

MASON'S MINNESOTA STATUTES

1927

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STATUTE COMPILATION COMMISSION FOR THE PUBLICATION OF
THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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meaning of this act when it is in fact done honestly, whether it be done negligently or not.

(3) A person is insolvent within the meaning of this act who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not.

(4) Goods are in a "deliverable state" within the meaning of this act when they are in such a state that the buyer would, under the contract, be bound to take delivery of them. ('17 c. 465 § 76)

162-240, 202+445, note under § 8345.

8451. Act does not apply to existing sales or contracts to sell—None of the provisions of this act shall apply to any sale, or to any contract to sell, made prior to the taking effect of this act. ('17 c. 465 § 76a)

8452. No repeal of uniform warehouse receipt act or uniform bills of lading act—Nothing in this act or in any repealing clause thereof shall be construed to repeal or limit any of the provisions of the act to make uniform the law of warehouse receipts, or of the act to make uniform the law of bills of lading. ('17 c. 465 § 76b)

8453. Inconsistent legislation repealed—All acts or parts of acts inconsistent with this act are hereby repealed except as provided in section 76b. ('17 c. 465 § 77)

G. S. 1913 § 6999 [8379] is by necessary implication repealed and in its place is substituted '17 c. 465 § 4. Hence, the reference in § 6999 [8379] is to the substitute thereof. (153-202, 189+936).

8454. Time when the act takes effect—This act shall take effect on the 1st day of June, 1917. ('17 c. 465 § 78)

8455. Name of act—This act may be cited as the uniform sales act. ('17 c. 465 § 79)

CHAPTER 68

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STATUTE OF FRAUDS

8456. No action on agreement, when—No action shall be maintained, in either of the following cases, upon any agreement, unless such agreement, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party charged therewith:

1. Every agreement that by its terms is not to be performed within one year from the making thereof.
2. Every special promise to answer for the debt, default, or doings of another.
3. Every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry.
4. Every agreement, promise or undertaking to pay a debt which has been discharged by bankruptcy or insolvency proceedings. (3483) [6998]

4. In General.

210+854, note under § 8460.

Must be given a liberal construction. 210+84.

Did not preclude the defendant from asserting a claim for damages caused by the plaintiff's failure to repair a rooming house occupied by the defendant under an oral lease from plaintiff. 212+18.

CONTRACTS NOT TO BE PERFORMED WITHIN ONE YEAR

1. Not void but simply non-enforceable—A contract within the statute is not void but simply non-enforceable, that is, no action can be directly based thereon (36-473, 31+938; 42-6, 43+484; 81-316, 84+116; 85-257, 88+846; 87-172, 91+483. See 51-333, 53+642).
2. Performance by one party within year—The statute does not apply to a contract which is fully performed by one of the parties at the time, or which may be performed by one of them within a year (78-299, 80+1051). Statute has no application where contract could be performed within year, or runs for indefinite time (98-52, 107+824). Where, although time was not limited within which contract should be completed, it appeared from its face that it was not to be executed within one year, it was within statute (103-471, 115+406).
3. Possibility not probability of performance the test—The statute is applicable only to contracts which cannot by their terms be performed within a year. Contracts which by their terms can possibly be performed within a year are not within the statute although the parties did not contemplate such performance (22-449; 30-464, 16+363; 83-523, 86+760).
4. When year begins to run—34-510, 26+906; 48-319, 51+216.
After working hours in the evening of December 27, 1922, defendant made an oral contract of employment with plaintiff for one year. The year was to commence at once—that date. Plaintiff reported for work on the following morning. Held, that the year would end at the close of working hours on December 27, 1923, and the contract would be performed within one year from the making thereof. 165-8, 207+320.
5. Effect of part performance—While no action can be maintained on an oral agreement for services not to

be performed within one year, such agreement controls the rights and remedies of the parties with respect to what has been done, and fixes the value of the services rendered under it, when the person rendering such services is discharged after part performance, without fault on his part, or is unable to fully perform on account of sickness; and an action will lie in such cases for the value of such services as fixed by the contract (36-473, 31+938; 81-316, 84+116; 85-257, 88+846). But where a person who has partly performed under such a contract refuses without legal excuse to fully perform and the other party is willing to go on with the contract, and is not in default, no recovery can be had for such part performance (42-6, 43+484). It seems that in an action to recover for a part performance it is not necessary to allege the value of the services (81-316, 84+116). The principle on which the equitable doctrine of part performance rests is that the agreement has been so far executed by one party with the consent or tacit encouragement of the other, and in reliance on his fulfillment of it, that for the latter to repudiate it and shelter himself under the statute would amount to a fraud on the former (66-388, 69+139). A part performance held not to take a case out of the statute (66-388, 69+139; 67-100, 69+637; 87-172, 91+483).

6. Contracts held within the statute.—A parol lease of real estate for the term of one year to commence in futuro (43-166, 45+13; 51-333, 53+642; 66-388, 69+139; 87-172, 91+483; 90-521, 97+373; see 34-510, 26+906); a contract for the conduct of a business agency for one year (22-449); a contract for personal services (36-473, 31+938; 81-316, 84+116; 85-257, 88+846); a contract for the foreclosure of a mortgage and the execution of a deed after the expiration of the redemption period (67-100, 69+637).

7. Contracts held not within the statute.—A contract for the conduct of a business agency for one year but terminable at any time by either party (22-449); a contract for personal services entered into by a promoter of a corporation and subsequently adopted by the corporation (48-319, 51+216); a contract of insurance (30-464, 16+363); a contract under which one of the parties was to perform within a year (78-299, 80+1051). See also 128-468, 151+195, 129-253, 152+538; 135-236, 160+765; 126-251, 148+104; 128-490, 151+203; 150-451, 185+510; 137-141, 162+1082; 142-110, 171+201; 143-113, 173+571; 143-246, 173+657; 147-236, 180+111; 146-244, 178+504; 147-295, 180+237; 147-323, 180+556.

PROMISES TO ANSWER FOR ANOTHER

8. General principles.—There must be a liability, actual or prospective, of a third person for whom the promisor undertakes to answer (14-194, 144; 34-410, 26+219). A promise to a debtor to pay his debt to another is not within the statute (14-265, 196; 23-6, 28-521, 11+76; 64-144, 66+143). Form is not controlling, and when a contract though in form a guaranty is made not to answer for another but for the direct benefit of the promisor, as for example, to enable him to transfer a debt or contract or to satisfy a debt or obligation of his own, it is not within the statute (22-283; 24-513; 29-102, 12+151; 48-207, 50+1033; 98-497, 108+1; 106-430, 119+214, 452). The general rule is that if the whole credit is not given to the person who comes in to answer for another, his undertaking is collateral and within the statute (34-410, 26+319; 37-23, 32+858; 57-234, 59+304; 87-250, 91+1116). A contract within the statute is not void, but merely non-enforceable, that is, no action can be directly based thereon (16-68, 56).

A promise to answer for the debt of another is unenforceable, unless evidenced by a writing expressing the consideration, and signed by the promisor. 157-502, 195+494.

9. The memorandum.—The consideration must be expressed (14-340, 260, 23-542); but the expression "for value received" is sufficient (34-307, 25+606; 64-213, 66+965). The consideration need not be expressly stated; it is sufficient if it appears from the whole document with reasonable certainty (20-40, 33; 60-515, 63+105. See 65-104, 67+802). Where a contract of guaranty is entered into contemporaneously with the principal contract, and is either incorporated in the latter, or so distinctly refers to it as to show that both agreements are parts of an entire transaction, the statute does not require a consideration to be expressed in the guaranty distinct from that expressed in the principal contract (20-40, 33; 35-345, 29+55; 64-213, 66+965). A mere signature on the back of a note is not sufficient (14-340, 260; 23-542). A negotiable promissory note imports consideration, and when made as collateral security, sufficiently expresses the consideration (61-513, 63+1110). The true consideration need not be stated and a seal is a sufficient substitute for the expression of the consideration (34-307, 25+606). Where one not a party to a negotiable note, after it has been delivered to and while it is in the hands of the payee, indorses it in blank on a valid consideration, for the purpose of assuming the liability of a guarantor, such act authorizes the payee to write over the signature the contract of guaranty in full and if he does so the statute is satisfied (62-220, 64+555).

10. Contracts held within the statute.—A promise of A to pay B, for transporting goods, on delivery to C, if C did not pay (1-301, 234); a promise to pay the rent of another in these words, "If you will let mother stay I will be responsible for the rent, and see that it is all right" (5-455, 368. See 35-345, 29+55); a promise guaranteeing the payment of a note (14-340, 260; 23-542, 62-220, 64+555; 79-309, 82+583; 82-220, 84+742); a promise of A to pay B for goods sold to C by B if C did not pay (16-68, 56; 34-410, 26+319); a promise guaranteeing the performance of the terms of a lease (35-345, 29+55); a promise of A, an insurance agent, that he would see that B paid to C insurance money, in accordance with a contract between B and C (52-304, 54+95); a note given as collateral security for the payment of another note (61-513, 63+1110); a promise by a father to pay a physician for services rendered an adult child (82-320, 84+1016).

11. Promises held not within the statute.—A promise to a debtor to pay his debt to another (14-265, 196; 23-6, 28-521, 11+76; 64-144, 66+143); a promise made by A to B that if B would release a lien on certain logs of C he would pay B's claim against C, A being a purchaser of the logs from C (8-127, 99); a promise of A to B that if B would waive a lien which he had on land of C to secure a debt of C to B, and pay the costs of a levy, A would pay B's claim against C (15-185, 142); a promise of A to pay B a claim of B against C secured by a chattel mortgage (14-194, 144); a promise of A to pay B for goods sold to C (32-237, 20+145); a promise by railroad contractors to boarding-house keepers that they would "see them paid" for the board of laborers employed by the contractors (34-32, 24+289); a promise of A to assume B's contract with C for building materials (35-451, 29+65); a promise in these words, "You give all the goods to H and R that they want, and charge directly to them, and every first of the month you bring in the bill, and I will pay it" (37-23, 32+858); a promise of A, a widow of B, to pay C the amount of a claim of C against B, if C would not present the claim against the estate of B (55-315, 56+1064); a promise in these words to pay for goods sold to another, "I will see you paid" (57-234, 59+304); a promise of A to indemnify B against loss by becoming responsible for C's faithful performance of his duty to D (64-144, 66+143; 76-220, 78+1114); a promise of A to be responsible for any loss resulting from a race meeting arranged by B (69-156, 71+1023); a promise of A to pay B for the board of laborers engaged for third parties on their contract with A (80-274, 83+170); a promise of A and B to pay C, an attorney, for defending D on a criminal charge (87-250, 91+1116); a promise guaranteeing the debt of another, assigned at the same time by the guarantor, the purpose being to thereby pay or satisfy a claim of the guarantee against the guarantor (48-207, 50+1033); a promise guaranteeing the collection of a note (22-283; 24-513); a promise guaranteeing the performance of a third party's contract on a consideration moving to the guarantor (29-102, 12+151); a promise in the form of a note given to satisfy a debt due the payee from another (32-427, 21+416). Where one requests another to join him as surety on bond and promises to save him harmless (113-111, 129+142).

AGREEMENT UPON CONSIDERATION OF MARRIAGE

A part performance held to take the case out of the statute (39-197, 39+146). The consideration held sufficiently expressed (65-104, 67+802).

PROMISE DISCHARGED BY BANKRUPTCY

Prior to Revised Laws it was held that action to enforce obligation barred by discharge in bankruptcy, based upon obligor's subsequent promise, must fail, unless there be positive and unequivocal proof both as to identification of the debt and as to distinct, unconditional, and present promise to pay (98-248, 108+303).

G. S. § 6999, the act relating to contracts for the sale of goods has been omitted, as superseded by '17 c. 465 § 4 appearing in ch. 67A; 153-202, 189+936.

12. Consideration.

The guaranty in question acknowledges as a consideration "credit given and to be given." There is no question but that the indebtedness sued for represents a part of the credit referred to. In such a situation, a general offer to prove absence of consideration was properly rejected, and the consideration was sufficiently expressed by the instrument to comply with the statute of frauds. 161-30, 200+851.

13. Guaranty of Note.

Written guaranty of note to be construed together with note. 210+84.

14. Option to Renew Lease.

Where a lessor indorses and signs on an existing lease this language: "The lessee is hereby given the option of renewing this lease for a period of five years from the expiration thereof at the rate of two hundred fifty (\$250.00) dollars per month for a period of five years upon giving six months notice, before expiration of his intention so to do" * * * it is within the statute of frauds, because, first, it does not express consideration; and, secondly, because it contemplates the making of a

lease for a longer period than one year. 157-161, 195+898.

8457. Auctioneer's memorandum—Whenever goods are sold at public auction, and the auctioneer, at the time of sale, enters in a salesbook a memorandum specifying the nature and price of the property sold, the terms of the sale, name of the purchaser, and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale, within the meaning of § 8379. (3485) [7000]

153-199, 189+935.

The above section is probably superseded by ch. 67A.

