter, 49 W 697, 6 NW 357.

Although the debtor does not attempt to recover treble damages, under sec. 1691, R. S. 1878, yet this does not preclude him from recovering back the actual excess as at the common law. The law treats the debtor as the weak and necessitous party, who is imposed upon, and the creditor alone is the violator of the law. Schriber v. Le Clair, 66 W 579, 29 NW 570.

It is immaterial in what manner or form, or under what pretense, the usury was exacted and paid. The contract will not be held good merely because upon its face and by its words it is free from taint, if substantially it be usurious. Dayton v. Dearholt, 85 W 151, 55 NW 147.

Where interest on maturing notes was computed and incorporated in the principal and the notes in addition provided for interest, the maker is entitled to reformation—usurious interest admittedly not being in contemplation of either of the parties. Petfalski v. Winkel G. Co. 190 W 64, 208 NW 893.

The exaction and acceptance of usurious payments must be proved by a clear and satisfactory preponderance of the evidence in an action by a borrower to recover the statutory penalty for usurious payments, since the facts essential to recovery also constitute a crime. Bauer v. Franklin S. Bank, 216 W 507, 257 NW 456.

In an action for treble damages for usurious interest paid, where a mortgage note, payable in monthly instalments, and providing for interest at a rate of less than 10% per year, also provided for a penalty of one per cent per month on delinquent monthly instalments, it will be considered that the one per cent provision was inserted for the purpose of compelling payment at maturity, in the absence of any showing to the contrary. Randall v. Home Loan & Investment Co. 244 W 623, 12 NW (2d) 915.

In an action under 115.07 (1), Stats. 1947, to recover treble the amount of $400 allegedly constituting a usurious payment by the plaintiffs to the defendants, the evidence, construed most favorably to the plaintiffs, would not sustain the jury's finding that the $400 was paid by the plaintiffs as a carrying charge on their own note, but only that it was paid as a carrying charge on a new loan made by the defendants to the purchasers of the plaintiffs' business, requiring dismissal of the complaint, since a payment by a third person, not a party to a loan, does not constitute usury. Zang v. Schumann, 262 W 570, 55 NW (2d) 864.

Supervision of the commissioner of banking over chattel mortgage loan companies, under sec. 1691, Stats. 1921, is limited to the issuing of licenses for their operation, and to such examinations of their books as he may consider proper. 10 Atty. Gen. 1022.

Before the business of loaning money on chattel security under the provisions of 115.07, Stats. 1928, can be commenced, a permit must be obtained from the commissioner of banking; when certificates submitted to the commissioner show that illegal charges as interest will be made, he is justified in refusing to issue a permit. 13 Atty. Gen. 170.

Charges permitted by 115.07 (3), Stats. 1939, in addition to lawful interest may be made but once and may not be made upon renewal of a loan. Insurance requirements which are unusual or unreasonable or receipt by the lender of profit out of an insurance transaction will not be permitted. In addition to charges other than interest permitted by that subsection, only statutory costs actually taxed and allowed upon entry of judgment may be contracted for or received. 29 Atty. Gen. 10.

A provision of the municipal code of the city of Milwaukee regulating pawnbrokers and permitting the same to charge a higher rate of interest than that permitted under the state usury laws, is invalid insofar as such municipal ordinance conflicts with state laws regulating rates of interest. 30 Atty. Gen. 423.

By the weight of authority a national bank may not be subjected to civil penalties for violation of the state usury law, the remedy provided by the national banking act being exclusive. Conviction of a national bank for violation of a state usury law has been sustained, although in the absence of a decision by the supreme court of this state or of the United States, the question would be open here. 32 Atty. Gen. 90.

In stating the rate of interest in writing as required by 115.04 in case of loans made under 115.07 (3), Stats. 1943, it is not necessary that the contract contain a break-down showing the total amount of interest and charges which a borrower is required to pay or the amount of interest or charges included in each instalment, unless it is necessary to do so to clearly express the rate. 34 Atty. Gen. 15.

Lenders licensed under either 115.07 or 115.09, Stats. 1925, who are also insurance agents may not, where the borrower is charged the maximum amount which under said sections may be imposed by way of interest and other charges, receive in addition a commission upon insurance which as a condition to obtaining the loan the borrower is required to obtain on property pledged as security therefor even where the premium for said insurance is at the manual rate and the borrower is given the right to select the insurance agent and voluntarily selects the lender as his agent. 34 Atty. Gen. 298.

Loan companies, licensed under 115.07, 115.09 or ch. 214, Stats. 1949, may not, in addition to interest and charges expressly authorized by such statutes, and in the absence of judgment, charge for and collect expenses of retaking, storage and sale under chattel mortgages or expenses of garnishment. 39 Atty. Gen. 95.

138.09 History: 1929 c. 408; Stats. 1929 s. 115.09; 1937 c. 284 s. 3; 1939 c. 476; 1947 c. 411 s. 11 (220.02 (5)); 1947 c. 462, 612; 1949 c. 262; 1951 c. 261 s. 10; 1953 c. 61; 1961 c. 315, 431; 1963 c. 158, 343; 1965 c. 51; 1967 c. 92 ss. 16, 22; 1967 c. 288; Stats. 1967 s. 138.09; 1969 c. 276 s. 592 (7); 1969 c. 376.

Questions as to charges permitted under 115.09, Stats. 1939, are answered in 29 Atty. Gen. 10.

115.07 (3), 115.09 and Ch. 214, Stats. 1939, constitute distinct legislative schemes for regulation of loan transactions, and one person may hold licenses under either or all of these 3 provisions. 29 Atty. Gen. 360.