8458. Grants of trusts, when void—Every grant of assignment of any existing trust in goods or things in action, unless the same is in writing, subscribed by the party making the same, or by his lawfully authorized agent, shall be void. (3486) [7001]

This refers to the transfer and not to the creation of trusts (23-55, 163-199, 189+935).

8459. Conveyance, etc., of land—No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted; assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the parties creating, granting, assigning, surrendering, or declaring the same, or by their lawful agent thereunto authorized by writing. But this section shall not affect in any manner the power of a testator in the disposition of his real estate by will; nor prevent any trust from arising or being extinguished by implication or operation of law. (3487) [7002]

1. Conveyances, etc., generally—A mortgage cannot be created by a deposit of title deeds (6-250, 167). Oral evidence is not admissible to prove the grantee in a deed (48-462, 51+473). A mechanic's lien is not an "interest" in land within the meaning of the statute (53-70, 54-1655). A contract for the foreclosure of a mortgage and a conveyance of the land after the expiration of the redemption period held within the statute (67-100, 69+637). The deposit of a deed in escrow on oral conditions as to its delivery is sufficient to avoid the statute (87-168, 91+467). An oral contract to take a conveyance of land and hold it as security for an indebtedness is not within the statute (96-27, 104+561; 96-230, 104+966). Contract canceling assignment of interest in land to secure a debt is not surrender of interest in lands within statute (110-481, 126+65). Agreement to accept proceeds of assigned contract to cut timber and credit on notes not purchase of interest in land (113-493, 129+1045). Verbal authority to accept by telegram offer of purchase held not to obviate lack of written authority in agent. Contract so entered into by agent is enforceable only when substantial part performance (108-132, 121+630). To take parol gift of land out of statute, donee must not only enter into possession, but also make improvements thereon, or perform such other acts with reference thereto as would make it inequitable not to enforce the gift (98-348, 108+295). Cited (101-152, 112+65).

2. Leases—Tenancies from year to year are not within the statute (47-1, 49+327). Where a written lease provides for an extension upon oral notice an extension so made is not within the statute (73-108, 75+1039). The acceptance of a lease need not be in writing, nor the authority of an agent to accept a lease, nor a ratification by a principal of an unauthorized acceptance by an agent (52-333, 54+188). The authority of an agent to execute a lease must be in writing (31-430, 18+151; 78-268, 80+974. See 91-409, 98+323). A ratification of an unauthorized execution of a lease by an agent must be in writing, but the lessor may, by his acts, estop himself from denying the authority of the agent (31-430, 18+151; 24-172). An oral lease void under the statute cannot be referred to for the purpose of determining the length of the term (51-333, 53+642). If possession is taken under an oral lease within the statute the lease regulates the terms of the tenancy as respects rent (30-515, 16+404; 57-18, 58+685; 81-316, 84+116; 95-417, 104+305. See 50-116, 52+384; 74-333, 77+231; 78-268, 80+974). A lease within the statute cannot be surrendered except by act or operation of law or by deed or conveyance in writing. Where there arises a condition of facts, voluntarily assumed, incompatible with the relation of landlord and tenant between parties who have occupied

that relation, there is a surrender of the lease by operation of law (8-107, 82; 26-318, 3+978; 56-33, 57+329; 57-381, 59+310; 63-13, 65+87. See 26-133, 1+813; 78-268, 80+974). An oral lease for more than one year terminable at any time on four months' notice is within the statute (30-515, 16+404). A lease of four rooms at a gross monthly rent, dated February 5, 1883, the tenants to have immediate possession of two of them, and of the other two on May 1, 1883, and the term to continue until May 1, 1884, is within the statute (31-430, 18+151). Agreement pursuant to which elevator was constructed on railway land held lease, and within statute (98-170, 107+1049). Writings, construed together in light of surrounding circumstances, held to supply the requirements as to signature and description (101-381, 112+419). Lease for more than one year cannot be canceled and surrendered by parol. But when landlord verbally agrees to cancel and surrender, and tenant performs by vacating and surrendering possession, landlord is estopped from asserting right to enforce covenants of lease, if he acquiesces and resumes possession (109-81, 122+1119).

A letter, written by defendants, proposing to sell a building and give a ground lease for a long term of years upon the terms and conditions set out, did not become an enforceable contract by plaintiff's appending thereto the following: "Accepted: 8/9/22 Nathan Kris, providing conditions of lease are satisfactory." 159-213, 198+541.

3. Trusts—A trust in real estate cannot be created by an oral declaration. A power in trust cannot be ingrafted on an absolute deed by parol (2-277, 238; 5-422, 342; 25-117; 33-329, 23+530; 34-272, 25+596, 26+121; 44-159, 46+295; 53-123, 54+1063; 54-56, 55+825; 63-5, 65+91; 92-506, 100+380; 93-499, 101+970; 95-220, 103+882). Trusts by operation of law are expressly excluded from the statute (6-358, 241; 21-127; 25-117). Evidence held not to show trust resting in parol in violation of G. S. 1894 § 4213. Verbal promise by grantee to hold legal title to land in trust for benefit of grantor and to reconvey on demand, where no bad faith except that which arises from refusal to carry out promise, is void. Where party obtains legal title from another by fraud, or by taking advantage of confidential or fiduciary relations, or in any other unconscientious manner, equity will impress a constructive trust (108-76, 121+214).

An express trust in favor of the beneficiary cannot, by parol proof, be ingrafted upon a deed which is absolute in form. 213+38.

The failure of the intended express trust does not result in a constructive trust in favor of the beneficiary of the incomplete trust. 213+38.

4. Partnership to deal in real estate—An agreement creating a partnership to deal in real estate—even a single piece of real estate—is not within the statute (33-175, 22+254; 33-339, 23+547; 41-374, 43+84; 53-443, 55+601).

128-468, 151+195; 129-482, 152+879; 127-313, 149+652; 139-154, 166+184; 141-481, 170+703; 145-244, 176+844; 146-62, 177+927; 148-235, 181+356; 151-516, 187+707; 153-300, 190+343; 154-346, 191+821; 154-532, 192+354.

5. License to Use Water.

An offer by a landowner to allow a city to connect its waterworks with an artesian well on his land, if the city would furnish him with water free of charge, was accepted and acted upon for more than 20 years. By accepting the offer the city avoided the expense of sinking a well on its own land. It incurred only an inconsiderable expense on the faith of the offer. The agreement was not in writing, and the duration of the privilege granted was not specified. Held, that all the city got was a license which was revocable at the will of the landowner and his grantee. 157-41, 195+535.

Upon the revocation of such a license, the licensee should be given a reasonable time to secure a supply of water from other sources before the landowner is permitted to shut off the flow of water from his well to the waterworks. 157-41, 195+535.

6. Contract to Procure Purchaser.

The contract was, in effect, one to procure a purchaser for land, and was not within the statute of frauds as a contract for the sale of lands. 166-18, 208+1.

7. Promise to Execute Mortgage.

Promise to execute mortgage is within statute. 166-153, 207+315.

8. Promise to Pay for Abandonment of Contract.

An agreement to pay a vendee in an executory contract for the purchase of land a sum of money for his abandonment of such contract is not within the statute of frauds. 209+642.

8460. Leases—Contracts for sale of lands—Every contract for the leasing for a longer period than one year or for the sale of any lands, or any interest in

lands, shall be void unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing and subscribed by the party by whom the lease or sale is to be made, or by his lawful agent thereunto authorized in writing; and no such contract, when made by an agent, shall be entitled to record unless the authority of such agent be also recorded. (3488) [7003]

1. In general.—An oral contract within the statute is void and not merely non-enforceable (16-172, 151; 46-321, 48-1129; 71-114, 73-522). An action for damages cannot be predicated on it (56-222, 57-480). The statute applies to both legal and equitable interests (71-114, 73-522). A contract for the sale of land cannot rest partly in writing and partly in parol. A modification of such a contract must be in writing (40-196, 41-1029). An offer or proposal in writing to sell lands must be accepted in writing and such acceptance must be unqualified so that there is a clear accession on both sides to one and the same set of terms (14-72, 55; 20-178, 163; 31-418, 18-145; 36-361, 31-690; 65-304, 67-999; 90-414, 97-126; 91-409, 98-323; 94-209, 102-373). Performance of a contract within the statute may be waived orally (74-224, 77-34). An oral variation of a written contract within the statute, though made in respect of a particular which might, if standing alone, be good by parol, cannot be available as part of the contract, so long as the whole contract remains executory (21-402; 40-196, 41-1029; 52-31, 53-1017; 74-224, 77-34; 78-379, 81-204, 543). The statute does not abrogate the doctrine of estoppel in pais (50-417, 52-908). Either party may invoke the statute (5-247, 193). An oral contract to convey land will not prevent a recovery by the owner in the absence of part performance (46-321, 48-1129). Where parts of an entire contract within the statute have been performed other parts of the same contract not within the statute may be proved and enforced (61-214, 63-624).

157-41, 195-535, note under § 8459.

The fact that plaintiff was in possession under a lease did not deprive him of the right to recover for improvements made solely under and in reliance on the contract to purchase. 156-357, 194-884.

The questions here involved could not be litigated in an action under the unlawful detainer statute and a judgment for restitution of the premises rendered in such an action is not a bar to this action. 156-357, 194-884.

Where a vendee under and in reliance upon an oral contract to purchase makes valuable improvements on the property and the vendor refuses to carry out the contract, the vendee may recover for such improvements to the extent that they enhanced the value of the property. 156-357, 194-884.

After defendant refused to perform, tender of further performance by plaintiff was unnecessary. 156-357, 194-884.

Evidence considered, and held sufficient to justify a finding of part performance to take an oral agreement to assign a 99-year lease of real property out of the statute of frauds, and to entitle defendant, in a partnership accounting, to credit of a one-half interest in the proceeds of the sale thereof. 156-416, 195-41.

Where a lessor indorses and signs on an existing lease this language: "The lessee is hereby given the option of renewing this lease for a period of five years from the expiration thereof at the rate of two hundred fifty (\$250.00) dollars per month for a period of five years upon giving six months notice before expiration of his intention so to do"—it is within the statute of frauds, because, first, it does not express the consideration; and secondly, because it contemplates the making of a lease for a longer period than one year. 157-161, 195-898.

Certain "premises" being described in a lease by street number and the name of an apartment building situated thereon, parol evidence is competent to identify and show the extent of the premises in question. 164-516, 205-446.

A contract void under the statute of frauds, is relevant in an action to recover on a quantum meruit for the services rendered, pursuant to such contract as an admission of value. 210-854

2. The memorandum.—The memorandum must describe the land to be conveyed with reasonable certainty (2-213, 174; 10-207, 168; 20-178, 163; 30-389, 15-674; 32-263, 20-193; 34-312, 25-638; 38-322, 37-451; 39-372, 40-266; 40-155, 41-411, 548; 40-180, 41-936; 40-433, 42-292; 42-267, 44-118; 51-105, 52-1080; 83-87, 85-942); but parol evidence is admissible to show the circumstances of the parties for the purpose of applying or identifying the description (2-213, 174; 30-389, 15-674; 34-312, 25-638; 38-322, 37-451; 40-433, 42-292; 42-267, 44-118; 51-105, 52-1080; 83-87, 85-942). It may be made up of several writings if their connection is apparent without resort to parol evidence (20-178, 163; 30-389, 15-674; 40-433, 42-292; 83-87, 85-942; 94-209, 102-373; 95-234, 103-1031). It must state the names of the vendor and vendee (39-

272, 39-495; 39-275, 39-496), and the price (38-338, 37-791; 39-272, 39-495); it must contain all the material terms of the contract (38-338, 37-791; 39-272, 39-495; 40-433, 42-292; 83-87, 85-942); it must be signed by the vendor but not necessarily by the vendee (80-317, 83-192, overruling 46-402, 49-199; 95-164, 103-889); and it must be delivered (16-172, 151). Parol evidence is inadmissible to supply omissions (39-272, 39-495; 40-433, 42-292). A memorandum held sufficient as respects parties, terms of payment and description of land (34-312, 25-638). A sheriff's certificate on execution sale is a sufficient memorandum (11-220, 142). A printed signature held not a sufficient signing to constitute an acceptance (94-209, 102-373).

3. Authority of agent.—The authority of an agent to contract for the sale of land must be in writing (69-328, 72-697; 71-114, 73-522; 84-187, 87-612; 91-409, 98-323; 93-247, 101-161; 112-190, 127-629). Prior to 1887 c. 26 the rule was otherwise (21-409; 21-538; 50-373, 52-963; 69-328, 72-697; 94-456, 103-335). The authority of an agent to accept an offer must be in writing (91-409, 98-323). Oral contract may be ratified (112-190, 127-629). The ratification of an unauthorized contract of an agent must be in writing (84-187, 87-612). See 43-246, 45-231; 69-328, 72-697). Where an agent authorized to contract to sell conveys under a defective power the deed will be treated as a good contract to sell (3-225, 154; 50-373, 52-963; 69-328, 72-697). There is a distinction between a power to sell and a power to convey (43-246, 45-231).

4. Contracts held within statute.—A contract for the sale of wild grass growing on the vendor's land (90-299, 96-705); a contract for the sale of standing timber (90-414, 97-126). See 58-149, 59-988; a contract by a settler on government land for a third party to enter the land and pay for it and convey to the settler when repaid (2-277, 238); a contract by one about to pre-empt land to convey after pre-emption (5-422, 342); a contract to convey land in payment for chattels (52-31, 53-1017); a contract for the conveyance of property to be acquired by foreclosure proceedings (67-100, 69-637; 71-114, 73-522; 73-311, 76-454); a contract for the exchange of lands (91-409, 98-323); a contract for the assignment of a lease (31-312, 17-621); a contract for a lease (31-392, 18-101). Agreement by husband to enter into contract in future for sale of land owned by wife is within statute (106-380, 118-1026). Cited (108-132, 121-630).

5. Contracts held not within the statute.—A written lease for one year with a provision for its renewal for two years at the option of the lessee, the option to renew being exercised by remaining in possession and paying rent (89-348, 94-1084); an executed contract (9-252, 237).

6. Recovery of money paid.—Money paid on an oral contract within the statute may be recovered if the vendor refuses or is unable to convey (12-326, 216; 19-372, 317; 25-117; 44-551, 47-161; 84-195, 87-608). If only a part of the purchase price is paid it cannot be recovered without tendering the balance and demanding a deed if the vendor is not in default (27-328, 7-266; 36-473, 31-938; 38-18, 35-668). See 42-538, 44-1031; otherwise if the vendor has refused to perform or has disabled himself (12-326, 216; 19-372, 317; 49-198, 51-819). Where the delivery of the deed and the payment of the balance of the purchase money are to be concurrent acts the vendor can put the vendee in default only by tendering a deed and demanding the balance (12-326, 216; 37-68, 33-43).

122-123, 142-18; 123-409, 143-1127; 125-81, 145-792; 127-15, 148-476; 128-15, 151-196; 130-450, 153-874; 134-68, 153-808; 135-128, 160-251; 135-452, 161-157; 140-53, 167-274; 147-173, 179-649; 147-200, 179-894; 148-256, 179-895; 148-269, 181-580; 150-416, 185-494; 152-362, 189-122, 193-686.

8461. Specific performance.—Nothing in this chapter contained shall abridge the power of courts of equity to compel the specific performance of agreements in cases of part performance thereof. (3489) [7004]

The doctrine of part performance rests on the ground of fraud. The underlying principle is that where one of the contracting parties has been induced or allowed to alter his situation on the faith of an oral agreement within the statute, to such an extent that it would be a fraud on the part of the other party to set up its invalidity, equity will make the case an exception to the statute (5-422, 342; 23-343; 30-528, 16-421; 32-482, 21-726; 35-373, 29-135; 39-197, 39-146; 63-230, 65-444; 81-428, 84-221; 95-315, 104-135). That is, equity will not permit the statute, which is designed to prevent fraud, to be used as an instrument of fraud (35-373, 29-135; 39-197, 39-146; 75-350, 78-4). Merely paying the purchase price (14-72, 55, 30-528, 16-421; 32-482, 21-726); or taking possession (20-219, 198. See 46-321, 48-1129); or doing acts preparatory or ancillary to a performance (14-72, 55), is insufficient. Taking possession and making substantial improvements is sufficient (12-326, 216; 13-462, 430; 23-343; 34-517, 26-725; 38-245, 36-640; 54-130, 55-831; 63-230, 65-444; 94-209, 102-373). If it is done with the consent, express or implied, of the vendor and

in pursuance of the contract (37-259, 34432; 54-130, 55+831; 63-230, 65+444). If a party sets up part performance to take a parol agreement out of the statute he must show acts unequivocally referring to and resulting from that agreement, such as the party would not have done unless on account of that very agreement, and with direct view to its performance. The acts must have been done with the specific intent of carrying out the contract and this intent cannot be shown by the oral agreement (2-277, 238; 7-408, 322; 20-219, 198; 29-95, 12+149; 35-373, 29+135; 54-130, 55+831; 71-1, 73+515). The acts must have been done in reliance upon and in pursuance of the oral agreement, and be related to and connected with it, but they need not have been stipulated in the agreement. Any act which a party to the contract might have asserted and relied on as part performance may be asserted and relied on by those claiming under him (35-373, 29+135). If the possession is not a new fact, but is a continuation of a former similar condition, the intent to hold possession with a view to carrying out the agreement must be proved by some further act which clearly shows that the possession cannot be accounted for except by the oral contract of purchase. Possession by a son raises no presumption that it was taken pursuant to a contract for purchase of the land (71-1, 73+515). Where one is in possession as a tenant with a verbal agreement for purchasing mere continuance in possession is not part performance (20-219, 198). Specific performance will not be granted where the plaintiff has an adequate remedy at law (5-178, 139; 29-95, 12+149; 16+431; 35-373, 29+135; 39-197, 39+146), as, for example, where the part performance consists merely in the payment of the purchase price (14-72, 55; 30-528, 16+421; 32-482, 21+726), or in services rendered, if their value can be ascertained with reasonable accuracy (30-528, 16+421; 39-197, 39+146; 75-350, 78+4). The right to have a contract specifically enforced is an equitable interest in land (34-517, 26+725); and it can only be enforced in an equitable action (31-392, 18+101; 87-172, 91+483). Specific performance may be enforced in favor of a licensee on the ground of part performance (29-95, 12+149). An express trust in favor of a grantor cannot be ingrafted on a conveyance absolute in its terms under the doctrine of part performance (53-123, 54+1063). The terms of the contract must be definite (83-206, 86+11), and the conduct of the plaintiff fair and equitable (5-422, 342). Acts held to take case out of statute (12-326, 216; 13-462, 430; 17-342, 320; 20-219, 198; 23-343; 25-516; 34-517, 26+725; 35-373, 29+135; 37-259, 34+32; 38-245, 36+640; 39-197, 39+146; 54-130, 55+831; 63-21, 55+95; 63-230, 65+444; 75-350, 78+4; 76-434, 79+541; 81-428, 84+221; 94-209, 102+373; 94-414, 103+214; 95-315, 104+135; 96-27, 104+561; 95-230, 104+966). Acts held not to take case out of statute (2-277, 238; 5-422, 342; 7-408, 322; 14-72, 55; 29-95, 12+149; 30-528, 16+421; 32-482, 21+726; 46-321, 48+1129; 67-100, 69+637; 71-1, 73+515; 83-206, 86+11).

122-123, 142+18; 124-114, 144+744; 125-49, 145+615; 125-49, 145+615; 125-82, 145+791; 125-118, 145+812; 126-389, 148+125; 130-368, 153+754; 135-368; 160+1031; 132-106, 155+1071; 128-110, 159+389; 128-136, 150+616; 128-150, 150+622; 134-321, 159+752; 127-238, 149+287; 132-87, 155+1054; 134-68, 158+809; 147-220, 179+894; 152-362, 189+122.

165-38, 205+607; 165-124, 205+955; 209+889; 211+823; 157-41, 195+535, note under § 8459.

The correspondence examined, and held not to show a completed contract for the purchase of land; hence the action for specific performance must fail. 161-350, 201+547.

Agreement to give or devise real property. 161-396, 202+53.

Plaintiffs are not in position to claim their tender of performance to have been in time. 162-452, 203+215.

There being justifiable rescission by defendant, restoration of the amount paid by him was proper. 162-452, 203+215.

Sale of land. 210+586.

8462. Logs—Extension of time of payment for labor—Every agreement extending the time of payment for manual labor, performed or to be performed in cutting, hauling, banking, or driving logs, beyond the time of the completion of such labor, shall be void, unless such agreement, expressing the consideration, be in writing subscribed by the party to be charged therewith, and unless, at the time of making such agreement or completing such labor, the person for whom it is to be or has been performed deliver to such laborer his negotiable promissory note for payment of the agreed compensation, with interest. Every lien allowed by law on account of such labor shall pass by the transfer of such note; and be enforceable by the holder thereof. (3490) [7005]

STATUTE OF FRAUDS GENERALLY

1. Construction—The statute should be construed to apply only to contracts clearly within its provisions (3-109, 61; 81-316, 84+116).

2. Contracts partly within statute—Where parts of an entire contract within the statute have been performed other parts of the same contract not within the statute may be proved and enforced (61-214, 63+624). The fact that a contract for a sale of goods embraces an agreement as to other matters does not take it out of the statute (40-1, 40+841).

3. Executed contracts—The statute has no application to executed contracts (9-252, 237; 87-11, 91+33).

4. Pleading—A defendant who denies in his answer the making of the contract alleged in the complaint may invoke the statute without pleading it (34-272, 25+596, 26+121; 40-141, 41+465; 82-320, 84+1016); otherwise if he admits the contract (56-299, 57+800; 82-320, 84+1016. But see 40-433, 42+292; 2-277, 238). In declaring on a contract within the statute it is not necessary to allege that it was in writing (8-127, 93; 11-220, 142; 31-312, 17+621; 33-50, 21+855; 33-329, 23+530; 92-208, 99+798). A complaint which shows on its face that it is based on a verbal contract within the statute is demurrable in the absence of an allegation of facts taking it out of the statute (2-277, 238; 20-40, 33; 39-145, 39+302). Allegations of the payment of earnest money or part acceptance are put in issue by a general denial (39-145, 39+302). An answer held to authorize proof either of a written contract sufficient to satisfy the statute or an oral one with part performance (94-209, 102+373).

5. Who may invoke statute—Either party to a contract may invoke the statute (5-247, 193). It is the general rule that third parties cannot invoke the statute (92-201, 99+804; 94-138, 102+390), but this has been held not applicable to a sheriff levying an execution (71-167, 72+727).

6. Parol modification of written contract—A written contract within the statute cannot be modified by a subsequent parol agreement between the parties (21-163; 21-402; 40-196, 41+1029; 52-31, 53+1017; 74-224, 77+34; 73-379, 81+204, 543). Not applicable to contract so modified which has been fully performed (113-148, 129+216, 389).

When statute may be availed of by motion to dismiss (128-463, 151+195).

CONVEYANCES FRAUDULENT AS TO PURCHASERS

8463. When made to defraud, void—Exception—Every conveyance of any estate or interest in lands, or the rents and profits thereof, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits, as against any such purchasers, shall be void; but no conveyance or charge shall be deemed fraudulent, in favor of a subsequent purchaser who had actual or constructive notice thereof at the time of his purchase, unless it appears that the grantee in such conveyance, or the person to be benefited by such charge, was privy to the intended fraud. (3491) [7006]

8464. With power of revocation, etc., when void—Every conveyance or charge of or upon any estate or interest in lands, containing any provision for the revocation, determination, or alteration of such estate or interest, or of any part thereof, at the will of the grantor, shall be void, as against subsequent purchasers from such grantor for a valuable consideration, of any estate or interest liable to be so revoked or determined, although the same is not expressly revoked, determined, or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge. (3492) [7007]

8465. Under power of revocation—When a power to revoke a conveyance of any lands, or of the rents and profits thereof, and to reconvey the same, is given to any person other than the grantor in such conveyance, and such person thereafter conveys the same land, rents, or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of revocation was recited therein, and the

intent to revoke the former conveyance expressly declared. (3493) [7008]

8466. Same—Premature conveyance—If a conveyance to a purchaser under either of §§ 8464, 8465 is made before the person making the same is entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation actually vests in such person, in the same manner and to the same extent as if then made. (3494) [7009]

CONVEYANCES FRAUDULENT AS TO CREDITORS

(Uniform Fraudulent Conveyance Act. '21 c. 415 § 14, expressly repeals G. S. '13 §§ 7010 and 7013, R. L. '05 §§ 3495 and 3498).

8467. Of chattels without delivery—Fraud presumed—Every sale by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same is accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things sold or assigned, shall be presumed to be fraudulent and void as against the creditors of the vendor or assignor and subsequent purchasers in good faith, unless those claiming under such sale or assignment make it appear that the same was made in good faith, and without any intent to hinder, delay, or defraud such creditors or purchasers. The term "creditors," as herein used, shall include all persons who are creditors of the vendor or assignor, at any time while such goods and chattels remain in his possession or under his control. (3496) [7011]

Sufficiency of change of possession considered (19-367, 312; 39-269, 39+628; 40-421, 42+290, 41-292, 42+1062; 42-457, 44+988; 44-541, 47+164; 45-124, 47+544; 72-329, 75+230). When possession held by lienholder notice of transfer to him is sufficient (54-509, 56+175). A vendee has the burden of proving his own good faith but not that of his vendor (63-24, 65+121). A subsequent purchaser, to avail himself of the statute, has the burden of proving that he is a bona fide purchaser. This he may do, prima facie, by proof that he paid a valuable consideration (44-541, 47+164; 103-412, 115+203). Statute affirmative of common law principles (85-264, 267, 88+761). But see (103-412, 115+203). Those who become creditors subsequent to the sale but while the property is in the possession of the vendor are "creditors" within the statute (40-421, 42+290; 41-292, 42+1062). Cited (18-308, 278; 27-530, 533, 8+765; 48-396, 399, 51+222; 103-459, 115+640). See '17 c. 465 sections 25, 26.