115.09, Stats. 1943, does not apply to banks and the banking commission has no authority to issue a license thereunder to a state bank. 32 Atty. Gen. 216.

Questions arising under 115.09, Stats. 1943, are answered in 34 Atty. Gen. 15.

See note to 138.07, citing 34 Atty. Gen. 298.

Insurance against loss resulting from conversion, embezzlement or secretion of an automobile by a retail purchaser or borrower in lawful possession under a conditional sale, mortgage or other pledge is "insurance on property" within the meaning of 115.09 (7) (f) and may be lawfully required of a borrower by licensee or permittee under ch. 115. 37 Atty. Gen. 203.

See note to 138.07, citing 39 Atty. Gen. 95.

138.10 History: 1951 c. 655; Stats. 1951 s. 115.10; 1967 c. 92 s. 16; Stats. 1967 s. 138.10.

CHAPTER 139.

Beverage, Cigarette and Oleomargarine Taxes.

Revisor's Note, 1963: This is a consolidation and revision of the sections of Ch. 139 dealing with the tax on fermented malt beverages and intoxicating liquors. Only a few minor substantive changes have been made; each one is indicated in a note after the section changed.

This revision was prompted by the enactment of ss. 139.11 and 139.12 (Ch. 178, Laws 1953) which provide for the payment of the occupational tax on fermented malt beverages on a monthly basis instead of by affixing tax stamps. The provisions of Ch. 139 providing for such tax stamps were not repealed, since s. 139.27 made those provisions applicable to the tax on intoxicating beverages.

This change in 1953 made the statute confusing to anyone but a very careful reader. The revision separates the taxing sections so as to make their applicability clear and combines a number of overlapping provisions.

This bill is sponsored jointly by the beverage and cigarette tax division and the revisor of statutes. [Bill 218-S]

On exercises of police power and taxing power see notes to sec. 1, art. I; and on the rule of taxation (privilege taxes) see notes to sec. 1, art. VIII.

139.01 History: 1963 c. 141; Stats. 1963 s. 139.01; 1969 c. 276.

Revisor's Note, 1963: (1) and (2) are from 66.054 (see present 139.02). (3) is from 139.02. (4) to (6) are from 139.25 (1) to (3). (7) and (8) are from 139.02 and 139.25 (4) and (5). (9) and (10) are new definitions put in to allow shortening language in other sections. (9) is patterned after 139.26 (1) and 176.01 (4).

There are 2 minor changes: The definition of "sales company" now in 139.02 is omitted as obsolete. The definition of "wholesaler" in (7) is changed to specify that a wholesaler is a person who sells to "licensed retailers and permittees" rather than simply one who sells for resale. [Bill 218-S]

139.02 History: 1963 c. 19, 141; 1963 c. 459 ss. 33, 34; Stats. 1963 s. 139.02; 1965 c. 634; 1969 c. 185.

Revisor's Note, 1963: The first sentence is from 139.01; see new 139.04 for exclusions from tax. The second sentence is from 139.03 (2) (last sentence). [Bill 218-S]

Fermented malt beverages containing 7½% of alcohol by volume or 6.01% of alcohol by weight are not taxable as intoxicating liquors under ch. 139, Stats. 1941, but sale of such beverages is subject to provisions of ch. 176, regulating sale of intoxicating liquors. 32 Atty. Gen. 48.

139.03 History: 1963 c. 19 s. 5; 1963 c. 103, 141; 1963 c. 224 ss. 104a, 104b, 104c, 104d; 1963 c. 459 ss. 35, 37 to 40; 1963 c. 561 s. 1; Stats. 1963 s. 139.03; 1965 c. 249, 549, 634; 1967 c. 226; 1969 c. 276 s. 590(1).

Revisor's Note, 1963: Introductory paragraph is from 139.26 (1). (1) is from 139.26 (1). (2) is from 139.26 (1b). See new 139.04 for exclusions from tax. (3) is from 139.03 (2) (last sentence). [Bill 218-S]

The additional liquor tax imposed by an increase in the rates by ch. 412, Laws 1947, amending this section, applied to all intoxicating liquor offered for sale from and after the date when the act became a law, including intoxicating liquor in the possession of dealers on such date and bearing previously affixed tax stamps in the amount specified prior to the amendment. Berlowitz v. Roach, 252 W 61, 30 NW (2d) 265.

Under ch. 139, Stats. 1933, the occupational tax is not confined to liquids which are intended for beverage purposes. The tax is imposed upon liquids reasonably capable of being drunk either for pleasure or for after effect. Liquid is fit for beverage purposes and taxable when it can with little or very simple change by dilution or subtraction be put in condition for use as a beverage. 23 Atty. Gen. 36.

139.04 History: 1963 c. 141; Stats. 1963 s. 139.04.

Revisor's Note, 1963: (1) is from 139.26 (2); see also 176.45. (2) is from 139.03 (13). (3) is from 139.09 and 139.25 (1). (4) is from 139.01 and 139.26 (1). (5) is from 139.01 and 139.26 (1). (6), (7) and (8) are from 139.26 (1).

There are 4 minor changes: (1) No reference is made to exclusion from tax for sales of malt beverages to sales companies, since there are no such companies and since such sales were only for interstate commerce. (2) Old 139.26 (1) permitted tax free sales only by manufacturers to rectifiers; the new 139.04 (4) adds "wineries" and permits tax free sales both ways between such persons; such sales