(124-113, 144+433).
Presumption being no change of possession, is rebuttable (193+38).
17 F. (2d) 492.

A chattel mortgage of a stock of merchandise contemplating the retention of possession by the mortgagor and a sale at retail, the mortgagor agreeing that "at least the amount of the wholesale price of that which is sold" shall be applied on the mortgage debt, is constructively fraudulent. 159-473, 199+84.

8468. Same—Limitations—Nothing contained in § 8467 shall apply to contracts of bottomry or respondentia, or assignments or hypothecations of vessels or goods at sea, in foreign ports, or out of the state, if the assignee or mortgagee take possession of such vessel or goods as soon as possible after the arrival thereof within the state. (3497) [7012]

8469. Rights of heirs, etc.—Every conveyance, charge, instrument, or proceeding, declared void by this chapter as against creditors or purchasers, shall be equally void as against their heirs, successors, personal representatives, or assigns. (3499) [7014]

19-17, 1; 24-383.

8470. Question of fact—Voluntary conveyances—The question of fraudulent intent, in all cases arising under this subdivision, shall be deemed a question of fact, and not of law; and no conveyance or charge

shall be adjudged fraudulent as against creditors solely on the ground that it was not founded on a valuable consideration. (3500) [7015]

1. Question of fact—Fraudulent intent a question of fact (19-367, 312; 27-530, 533, 8+765; 44-168, 46+304; 45-124, 127, 47+544; 48-396, 400, 51+222; 62-307, 64+821; 63-24, 65+121). If the fraudulent intent unequivocally appears on the face of the conveyance or from the facts admitted by the pleadings there is no necessity of submitting the question to the jury (4-204, 146; 4-391, 296; 6-305, 213). When the evidence is reasonably susceptible of but one inference the court may direct a verdict as in other cases (42-519, 44+535; 52-216, 53+1147; 62-341, 345, 64+818). In an action tried by the court it is not necessary to submit the question of fraud to a jury (84-10, 86+612). Statute not applicable to transfers of personalty (18-414, 373).

2. Voluntary transfers—Voluntary transfers are prima facie fraudulent (4-391, 296; 25-199; 26-385, 4+621; 39-527, 40+831; 45-540, 48+440; 79-299, 303, 82+589; 83-265, 86+99). Knowledge of grantee immaterial (83-265, 86+99).

123-445, 143+1130; 135-106, 160+249; 147-101, 179+683; 153-411, 190+895.

The evidence sustains a finding that a conveyance made by a father, to his son, in consideration of future support, was fraudulent as to creditors, and that the son participated in or had knowledge of the fraud. 166-435, 208+184.

8471. Bona fide purchasers—The provisions of this subdivision shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it appears that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor. (3501) [7016]

Affirmative of common law (18-414, 373; 63-24, 28, 65+121). If the grantee has knowledge of facts which would put an ordinarily prudent man on inquiry which would lead to the discovery of the fraudulent intent he is charged with notice of such intent (55-515, 518, 57+223; 69-101, 103, 71+829; 75-542, 78+1). Valuable consideration essential (13-434, 398). Effect of paying only portion of purchase money before notice (49-532, 52+141. See 33-157, 160, 22+292). Purchaser with notice from bona fide purchaser protected (67-116, 118, 69+703). If the instrument of transfer bears a fraudulent intent on its face the purchaser is charged with notice (25-199, 201).

8472. Assignment of debt—Every assignment of a debt, unless the same be in writing and be filed with the clerk of the town or municipality in which the assignor resides, shall be presumed to be fraudulent and void as against his creditors, unless those claiming thereunder make it appear that it was made in good faith and for a valuable consideration: Provided, that this section shall not apply to debts evidenced by writing subscribed by the debtor, and delivered to the assignee at the time of the assignment thereof. Assignments required by this section to be filed need not be acknowledged. (3502) [7017]

82-21, 84+640; 85-355, 88+997.
1899 c. 268 cited (97-258, 106+1053).
Does not "require" a "recording or registering" within the meaning of federal bankruptcy act; and hence an assignment made more than four months prior to filing of petition in bankruptcy could not be avoided by trustee as preference, though it was never filed (139+941). Failure to file does not render assignment absolutely void (124-160, 144+763; 140-34, 167+277). Presumption, how overcome (143-66, 173+181).
209+883.

In an action to set aside an assignment of certain cream checks, upon the ground that it was made to defraud the assignor's creditors, held, that the evidence is not sufficient to support the contention and order for judgment. 158-305, 197+259.

8473. Sale of stock of merchandise—Every sale of a portion of stock of merchandise, otherwise than in the ordinary course of the seller's business, and every sale of an entire stock of merchandise, shall be presumed fraudulent and void as against the seller's creditors, unless at least five days before the sale:

1. The seller and purchaser make an inventory showing the quantity, and, so far as possible, with the

exercise of reasonable diligence, the cost to the seller, of each article to be sold;

2. The purchaser in good faith make full inquiry of the seller as to the names and places of residence and business of the seller's creditors and the amount owing to each; and

3. The purchaser mail to each creditor, of whom he can with the exercise of reasonable diligence acquire knowledge, notice of the proposed sale, stating the cost to the seller of the merchandise sold and the price to be paid therefor.

Except as herein provided, nothing in this section shall change or affect the rules of evidence and the presumptions of law otherwise applicable to such sales. (3503) [7018]

95-422, 104+371.
1899 c. 291 constitutional (99-22, 108+940). Sales presumptively fraudulent only: statute merely prescribing a rule of evidence (99-22, 108+940). Failure of vendee to secure inventory, or inquire as to vendor's creditors and amount owing each, rendered sale presumptively fraudulent (103-459, 115+640). Cited and applied (106-544, 119+665; 118-139, 136+401).
159-447, 199+176.

Sale made without compliance with statute is presumptively fraudulent and burden of proof is on purchaser in action to set aside. 17 F. (2d) 492.

Purchaser was entitled to credit for part of purchase price which went to trustee in bankruptcy—Id.

8474. "Conveyance" defined—The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, except a will, whatever its form, and by whatever name known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered. (3504) [7019]

Leases included (24-172; 37-218, 34+21). Names and forms not controlling (4-533, 418; 23-242, 252; 30-419, 421, 15+687).

FRAUDULENT CONVEYANCES.

8475. Definition of Terms—In this act "Assets" of a debtor means property not exempt from liability for his debts. To the extent that any property is liable for any debts of the debtor, such property shall be included in his assets

"Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or incumbrance.

"Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

"Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent. ('21 c. 415 § 1)

Proof of the beginning of an action in March, which was reduced to a verdict in May, and entered into a judgment in October, which remains in force, is sufficient proof of an existing indebtedness at all times after the beginning of the action as to the appellant who attended the trial. 157-1, 195+627.

As a general rule, the validity of a transfer of property given by a debtor to a creditor to secure or pay his claim, in consideration for which he agrees to advance to the debtor sufficient to enable him to live during the season, depends upon the bona fides and fairness of the transaction. 158-305, 197+259.

Inapplicable to transfer prior to January, 1922. 159-535, 198+132.

8476. Insolvency—(1) A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured.

(2) In determining whether a partnership is insolvent there shall be added to the partnership property the present fair salable value of the separate assets of each general partner in excess of the amount probably

sufficient to meet the claims of his separate creditors, and also the amount of any unpaid subscription to the partnership of each limited partner, provided the present fair salable value of the assets of such limited partner is probably sufficient to pay his debts, including such unpaid subscription. ('21 c. 415 § 2)

8477. Fair Consideration—Fair consideration is given for property, or obligation,

(a) When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or

(b) When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained. ('21 c. 415 § 3)

209+883.
Where children, after becoming of age, remain as members of family and perform services under an agreement for compensation, such services are a valid consideration for a conveyance in payment therefor. But the services of such children, if rendered without a prior agreement for compensation, will not sustain such a conveyance as against creditors of the grantor. 164-317, 204+953.

8478. Conveyance by Insolvent.—Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration. ('21 c. 415 § 4)

A conveyance from parents to children is presumed to be valid until shown to be invalid. 164-317, 204+953.

Action to set aside a conveyance of personal property from a debtor to his children as fraudulent. 164-317, 204+953.

The consideration required, is one which fairly represents the value of the property transferred or the obligation incurred. 209+833.

8479. Conveyances by Persons in Business—Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent ('21 c. 415 § 5)

8480. Conveyance by a Person about to Incur Debts—Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors. ('21 c. 415 § 6)

Basis and scope of section defined (62-341, 345, 64+818). Applicable to realty (62-341, 345, 64+818; 64-476, 67+538). Not applicable where transfer is primarily for the benefit of the grantee and the reservation to the grantor is incidental and partial (3-364, 257; 19-367, 312; 25-175, 62-341, 345, 64+818; 64-476, 67+538; 94-67, 102+376). Held not applicable to transfer of exempt property (51-296, 53+637); to bill of sale of partnership property to secure firm debts with right of redemption (74-439, 77+236). Requisites of complaint to bring case within (64-476, 67+538). Statute affirmative of common law principles (see 3-364, 257; 19-17, 1; 28-23, 8+876; 35-194, 28+252; 39-527, 40+831).

R. L. '05 § 3495 G. S. '13 § 7010 was repealed by '21 c. 415 § 14, and notes thereunder appear here; (124-113, 144+433). Deserted wife of grantor is entitled to all rights of a creditor (144-263, 180+221).

8481. Conveyance Made with Intent to Defraud—Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either pres-

ent or future creditors, is fraudulent as to both present and future creditors. ('21 c. 415 § 7)

R. L. '05 § 3498, G. S. '13 § 7013 is expressly repealed by '21 c. 415 and notes thereunder appear here.

4. In General.

164-446, 205+371.

In so far as quitclaim deed conveyed interest of son as heir at law of his father, it was without consideration, and in fraud of creditors. 167-275, 208+1003.

This act inapplicable to transfer prior to its going into effect. 159-535, 198+132.

Section 7013, Gen St. 1913, relating to fraudulent transfers of real estate, but omitting personal property, not abrogate the common-law rule which remains in force; and the assignments of personal property made for the purpose of hindering, delaying, and defrauding creditors are void as against such creditors. 157-1, 195+827.

Knowledge of the insolvency of the transferor does not prevent a transferee from acquiring the rights of a good-faith purchaser, provided he gives a fair consideration for what he gets. 203+883.

Where a corporation has been organized for that purpose, and used as an instrument of fraud, where an individual has incorporated himself in order to hinder and, if possible, to defraud creditors, courts, in order to accomplish justice, will go as far as necessary in disregarding the corporation and its doings. 159-132, 198+417.

The complaint alleges that one of the defendants paid to another defendant a stated sum upon a note owing him by her deceased husband, who died insolvent; that the other defendant, her father, was a surety upon the note; that the payment was a voluntary one without consideration; that she was largely indebted at the time; that the payment made her insolvent; that it was made with intent to defraud her creditors; and that the two defendants were conversant with the situation and participated in the transaction. Held, that the complaint states a cause of action. 159-353, 198+1006.

In a motion to vacate a writ of attachment upon the ground that the defendant was about to transfer property to delay creditors, the burden of proof is upon the plaintiff; and the proof in this case is held insufficient. 167-181, 208+759.

Evidence sustains finding that deed was not made with intent to hinder, delay or defraud creditor, that it was made for a valuable consideration, and that the grantee therein named did not know that said grantor was then indebted to any party whatsoever. 164-350, 205+218.

The finding that there was no fraud as to the plaintiff judgment creditor, in the arrangement whereby the deed was returned to the vendor, who gave a deed of a portion of the land to the vendee's wife, is sustained. 165-198, 206+170.

The finding that the chattel mortgage in question was given to secure a valid debt and not for the purpose of hindering, delaying, or defrauding creditors is sustained by the evidence. 165-317, 206+440.

The finding herein to the effect that defendant as grantee received a deed from his brother, grantor, without consideration, and with the fraudulent intent on the part of both to hinder and delay plaintiff, a creditor of the grantor, is sufficiently supported. 167-37, 208+423.

The evidence sustains the finding that a mortgage and deed were fraudulent as to the plaintiff judgment creditor. 210+634.

The evidence sustains the finding that the debts upon which the judgments were entered antedated the mortgage and conveyance. 210+634.

The evidence sustains the finding that conveyances of real estate made by the bankrupt, of whom the plaintiff is trustee, to relatives, were made to hinder, delay, and defraud his present and future creditors. 211+473.

Fraud may be proved by circumstantial evidence. 211+473.

When there is evidence that a conveyance is fraudulent, the fact that it is between relatives is proper for consideration. 211+473.

1. Based on 13 Eliz. c. 5—7-337, 264; 48-490, 494, 51+475; 53-110, 114, 54+942.

2. Declaratory of common law—12-60, 27; 13-326, 299; 18-414, 373; 53-110, 115, 54+942.

3. Personality—Fraudulent transfers of personalty are voidable the same as fraudulent transfers of realty (13-326, 299; 13-434, 398; 22-247, 53-110, 115, 54+942).

4. Who are "other persons"—Wife suing or about to sue for divorce (53-110, 115, 54+942. See 90-471, 97+122). Wife after decree dissolving marriage (96-523, 105+183).

5. Meaning of "lawful"—7-337, 264, 11-104, 62.

6. Subsequent creditors—A subsequent creditor cannot avoid a conveyance merely because it was made with intent to defraud creditors existing at the time of its execution (48-490, 51+475; 88-506, 515, 93+665; 95-414, 104+479; 99-301, 109+242); otherwise if it was made to defraud him (39-527, 40+831; 48-490, 51+475; 53-110, 115, 54+942), or where the necessary consequence of the transfer is to defraud creditors (47-507, 50+696).

7. Essential elements—To make a debtor's transfer of property fraudulent as respects his creditors there must

be an intent to defraud, express or implied, and an act which, if allowed to stand, will actually defraud them by hindering, delaying or preventing the collection of their claims (28-544, 549, 11+77; 51-296, 298, 53+637; 89-432, 437, 95+216, 769). The thing transferred must be of value out of which the creditor could have realized the whole or a part of his claim, or, otherwise expressed, property which is appropriable by law to the payment of the debt (51-296, 298, 53+637; 89-432, 437, 95+216, 769).

8. Intent—As a general rule a fraudulent intent is essential (4-204, 146; 6-305, 213; 18-414, 373; 21-187, 192, 23-242, 252; 47-247, 49+982; 62-341, 345, 64+818). When a fraud on creditors is a necessary consequence of the transfer the fraudulent intent will be presumed (4-533, 418; 47-507, 50+696). The intent must exist at the time of the transfer (4-204, 146; 45-307, 47+969). Good faith (101-107, 111+947; 101-344, 112+266).

9. Property must be appropriable—The transfer of exempt property is not fraudulent (27-116, 6+455; 27-156, 161, 6+618; 28-77, 9+172; 89-247, 250, 94+677); nor is the transfer of property incurred to its full value (28-544, 11+77; 40-193, 41+1031; 51-296, 53+637; 56-531, 58+551; 76-311, 318, 79+305; 88-311, 316, 92+1125; 89-247, 251, 94+677; 89-432, 436, 95+216, 769). There may be a fraudulent transfer of a "contingent interest" (88-311, 92+1125); and of a "beneficial interest" (14-205, 149).

10. Voidable—Good between parties—Confirmation—The term "void" means voidable (22-214; 25-432, 437; 44-534, 47+258; 87-456, 461, 92+340; 93-274, 277, 101+167). A fraudulent conveyance is good between the parties (2-191, 251; 12-60, 27; 30-45, 46, 14+63; 66-195, 197, 68+840; 70-125, 131, 72+963; 72-27, 31, 74+902; 87-456, 461, 92+340). And their privies (86-199, 206, 90+364). The grantor cannot maintain an action to set it aside (90-471, 473, 97+122). But a fraudulent mortgagor may redeem (35-55, 27+74), or resist a foreclosure (36-123, 30+439; 44-534, 47+258). A fraudulent pledgor may redeem (16-320, 283). Creditors may confirm a fraudulent transfer and they will be held to have done so if they pursue the property or money which the debtor received in exchange for the transfer (2-291, 251; 3-377, 271; 22-214; 69-60, 65, 71+827; 70-125, 72+963. See 3-389, 282).

11. Creditor's right to debtor's property—The law regards the property of the debtor as of right belonging to his creditors and sanctions no scheme or device to deprive them of it (6-305, 213). A debtor's property is by law subject immediately to process issued at the instance of his creditor (28-23, 26, 8+876).

12. Knowledge of grantee—As a general rule, to render a transfer fraudulent, the grantee must participate in the fraud or have knowledge of it (18-414, 373). But it is not necessary in the case of a fraudulent assignment for the benefit of creditors (6-305, 213; 23-242), or in the case of any other voluntary conveyance (83-265, 86+99), or where the necessary consequence of the transfer is to defraud creditors (47-507, 50+696).

13. Devices to hinder and delay—A transfer by a debtor to secure an extension of time in which to pay his debts is fraudulent (23-242; 69-60, 71+827).

14. Transfer with trust for grantor—A debtor cannot place his property beyond the reach of the process of his creditors, and, at the same time, retain control over it and its avails and it is immaterial that he intends ultimately to apply the avails of it to the payment of his debts (19-17, 1; 28-23, 26, 8+876). Transfer of real or personal property by debtor to third party to be held in trust for his use and benefit is void as to existing and subsequent creditors (99-301, 109+242).

15. Existence of other property—If a transfer is made with a fraudulent intent it is void although the creditor has other property out of which the debt might be made (76-311, 316, 79+305. See 25-175, 181). If a grantor retains property sufficient for the payment of all his debts he has a right in good faith to provide for his future support by a conveyance of a portion of his property (62-341, 346, 64+818).

16. Consideration—Transfer may be fraudulent although based on a valuable consideration (3-364, 257; 20-435, 389; 42-519, 44+535).

17. Preferences—The payment of an honest debt is not deemed fraudulent under this statute although it operates as a preference and hinders and delays the other creditors (11-104, 62; 19-367, 312; 25-432; 30-60, 14+262; 45-341, 352, 48+187; 46-1, 48+413; 48-396, 51+222; 60-397, 401, 62+383; 81-167, 173, 83+505; 89-432, 439, 95+216, 769). Preferential mortgage is not void under this statute (33-29, 21+840; 34-416, 26+237; 74-439, 77+236; 89-432, 439, 95+216, 769).

18. Deed fraudulent in part void in toto—21-187; 47-507, 50+696; 47-525, 526, 50+699.

19. Title of grantee—Becomes absolute when statute of limitations has run (87-456, 92+340). A fraudulent grantee may do with the property all that the grantor might have done if he had retained it (72-27, 32, 74+902).

20. Liability of grantee—19-17, 1.

21. Crops on land fraudulently conveyed—26-273, 3+351; 28-469, 10+781; 36-223, 30+815; 51-114, 52+1096; 66-195, 68+840. See 47-525, 50+699.

22. Badges of fraud—31-348, 350, 17+950; 51-546, 548, 53+871; 73-265, 266, 76+26; 75-341, 77+991; 82-204, 84+746.

23. Transfers between husband and wife—Transfers between a husband and his wife, whether directly or in-

directly, are prima facie fraudulent as to existing creditors. The burden is on the wife to show good faith and a valuable consideration paid by her or by some one in her behalf (56-469, 57+1136; 89-423, 425, 95+214. See 8-226, 195; 26-273, 3-351; 28-365, 10+20; 28-469, 10+781; 34-107, 24+366; 39-242, 39+320; 44-168, 46+304; 45-294, 47+812; 46-1, 48+413; 73-265, 76+26).

24. **Transfers between near relatives**—Transfers between near relatives are scrutinized by the courts closely but they are not presumptively fraudulent except in the case of husband and wife (89-423, 95+214. See 45-540, 48+440; 64-152, 66+124; 84-483, 87+1120; 88-35, 92+511; 92-139, 99+631). When they are voluntary they are, like all voluntary conveyances, presumptively fraudulent (79-299, 82+589).

25. **Transfers in consideration of future support**—25-199; 26-385, 4+621; 62-341, 346, 64+818.

26. **Transfers of stocks of merchandise**—22-214; 27-454, 8+168; 29-114, 12+355; 30-93, 14+365; 67-116, 69+703; 68-104, 70+871; 72-329, 75+230; 73-498, 76+265; 75-341, 77+991; 75-542, 78+1; 77-279, 79+970; 82-204, 84+746; 83-309, 86+339; 90-249, 95+1108.

27. **Assignment of claims**—82-223, 84+797.

28. **Assignment of wages to be earned**—47-247, 49+982.

29. **Assignments for the benefit of creditors**—Note 9.

30. **Mortgages of real estate**—19-17, 1; 27-320, 7+355; 35-55, 27+74; 38-443, 38+359; 40-193, 41+1031; 44-534, 47+255; 69-124, 71+924; 70-125, 72+963; 71-139, 73+850; 71-211, 73+729; 73-397, 76+24; 75-523, 78+111; 80-492, 83+418; 86-255, 90+387.

31. **Chattel mortgages**—4-533, 418; 20-435, 389; 21-187; 24-383; 24-390; 24-435; 25-175; 25-500; 27-421, 8+144; 30-35, 14+61; 30-419, 15+687; 31-456, 18+149; 32-52, 19+81; 32-259, 20+187; 32-381, 20+334; 33-29, 21+840; 33-104, 22+126; 34-416, 26+237; 36-123, 30+439; 36-156, 30+659; 37-82, 33+117; 37-509, 35+372; 41-213, 43+137; 42-519, 44+535; 44-541, 47+164; 45-307, 47+969; 47-403, 50+368; 47-507, 50+695; 51-546, 52+871; 55-195, 56+814; 58-502, 60+343; 62-307, 64+821; 62-338, 64+825; 64-265, 66+977, 67+537; 64-428, 67+200; 65-409, 68+65; 67-191, 69+809; 68-86, 70+868; 72-253, 75+127; 74-737, 77+231; 74-439, 77+236; 81-107, 83+439; 89-432, 95+216, 369; 96-340, 104+963.

32. **Who may assign**—Assignees and receivers for the benefit of creditors. Partners (35-213, 28+511). Purchaser at execution sale (32-259, 20+187). Receiver in supplementary proceedings (36-106, 30+402). Administrator (24-383). Judgment creditors (12-145). Wife of grantor (90-471, 97+122. See 53-110, 115, 54+942). Debtor of assignor when sued by assignee (4-407, 309). One not a creditor (7-421, 336).

33. **Remedies of creditors**—Election—Judgment creditor has election of three remedies. He may sell on execution; or maintain an action to set aside the conveyance; or maintain an action in the nature of a creditor's bill (36-494, 498, 32+852; 87-456, 460, 92+340).

34. **Sale on execution**—9-108, 98; 25-155, 159; 26-385, 4+621.

35. **Action to set aside**—It is the general rule that a simple contract creditor cannot maintain the action. The creditor must first obtain a judgment and docket it in the county where the land lies. It is not necessary to issue execution and have it returned unsatisfied (7-40, 24; 12-145, 83; 29-139, 12+454; 32-84, 19+390; 51-536, 53+799; 76-311, 316, 79+305; 82-288, 291, 84+1024). A simple contract creditor may maintain the action where the debtor is a non-resident or has absconded (see 48-372, 51+121; 64-326, 67+60). In the case of personality the creditor must first have an execution returned unsatisfied (32-84, 19+390). Requisites of complaint (12-60, 27; 29-139, 12+454; 32-84, 19+390; 39-527, 40+831; 43-297, 45+434; 45-540, 48+440; 51-536, 53+799; 58-205, 212, 59+1003; 64-476, 67+538; 67-24, 69+475; 70-113, 72+838; 76-311, 316, 79+305, 77 Am. St. Rep. 651; 89-184, 94+551; 99-301, 109+242). Parties (25-155; 36-494, 32+852; 53-73, 54+1055; 59-52, 60+848; 81-341, 84+44; 91-96, 97+574). Venue (91-96, 97+574). Joinder of causes of action (9-183, 169; 81-341, 84+44; 91-96, 97+574). Relief allowable (58-99, 104, 59+977). Debtor may assert homestead right (40-193, 195, 41+1031). Interest giving right to defend (4-192, 133).

36. **Action in nature of creditor's bill**—7-40, 24; 32-84, 19+390; 48-372, 51+121; 64-326, 330, 67+60; 76-311, 79+305.

37. **Limitation of actions**—28-248, 9+372; 29-139, 12+454; 35-493, 29+193; 70-113, 72+838; 87-456, 92+340; 89-184, 94+551. See 39-330, 40+161.

38. **Burden of proof**—It is the general rule that fraud will not be presumed and that the burden of proving a conveyance fraudulent is on him who asserts it (18-414, 373; 50-414, 52+907; 84-483, 87+1120; 87-456, 460, 92+340; 89-423, 95+214; 90-497, 97+379; 91-204, 97+376), including the fact that the grantee had notice of the fraudulent intent (18-414, 373. See 36-223, 30+815; 73-397, 400, 76+24). Until a prima facie case is made in proof of fraudulent intent on the part of the grantor it is not incumbent on the grantee to prove that he paid a valuable consideration (50-414, 52+907). Special rules apply to transfers between husband and wife (66-469, 57+1136). The creditor must prove that the claim on which his judgment is based existed prior to the transfer and the judgment itself does not prove it. But the judgment proves the validity of the claim and cannot be attacked except for fraud or want of jurisdiction (7-337,

264; 20-435, 389; 36-223, 30+815; 43-397, 45+715; 48-490, 51+475; 71-211, 215, 73+729; 77-228, 79+964; 88-506, 93+665). Burden of officer to justify seizure of goods fraudulently transferred (31-337, 17+946).

39. **Degree of proof required**—Proof that a conveyance is fraudulent must be clear and satisfactory. It must be sufficiently strong and cogent to satisfy a man of sound judgment (89-432, 439, 95+216, 769). The fraud must be manifest or plainly inferable (63-24, 65+121). Plaintiff must show, by evidence outside of proof of judgment, that claim on which the judgment was based existed so as to make him creditor when transfer was made. Not required to establish that such claim was valid and enforceable. Grantee estopped from setting up any defense, including statute of limitations, which might have been interposed in original action (100-189, 110+968).

40. **Evidence**—To be admitted freely (34-107, 24+366; 62-119, 121, 64+108; 66-223, 227, 68+1072; 77-116, 119, 79+602). Circumstantial evidence sufficient (62-119, 121, 64+108; 75-542, 545, 78+1). Acts and declarations of grantor while in possession (40-421, 42+290; 42-277, 44+59; 52-216, 221, 53+1147; 70-496, 498, 73+402; 77-116, 119, 79+602. See 53-516, 55+596). Admissions of grantor subsequent to transfer (30-45, 14+63, and cases cited. See 96-340, 104+963). Solvency and insolvency of debtor (8-226, 195; 31-348, 17+950; 45-283, 47+807; 102-256, 113+689). Payment of grantor's debts by grantee (31-348, 17+950). Grantor may testify as to fraudulent intent (96-340, 104+963). Books of account, etc., to show insolvency (69-60, 71+827). Value of the land (6-220, 142). Inadequacy of price (82-204, 84+746). Declarations of fellow conspirators (30-45, 14+63; 62-119, 64+108; 82-204, 84+746). Failure to investigate title (75-341, 77+991). Generally (53-516, 55+596; 66-195, 68+840; 67-116, 69+703; 77-279, 79+970).

41. **Cross-examination**—Great latitude is allowable in the cross-examination of the immediate parties. Not limited to matters touched on in the direct examination (32-241, 20+186; 34-107, 110, 24+366; 35-401, 29+123; 37-218, 34+21; 39-269, 39+628; 62-119, 121, 64+108; 65-473, 67+1149; 66-223, 68+1072; 75-542, 544, 78+1), and the same rule applies to the examination of one claiming to be a bona fide purchaser (49-532, 52+141).

42. **Findings**—28-23, 8+876; 28-93, 9+585; 43-137, 45+4; 62-341, 347, 64+818; 90-497, 97+379. See 123-364, 143+915; 123-459, 144+152; 124-113, 144+413; 124-176, 144+761; 126-141, 147+958; 127-256, 149+372; 129-356, 152+727; 134-400, 159+958; 135-105, 160+249; 136-376, 162+475; 140-159, 167+484; 151-483, 187+417.

8482. **Conveyance of Partnership Property**—Every conveyance of partnership property and every partnership obligation incurred when the partnership is or will be thereby rendered insolvent, is fraudulent as to partnership creditors, if the conveyance is made or obligation is incurred.

- To a partner, whether with or without a promise by him to pay partnership debts, or
- To a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners. (21 c. 415 § 8)

8483. **Rights of Creditors Whose Claims Have Matured**—(1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser.

- Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or
- Disregard the conveyance and attach or levy execution upon the property conveyed.

(2) A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation, may retain the property or obligation as security for repayment. (21 c. 415 § 9) 209+833.

The rule is settled in this state that a subsequent creditor cannot avoid a conveyance by his debtor merely because it was made with intent to defraud his creditors. To avoid such a conveyance, the subsequent creditor must allege and prove facts showing that its purpose was to defraud him. 158-305, 197+259.

Action in equity to set aside conveyance. 159-535, 198+132.

Under the findings, the vendees were not entitled to

relief upon the ground that they paid in part for the land and did not actually participate in the fraud. 211+473.

A judgment creditor, claiming a conveyance of land made by his debtor to be fraudulent, may disregard it and sell on execution, and afterwards litigate the question of fraud; or he may bring an action to set aside the conveyance as fraudulent. 212+455.

8484. Rights of Creditors Whose Claims Have Not Matured—Where a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured, and the court may:

- (2) Restrain the defendant from disposing of his property;
- (b) Appoint a receiver to take charge of the property;
- (c) Set aside the conveyance or annul the obligation, or
- (d) Make any order which the circumstances of the case may require. ('21 c. 415 § 10)

8485. Cases Not Provided for in Act—In any case

not provided for in this Act the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause shall govern. ('21 c. 415 § 11)

8486. Construction of Act—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. ('21 c. 415 § 12)

Mortgage of stock of goods remaining in hands of mortgagor is presumptively fraudulent. 15 F. (2d) 871.

8487. Name of Act—This act may be cited as the Uniform Fraudulent Conveyance Act. ('21 c. 415 § 13)

8488. Inconsistent Legislation Repealed—Sections 7010 and 7013 of General Statutes, 1913, are hereby repealed, and all acts or parts of acts inconsistent with this Act are hereby repealed; but sections 7011, 7012, 7017 and 7018 of General Statutes, 1913, are not repealed. ('21 c. 415 § 14)

8489. This act shall take effect on the first day of January, one thousand nine hundred and twenty-two. ('21 c. 415 § 15)

CHAPTER 69

LIENS FOR LABOR AND MATERIAL

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FOR IMPROVEMENT OF REAL ESTATE

8490. Mechanics, laborers and materialmen—Whoever contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery for any of the purposes hereinafter stated,

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and
amendatory, and notes showing repeals, together with annotations from the
various courts, state and federal, and the opinions of the Attorney
General, construing the constitution, statutes, charters
and court rules of Minnesota together with digest
of all common law decisions.



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Evidence held not to justify a ruling as a matter of law that a written contract whereby plaintiff agreed to sell defendant's oil products for a certain commission was modified by a subsequent oral agreement reducing amount of commissions. *Dwyer v. I.*, 190M616, 252NW 837. See Dun. Dig. 1774.

In suit by a securities salesman for commissions, evidence held to support a finding by jury that salesman's efforts resulted in sales. *Armstrong v. B.*, 202M26, 277 NW348. See Dun. Dig. 1128.

A broker is not entitled to a commission unless he is procuring cause of sale. *Armstrong v. B.*, 202M26, 277NW 348. See Dun. Dig. 1149.

CHAPTER 68

Frauds

STATUTE OF FRAUDS

8456. No action on agreement, when.
Renn v. W., 185M461, 241NW581.

½. In general.

Agent who had exclusive management of property under an agreement to pay all expenses of operation and a fixed monthly income to the owner, and to retain the difference, had authority to lease an apartment for more than a year and take in payment of the rent a conveyance to him of an equity in a house and lot. 172M40, 214NW759.

An oral contract of present insurance, or an oral contract for insurance effective at a future date, is valid. *Schmidt v. A.*, 190M585, 252NW671. See Dun. Dig. 4647.

Oral contract to be entitled to specific performance must be established by clear, positive and convincing proof. *Anderson v. A.*, 197M252, 266NW841. See Dun. Dig. 8806.

Where defendant by answer denied making of alleged contract, there was nothing to claim that he waived right to invoke statute of frauds by failure to plead it. *Roberts' Estate*, 202M217, 277NW549. See Dun. Dig. 8857.

Claim to value of estate, in lieu of specific performance of oral contract to will entire estate including land, is a claim for recovery of damages for breach of agreement, and damages for breach of contract void under statutes of fraud cannot be recovered by action in any court. *Roberts' Estate*, 202M217, 277NW549. See Dun. Dig. 2559, 2567.

Where decision hinges upon oral evidence of that which statute of frauds and statute of wills require to be in writing, oral evidence to establish facts claimed must be clear, unequivocal, and convincing. *Ives v. P.*, 204M142, 283NW140. See Dun. Dig. 8857.

Equity may specifically enforce an oral contract void under statute of frauds where there has been full performance by party seeking relief and it would work a fraud to deny the same. *Hecht v. A.*, 204M432, 283NW 753. See Dun. Dig. 8779, 8852.

Comments. 14MinnLawRev746.

1. Contracts not to be performed within one year—not void but simply non-enforceable.

Vendor's lien of common law is "created by the law and not by the parties" and is not considered within statute of frauds. *Hecht v. A.*, 204M432, 283NW753. See Dun. Dig. 8876.

2. —Performance by one party within year.

Agreement for transfer of service line to defendant electric company was fully performed by plaintiff, and statute of frauds had no application to oral agreement to pay therefor. *Bjornstad v. N.*, 195M439, 263NW289. See Dun. Dig. 8859.

4. —When year begins to run.

In action for damages for failure to give tenant possession under written lease for holding "from month to month," trial court was not authorized to find that lease was oral for term of one year to begin at certain future date. *Vethoulikas v. S.*, 191M573, 254NW909. See Dun. Dig. 5366, 5419.

A verbal agreement to extend terms of a lease for period of one year, such year to commence at a future time, is within statute of frauds and unenforceable. *Atwood v. F.*, 199M596, 273NW85. See Dun. Dig. 8858.

7. Promise to execute mortgage.

An agreement to give a real estate mortgage is within statute of frauds. *Hecht v. A.*, 204M432, 283NW753. See Dun. Dig. 8880.

8. Promises to answer for another.

Contract of guaranty signed by members of a co-operative company was within the statute as to loans already made to the company and renewals of such loans, though it was valid as to subsequent loans. 174 M383, 219NW454.

Construction of guaranty by directors of corporation. 180M27, 230NW121.

Statute of frauds in suretyship cases. 12MinnLawRev 716.

10. —Contracts held within the statute.

Oral promise to pay mechanic's lien, made to person other than owner, by one who intended to purchase the land, held within statute, where no advantage accrued to promisor, and no disadvantage to promisee. 180M441, 231NW16.

11. —Promises held not within the statute.

Promise to pay existing debt of another, which promise arises out a new transaction between parties to it

and for which there is fresh consideration, is original undertaking and not within statute of frauds. *Marckel Co. v. R.*, 186M125, 242NW471. See Dun. Dig. 8865.

Promise of vendor to pay for heating plant installed for vendee, held not within statute of frauds. *Marckel Co. v. R.*, 186M125, 242NW471. See Dun. Dig. 8868.

Appellant's promise that plaintiff would be paid if it printed a special issue of a paper for benefit of another became a primary obligation, and binding, though oral. *North Central Pub. Co. v. S.*, 193M120, 258NW22. See Dun. Dig. 8867.

Where one receiving money with instructions to deposit it in bank, instead purchased bonds and sent them to person forwarding money, his promise to take over the bonds at any time if they were not wanted was not a promise to respond for debt of another and was not within statute of frauds. *Wigdale v. A.*, 193M384, 258NW 726. See Dun. Dig. 8865.

Evidence held to sufficiently support conclusion that appellant promised to pay premium for liability insurance issued in name of a taxicab association and its individual members, and obligation thus assumed was an original and primary one, not within statute of frauds. *Kenney Co. v. H.*, 194M357, 260NW358. See Dun. Dig. 8865.

Acceptance by contractor of order from subcontractor was not an agreement to pay debt of another, but an agreement by contractor to pay his own indebtedness, and was not within statute of frauds. *Farmers State Bank v. A.*, 195M475, 263NW443. See Dun. Dig. 8868.

Parol evidence held admissible with regard to pledging of stock to secure debt of a third person. *Stewart v. B.*, 195M543, 263NW618. See Dun. Dig. 7738a.

Third person's verbal promise to pay pre-existing debt is not within statute when creditor furnishes a consideration at least equivalent in value to amount of pre-existing debt. *Rolfsmeyer v. R.*, 198M213, 269NW411. See Dun. Dig. 8868.

Where individual in business organizes a corporation to take it over, transferring all his assets, subject to his liabilities and obligations, corporation becomes obligated to fulfill written contract of individual whereby he employed a superintendent for business for a term of years, and fact that corporation assumed employment contract may be proven by parol. Statute of frauds is not applicable. *McGahn v. C.*, 198M328, 269NW830. See Dun. Dig. 8864.

1½. Agreement upon consideration of marriage.

Conversation before marriage between a testator and members of his family wherein the former announced his mere intention or plans concerning the disposition of his property, properly held not to impose contractual obligation upon any one. *Hanefeld v. F.*, 191M547, 254NW 821. See Dun. Dig. 10207.

1¼. Promise to pay debt discharged in bankruptcy.

Promise to pay debt discharged by bankruptcy. 172M 390, 215NW784.

8458. Grants of trusts, when void.

Section is not applicable to express oral trusts in personalty where full possession of property is passed by trustor to trustee. *Salschelder v. H.*, 286NW347. See Dun. Dig. 8852.

8459. Conveyance, etc., of land.

1. Conveyances, etc., generally.

Son of decedent held not entitled to specific performance of a verbal agreement to convey land. *Happel v. H.*, 184M377, 238NW783. See Dun. Dig. 8788.

Statute of frauds was no defense where contract permitting tenant to cut wood was performed. *Morrow v. P.*, 186M516, 243NW785. See Dun. Dig. 8852.

Verbal authority does not confer upon an agent authority to bind his principal to a conveyance of real estate. *Peterson v. S.*, 192M315, 256NW308. See Dun. Dig. 8882.

An agreement relocating an easement is within statute of frauds, but if oral agreement has been executed or so far carried out that one of parties is estopped, law may regard new easement as substituted for old. *Schmidt v. K.*, 196M178, 265NW347. See Dun. Dig. 8876.

Doctrine of part performance rests on ground of fraud. Equity will not permit statute of frauds, purpose of which was to prevent fraud, to be used as a means of committing it. *Schaefer v. T.*, 199M610, 273NW190. See Dun. Dig. 8862, 8885.

An oral agreement to will all property in consideration of support for life was indivisible, and part relating to personality was not enforceable in probate court, entire agreement being within statute of frauds. *Roberts' Estate*, 202M217, 277NW549. See Dun. Dig. 8880.

To constitute a valid transfer of land by verbal gift, there must be a gift completely executed by delivery of possession and performance of some acts sufficient to take case out of statute of frauds, and there must be an acceptance, a taking of possession under and in reliance upon gift, and doing of such acts in reliance thereon that it would work a substantial injustice to hold gift void. *Henslin v. W.*, 203M166, 280NW281. See Dun. Dig. 8876.

Promise to make a gift of realty where promisee entered into possession and made improvements. 15Minn LawRev825.

2. Leases.

178M330, 227NW46; note under §8640.

Agent who had exclusive management of property under an agreement to pay all expenses of operation and a fixed monthly income to the owner, and to retain the difference, had authority to lease an apartment for more than a year and take in payment of the rent a conveyance to him of an equity in a house and lot. 172M40, 214NW759.

Taking possession of and operating a farm under an oral lease void under the statute of frauds creates a tenancy at will, which may be terminated only by statutory notice. *Hagen v. B.*, 182M136, 233NW822. See Dun. Dig. 5440.

Paper held sufficient compliance to show modification of lease by surrender of right of cancellation without cause. *Oakland Motor Car Co. v. K.*, 186M455, 243NW 673. See Dun. Dig. 8877, 8881.

A three-year lease could not be terminated or modified by parol. *Hoppman v. P.*, 189M40, 248NW281. See Dun. Dig. 8877.

Leasor held not estopped to deny termination of lease by lessee after fire. *Id.* See Dun. Dig. 8877.

Finding that lease was for one year to begin at future date held erroneous. *Vethourikas v. S.*, 191M573, 254NW 909. See Dun. Dig. 5366, 5419.

Payment of rent could not be considered as a part performance of an oral lease for one year to commence in future so that an action for damages could be maintained for failure to give tenant possession of premises. *Id.* See Dun. Dig. 8885.

Evidence supports finding that a tenant surrendered its lease and landlord accepted surrender and terminated relationship. *Sjoberg v. H.*, 199M81, 271NW329. See Dun. Dig. 5438.

4. Partnership to deal in real estate.

Oral partnership agreement for purpose of dealing in land. 19MinnLawRev581.

7. Promise to execute mortgage.

An oral contract on one hand to make and on other to accept a mortgage on real estate is unenforceable if not void under statute of conveyances, §8459, and statute of frauds, §8460. *Hatlestad v. M.*, 197M640, 268NW665. See Dun. Dig. 8880.

8. Agreement modifying instrument affecting land.

Oral agreement of real estate mortgagee to extend time of payment to certain date in consideration of mortgagor giving chattel mortgage on crops to secure payment of taxes was not void as an attempt to vary terms of written instrument, which instrument was within statute of frauds. *Hawkins v. H.*, 191M543, 254NW 809. See Dun. Dig. 3374.

8460. Leases—Contracts for sale of lands.

1. In general.

Creditor of vendor with notice and knowledge of sale cannot urge that contract of sale was invalid under statute of frauds after payment but before deed is given. 173M225, 217NW136.

Not construed as prescribing a rule of evidence, but rather as precluding the substantive right to sue upon an oral contract. 178M330, 227NW46.

A contract for sale or exchange of real property, modified by parol agreement and so performed, is not violative of statute. *Erickson v. K.*, 195M623, 263NW795. See Dun. Dig. 8880.

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

Equity may specifically enforce an oral contract void under statute of frauds where there has been full performance by party seeking relief and it would work a fraud to deny the same. *Hecht v. A.*, 204M432, 283NW 753. See Dun. Dig. 8788.

2. The memorandum.

Acceptance of terms of a written proposal for purchase of real estate must be in writing, and a writing is insufficient where it does not contain acceptance of proposal in regard to terms of a mortgage and the furnishing of an abstract. *Bey v. K.*, 192M283, 256NW140. See Dun. Dig. 8880, 8881.

Vendor under oral contract held not entitled to specific performance in face of findings that alleged vendee made advancements and went into possession with understanding that he would be repaid if he did not purchase the premises, subject to liability for certain rents. *Johls v. C.*, 193M553, 259NW57. See Dun. Dig. 8788.

3. Authority of agent.

Agent who had exclusive management of property under an agreement to pay all expenses and a fixed monthly income to the owner, and retain the difference, had authority to lease an apartment for more than a year and take in payment of the rent a conveyance of an equity in a house and lot. 172M40, 214NW759.

4. Contracts held within statute.

An oral contract on one hand to make and on other to accept a mortgage on real estate is unenforceable, if not void under statute of conveyances, §8459, and statute of frauds, §8460. *Hatlestad v. M.*, 197M640, 268NW665. See Dun. Dig. 8880.

An oral unilateral contract for purchase of interest in land is within prohibition of statute. *Alamo Realty Co. v. M.*, 202M457, 278NW902. See Dun. Dig. 8880.

5. Contracts not within statute.

Whether plowing was part performance taking lease out of statute, held for jury. 178M460, 227NW656.

Inflexible rule "once a mortgage always a mortgage" and doctrine whereunder a deed absolute in form may be declared a mortgage, if it was so intended, are in operation wholly independent of statute of frauds. *Hatlestad v. M.*, 197M640, 268NW665. See Dun. Dig. 8880.

7. Pleading.

Defendant, by answer having denied making of contract, properly invoked the statute, although he did not plead it. 178M330, 227NW46.

8461. Specific performance.

Evidence sustains the finding of the trial court that the plaintiff partially performed an oral contract made in 1921 for the purchase of real property so as to justify a decree of specific performance. 181M458, 233NW 20. See Dun. Dig. 8885.

In action for specific performance of agreement to convey land, evidence held insufficient to establish part performance sufficient to take case out of statute of frauds. *Arntson v. A.*, 184M60, 237NW820. See Dun. Dig. 8852(92), 8862.

Vendor under oral contract held not entitled to specific performance in face of findings that alleged vendee made advancements and went into possession with understanding that he would be repaid if he did not purchase the premises, subject to liability for certain rents. *Johls v. C.*, 193M553, 259NW57. See Dun. Dig. 10005a.

Equitable doctrine of part performance is inapplicable to an action for damages for breach of contract as distinguished from one for specific performance. *Hatlestad v. M.*, 197M640, 268NW665. See Dun. Dig. 8880.

Part performance which takes a case out of statute for specific performance must be unequivocally referable to oral contract, and if it is equivocal, if it reasonably may be accounted for otherwise than by a contract, it will be of no avail. *Id.* See Dun. Dig. 8885.

In action for specific performance of option, evidence held to sustain finding that defendant had knowledge of plaintiff's outstanding option when he purchased land involved. *McKercher v. V.*, 199M263, 271NW489. See Dun. Dig. 8811.

Part performance by lessee in preparation of land for crop in reference to and in reliance upon oral agreement of extension, held sufficient to avoid bar of statute. *Atwood v. F.*, 193M596, 273NW85. See Dun. Dig. 8862.

Doctrine of part performance rests on ground of fraud. *Schaefer v. T.*, 199M610, 273NW190. See Dun. Dig. 8862, 8885.

No tender of purchase money need be made before bringing suit where vendor, whose specific performance is sought, resists performance and insists that he is not bound by contract. *Gassert v. A.*, 201M515, 276NW808. See Dun. Dig. 8807, 10036.

An action for specific performance of a contract to convey land is transitory and may be enforced wherever defendants may be found. State v. District Court of Hennepin County, 202M75, 277NW353. See Dun. Dig. 10105, 10108.

Evidence held to sustain decree of specific performance against Salvation Army under contract for exchange of property. *Karp v. S.*, 203M285, 281NW41. See Dun. Dig. 8885.

Specific performance will not be granted of a contract to repurchase a farm for which a former owner negotiated with the conservator of rural credit where the negotiations fail by the conservator's exercise of his power to reject such party's offer. *Ejerke v. A.*, 203M501, 281 NW865. See Dun. Dig. 8788.

Where former owners of a homestead remain in possession thereof after their title has been divested by the foreclosure of a mortgage thereon, and, while so in possession, the holder of the title conveys to the wife of one of such persons upon the promise of such wife and husband to execute a mortgage for the balance of the purchased price, equity will enforce performance of such promise by decreeing a vendor's lien for such balance superior to any homestead right in the land. *Hecht v. A.*, 204M432, 283NW753. See Dun. Dig. 8788a.

Specific performance will be granted to children, who have fully performed, on their part, a contract made with their parent for testamentary disposition of his estate consisting of real and personal property, in the nature of a family settlement, where it appears that parent and children all had interests in property which children transferred to parent under an agreement that he would leave property, or so much thereof as remained, to them

at his death. *Jannetta v. J.*, 285NW619. See Dun. Dig. 8789a.

Specific performance of right of inspection incident to option. 12MinnLawRev1.

Privileges in gross to do acts on the land of another—when will they be specifically enforced? 13MinnLawRev 593.

CONVEYANCES FRAUDULENT AS TO CREDITORS

8467. Of chattels without delivery.

A trust deed on land and the equipment of a flour and feed mill, providing that the mortgagor shall operate the business, and recorded as a real estate mortgage, but not as a chattel mortgage, held not invalid as to creditors where there was no expressed agreement that the mortgagor should not account to the mortgagee for the proceeds of the sale of flour, feed, etc. In re *Hanover Milling Co.*, (DC-Minn), 31F(2d)442.

A conditional sale of a stock of merchandise under which buyer is permitted to retain possession and to sell from and replenish the stock, is valid. In re *Horwitz*, (USDC-Minn), 32F(2d)285.

A chattel mortgage covering a stock of merchandise under which mortgagor is permitted to retain possession and to sell from and replenish the stock, is fraudulent as a matter of law and void as to creditors. In re *Horwitz*, (USDC-Minn), 32F(2d)285.

Wife held not creditor of husband within Uniform Fraudulent Conveyances Act. *Maruska v. E.*, (USDC-Minn), 21FSupp841.

A sale by a vendor of goods or chattels when there is not an immediate change of possession is presumed to be fraudulent and void as against creditors of the vendor. 175M157, 220NW560.

This statute creates only a rebuttable presumption of fraud. 176M433, 223NW683.

Conditional sales contract of a new and unregistered automobile, which remained in the possession and in the salesroom of the vendor, a retail dealer in automobiles, held subject to this section. *Drew v. F.*, 185 M133, 240NW114. See Dun. Dig. 3842, 3855.

It is not a fraud upon creditors for a debtor to transfer to true owner the latter's property. *Bolton-Swanby Co. v. O.*, 201M162, 275NW855. See Dun. Dig. 3855.

8470. Question of fact—Voluntary conveyances.

1. Question of fact.

179M7, 228NW177.

Whether a real estate mortgage covering personal property on the premises is invalid as to creditors because permitting the mortgagor to retain possession of the personal property, is a question of fact. (DC-Minn.) 31F(2d)442.

8473. Sale of stock of merchandise.

Limitations upon application of bulk sales act. 15Minn LawRev475.

UNIFORM FRAUDULENT CONVEYANCE ACT

The Uniform Fraudulent Conveyance Act has been adopted by: Arizona, California, Delaware, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, South Dakota, Tennessee, Utah, Wisconsin, Wyoming.

8475. Definition of terms.

175M47, 220NW400.

This act does not impliedly repeal §8345. 172M355, 215NW517.

The Fraudulent Conveyance Act (Chapter 415, Laws 1921) did not modify or repeal any part of the Homestead Law. 173M576, 218NW108.

A surety upon a fidelity bond becomes an existing creditor from the date of the taking effect of the bond for the purpose of attaching as fraudulent a transfer of property by his principal obligor. *National Surety Co. v. W.*, 184M44, 237NW690. See Dun. Dig. 3901.

A transfer made in good faith and without intent to hinder, delay or defraud creditors was not void prior to passage of Uniform Fraudulent Conveyance Act. *National Surety Co. v. W.*, 184M44, 237NW690. See Dun. Dig. 3842.

Assignment of future wages held not to preclude discharge of assignor in bankruptcy. *Strane v. S.*, (USCCA-Minn), 87F(2d)365.

Remedy of creditors. 18MinnLawRev225.

Uniform fraudulent conveyance act—presumptions of intent—limitations of actions—necessity for prior judgment—rights of insurance beneficiaries. 23MinnLawRev 616.

8477. Fair consideration.

174M423, 219NW550; note under §8481.

Transfer to directors of bank to secure payment of a debt of grantor, the managing officer of the bank, to the bank, was given upon a fair consideration and was not void, though it rendered grantor insolvent. 172M 149, 214NW787.

Evidence held to support finding that conveyances to wife and daughter were made in good faith for adequate consideration and not with intent to defraud creditors. 173M468, 217NW593.

Conveyance, held not to have been given in payment of antecedent debt. 179M7, 228NW177.

In an action by a creditor, who furnished material for improvement of a homestead, to set aside as fraudulent a transfer thereof by the husband to his wife through a third party, evidence sustains findings that the transfer was supported by a fair consideration and was made without any actual intention of defrauding. *Steinke-Seidl Lumber Co. v. N.*, 183M491, 237NW194. See Dun. Dig. 3859.

Satisfaction of an antecedent debt may constitute a fair consideration. *Steinke-Seidl Lumber Co. v. N.*, 183 M491, 237NW194.

That a transfer of property in part payment of an antecedent debt results in a preference does not constitute fraud as against attacking creditors. *National Surety Co. v. W.*, 184M21, 237NW585. See Dun. Dig. 3852 (7).

Evidence held to show an antecedent debt owing by husband which was sufficient consideration for transfer of property to wife. *National Surety Co. v. W.*, 184M21, 237NW585. See Dun. Dig. 3859.

Evidence held not to show that consideration for conveyance was unfair. *Larson v. T.*, 185M366, 241NW43. See Dun. Dig. 3928a.

Finding sustained that transfers of property from father to son were honestly made in payment of antecedent debt and without intent to defraud other creditors of father. *Skinner v. O.*, 190M456, 252NW418. See Dun. Dig. 3846, 3848, 3851, 3852.

Evidence sustains finding that mortgage to children was given for "a good, sufficient, valuable and adequate consideration." *Kray v. P.*, 197M364, 267NW144. See Dun. Dig. 3895.

Evidence held to sustain finding that transfers of chattel mortgages were made upon payment of full and adequate consideration and were not fraudulent as to creditors. *Hamilton v. W.*, 198M308, 269NW635. See Dun. Dig. 3895.

A fair consideration is one which fairly represents value of property at time transfer is made, and transfer is not fraudulent because later events permit sale at greatly increased amount. *Kohrt v. M.*, 203M494, 282NW 129. See Dun. Dig. 3849.

(b). Whether there was a fair or sufficient consideration for the transfer of securities attacked as fraudulent as to creditors was a question of fact for trial court. *Weese v. W.*, 191M526, 254NW816. See Dun. Dig. 3849.

8478. Conveyance by insolvent.

172M149, 214NW787; note under §8477.

173M576, 218NW108; note under §8475.

174M423, 219NW550; note under §8481.

Strane v. S., (USCCA-Minn), 87F(2d)365; note under §8475.

Where Minnesota corporation, to avoid double liability of stockholders, organized a Delaware corporation, to which it transferred all of the assets of the corporation, in exchange for stock in the Delaware corporation, the creditors of the Minnesota corporation could not have the transfer set aside in a federal court of equity as fraudulent, to the prejudice of the creditors of the Delaware corporation, the federal court applying equitable principles independent of the state statutes. *Brill v. W.* (CCA8), 65F(2d)420. Cert. den. 290US643, 54SCR 61. See Dun. Dig. 3866a.

In such case the Delaware creditors having secured the appointment of a receiver before the Minnesota creditors had taken any action or had reduced their claims to judgment, had a superior equity against the assets, and both sets of creditors would be treated alike. *Id.*

This section does not apply to a joint tenancy in stock created by husband in himself and wife in the absence of either fraud or insolvency, so as to render the wife liable for husband's unpaid federal income tax as transferee under §311 of the Federal Revenue Act of 1928. *Irvine v. H.*, (CCA8), 99F(2d)265, rev'g 36BTA653.

Evidence held to show conveyance from husband and wife to daughter rendered husband insolvent. 171M284, 213NW911.

Evidence held not to show agreement for repayment of advances made by wife to husband. 171M284, 213NW 911.

Payment of an honest debt is not fraudulent although it operates as a preference, in view of the federal bankruptcy act (Mason's Code, Title 11). 171M284, 213NW911.

Evidence held to support finding that conveyances to wife and daughter were made in good faith for adequate consideration and not with intent to defraud creditors. 173M468, 217NW593.

The consideration must be one which fairly represents the value of the property. 179M7, 228NW177.

Evidence held not to show that conveyance rendered grantor insolvent. *Larson v. T.*, 185M366, 374, 241NW43, 47. See Dun. Dig. 3928a.

Evidence held not to require finding that transfer of land rendered grantor insolvent. *National Surety Co. v. W.*, 184M21, 242NW545. See Dun. Dig. 3846.

Every conveyance made by a person who will thereby be rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made without a fair consideration. *State Bank of New London v. S.*, 197M425, 267NW366. See Dun. Dig. 3848.

Transfers between husband and wife, whether made directly or indirectly, are prima facie fraudulent as to existing creditors; burden resting upon wife to show by clear and satisfactory evidence that a valuable consideration was paid by her or by some one in her behalf. *Id.* See Dun. Dig. 3907.

A voluntary conveyance is one made without any valuable consideration. *Kohrt v. M.*, 203M494, 282NW129. See Dun. Dig. 3870.

Mere fact that a person is solvent does not necessarily render him incapable of making conveyances or transfers fraudulent to his creditor, solvency being only an item of evidence to be considered with all the other facts and circumstances of the case. *Lind v. O.*, 204M30, 282NW661. See Dun. Dig. 3860, 3919.

8479. Conveyances by persons in business.

Whether transferee of securities participated in fraud or acted in bad faith, held question of fact for trial court. *Weese v. W.*, 191M526, 254NW816. See Dun. Dig. 3851.

4½. Subd. 3. Statement showing that materials were furnished by subcontractor to owner, though actually furnished to principal contractor, held sufficient. 199NW 475, 47SD494.

8481. Conveyance made with intent to defraud.

¼. In general.

Brill v. W. B. Foshay Co. (CCA8), 65F(2d)420. *Cert. den.* 290US643, 54SCR61, note under §8478. Assignment of future wages held not to preclude discharge of assignor in bankruptcy. *Strane v. S. (USCCA-Minn)*, 87F(2d)365.

This section does not apply to a joint tenancy in stock created by husband in himself and wife in the absence of either fraud or insolvency, so as to render the wife liable for husband's unpaid federal income tax as transferee under §311 of the Federal Revenue Act of 1928. *Irvine v. H. (CCA8)*, 99F(2d)265, rev'g 36BTA653.

Evidence held to show that makers of note to bank were not estopped as against creditors to deny that note was given for valid consideration. *Grant Co. State Bk. v. S.*, 178M556, 228NW150.

6. Subsequent creditors.

Creditors could not impress proceeds of life insurance policies with claims based on fraud of insured after issuance of policies. *Cook v. P.*, 182M496, 235NW9. See Dun. Dig. 4801, 3876a.

In action to set aside conveyance as fraudulent evidence held to establish that claim upon which judgment rested arose prior to transfer. *Larson v. T.*, 185M370, 241NW46. See Dun. Dig. 3928a.

In action to set aside conveyance as fraudulent, evidence held to establish that intervenor's claim upon which his judgment rested arose prior to the conveyance attacked. *Larson v. T.*, 185M374, 241NW47.

23. Transfer between husband and wife.

Transfers from husband to wife are presumptively fraudulent as to existing creditors and burden is upon her to show good faith and a valuable consideration paid by her, or by someone in her behalf. *Lind v. O.*, 204M30, 282NW661. See Dun. Dig. 3859.

24. Transfers between near relatives.

Transfers by father to daughters are scrutinized closely by the courts, and when voluntarily made are presumptively fraudulent as to creditors. *Lind v. O.*, 204M30, 282NW661. See Dun. Dig. 3858.

31. Chattel mortgages.

Title that passes on foreclosure of prior and paramount mortgage. 171M197, 213NW892.

Evidence sustained finding that chattel mortgage given by father to son was not executed in good faith. 177M84, 224NW457.

32. Who may assail.

Equity will not lend its aid either to a grantor who seeks to impeach a fraudulent conveyance, or personal representative suing for benefit of his estate, though statute permits personal representative in some cases to sue for benefit of creditors. *Lind v. O.*, 204M30, 282NW 661. See Dun. Dig. 3898.

A creditor may sue on his own behalf to set aside a fraudulent conveyance made by decedent prior to his death, right of personal representative of fraudulent debtor to bring suit not being exclusive. *Id.* See Dun. Dig. 3901.

35. Action to set aside.

In action to set aside fraudulent conveyances, grantee cannot set up defenses which were available to the

grantor in the original action. *Weber v. A.*, 176M120, 222NW646.

A change procured by misrepresentations in form of indebtedness held not to relieve defendant from his obligation. 176M550, 224NW237.

Causes of action set forth in complaint in intervention in action to set aside conveyances as fraudulent held not well pleaded. *Larson v. T.*, 185M370, 241NW46. See Dun. Dig. 3926.

Court was not justified in vacating mortgage foreclosure proceedings in action to set aside transfer of mortgage as fraudulent as to creditors. *Larson v. T.*, 185M370, 241NW46. See Dun. Dig. 3930.

Several creditors having distinct claims can join as plaintiffs in a single complaint brought to reach fraudulently conveyed property. *Lind v. O.*, 204M30, 282NW 661. See Dun. Dig. 3898.

38. Burden of proof.

175M157, 220NW560.

Transfer of real estate in full value for payment of a debt was not fraudulent in absence of showing of actual interest to hinder, delay or defraud plaintiff. 174M423, 219NW550.

39. Degree of proof required.

Finding of fraudulent intent in transfer of real estate, supported by evidence. 176M550, 224NW237.

40. Evidence.

Evidence, held to show that conveyance from father to daughter was not in fraud of creditors. 181M71, 231NW397.

Evidence held to sustain finding that conveyance left grantor insolvent and that grantee had knowledge of intent to defraud creditors of grantor. *Larson v. T.*, 185M374, 241NW47. See Dun. Dig. 3928a.

In action to set aside fraudulent conveyance, finding of good faith held supported by evidence. *National Surety Co. v. W.*, 186M93, 242NW545. See Dun. Dig. 3848.

Evidence held to support finding that transfer of real estate was fraudulent as to creditors and that crops did not belong to grantee. *Joop v. S.*, 188M419, 247NW 526. See Dun. Dig. 3910.

8483. Rights of creditors with matured claims.

Simple creditor, suing to set aside fraudulent conveyance does not obtain lien upon property conveyed until rendition of final judgment. *Emrich v. E. (USCCA8)*, 78F(2d)558, 29AmB(NS)458. *Cert. den.*, 297US709, 56SCR 501.

Assignment of future wages held not to preclude discharge of assignor in bankruptcy. *Strane v. S.*, (USCCA-Minn), 87F(2d)365.

Rights of holder of prior and paramount mortgage, and a purchaser at foreclosure sale. 171M197, 213NW 892.

Appointment of a receiver for a judgment debtor's nonexempt property in proceedings supplementary to execution is discretionary with court. *Ginsberg v. D.*, 191M12, 252NW669. See Dun. Dig. 3549.

Though a simple creditor may bring a suit to set aside a fraudulent conveyance, he is not compelled to do so and may first sue and obtain judgment, and limitations does not begin to run against him in the latter case at least until he has obtained judgment. *Lind v. O.*, 204M30, 282NW661. See Dun. Dig. 3922.

(a).

Enrich v. E. (USCCA8), 78F(2d)858, 29AmB(NS)458. *Cert. den.*, 297US709, 56SCR501.

8484. Creditors whose claims have not matured.

A receiver cannot attack a chattel mortgage as void to creditors because not recorded, without showing that he occupies a status to assail it. 175M47, 220NW400.

G. S. 1923, §8345, does not apply to general creditors, but to such as are armed with process, or to a receiver representing creditors and vested with the right to attack. 175M47, 220NW400.

A surety upon a fidelity bond becomes an existing creditor from the date of the taking effect of the bond for the purpose of attacking as fraudulent a transfer of property by his principal obligor. *National Surety Co. v. W.*, 184M44, 237NW690. See Dun. Dig. 3901.

8488. Inconsistent legislation repealed.

Act is not a substitute for old remedies but simply abrogates ancient rules whereby a judgment and a lien were essential preliminaries to equitable relief. *Lind v. O.*, 204M30, 282NW661. See Dun. Dig. 3921.

CHAPTER 69

Liens for Labor and Material

FOR IMPROVEMENT OF REAL ESTATE

8490. Mechanics, laborers and materialmen.

¼. In general.

A surety bond to protect the owner of land against mechanic's liens, held not discharged by a transfer of the land where the contract was made a party to the bond. *Hartford A. & I. Co. v. F.*, (CCA8), 59F(2d)950. See Dun. Dig. 9094, 9107.

The surety on a bond to protect the owner of land against mechanic's liens cannot complain of a change in the title taking place after liability on the bond had attached by the filing of a lien. *Id.*

The surety on a bond to protect land from mechanics' liens is not discharged by a transfer of the land where the principals on the bond are not released. *Id.*

That obligee in a surety bond to protect against mechanics' liens compelled a lienor to elect between his