89

THE GENERAL STATUTES

OF THE

STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated All General Laws of the State in Force December 31, 1894

COMPILED AND EDITED BY

HENRY B. WENZELL, Assisted by EUGENE F. LANE

WITH ANNOTATIONS BY

FRANCIS B. TIFFANY and Others

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Sections 1 to 4821 of the General Statutes

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CHAPTER 41.

FRAUDS.

[ASSIGNMENT FOR BENEFIT OF CREDITORS—INSOLVENT LAW OF 1881.]

TITLE 1.

CONVEYANCES OF LANDS FRAUDULENT AS AGAINST PURCHASERS.

§ 4204. Conveyances made to defraud purchasers to be void.

Every conveyance of any estate or interest in lands, or the rents and profits of lands, 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.

(G. S. 1866, c. 41, § 1; G. S. 1878, c. 41, § 1.)

§ 4205. Exception in favor of innocent grantee.

No such conveyance or charge shall be deemed fraudulent, in favor of a subsequent purchaser, who had actual or legal notice thereof at the time of his purchase, unless it appears that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

(G. S. 1866, c. 41, § 2; G. S. 1878, c. 41, § 2.)

§ 4206. Conveyances with powers of revocation, 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 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 so liable to be 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.

(G. S. 1866, c. 41, § 3; G. S. 1878, c. 41, § 3.)

§ 4207. Conveyance under power of revocation.

When a power to revoke a conveyance of any lands or 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.

(G. S. 1866, c. 41, § 4; G. S. 1878, c. 41, § 4.)

§ 4208. Premature conveyance under power of revocation.

If a conveyance to a purchaser, under either of the two preceding sections, 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 revo-

cation actually vests in such person, in the same manner and to the same extent as if then made.

(G. S. 1866, c. 41, § 5; G. S. 1878, c. 41, § 5.)

TITLE 2.

STATUTE OF FRAUDS.

§ 4209. No action maintainable on agreement, when.

4209
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55-M . 353
59-NW . 301
59-NW . 304
63-NW . 105
63-NW . 245

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:

First. Every agreement that by its terms is not to be performed within one year from the making thereof;

Second. Every special promise to answer for the debt, default or doings of another;

Third. Every agreement, promise or undertaking, made upon consideration of marriage, except mutual promise to marry.

(G. S. 1866, c. 41, § 6; G. S. 1878, c. 41, § 6.)

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62-M - 220
64-NW 505
67-NW 802
69-NW 637

AGREEMENTS NOT TO BE PERFORMED WITHIN ONE YEAR. A parol agreement that, by its terms, is not to be performed within one year from the making thereof, is within the statute of frauds, and void. Otherwise, if its obligations can be performed within that period. Cowles v. Warner, 22 Minn. 449.

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65-M - 104
66-M - 389
67-M - 101
69-M - 157

A finding of fact that *on or about* the first of April premises were leased for one year from the first of April does not present the objection that the leasing was an agreement not to be performed within one year from the making thereof. Mackey v. Potter, 34 Minn. 510, 26 N. W. Rep. 906.

Part performance of an agreement that cannot be performed within a year does not relieve it of the statute of frauds. Wolke v. Fleming, (Ind.) 2 N. E. Rep. 325.

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An oral agreement for services not to be performed within one year, controls the rights of the parties respecting what they have done under it. If the services are for a specified time and gross sum to be paid on completion, and the servant leaves without cause, he cannot recover for what he has done. Kriger v. Leppel, 42 Minn. 6, 43 N. W. Rep. 484.

4209
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80-NW1051
84-NW 116
84-NW 743

A parol lease for one year from a future day is invalid. Jellett v. Rhode, 43 Minn, 166, 45 N. W. Rep. 13.

A contract by the promoters of a corporation, though by its terms not to be performed within one year from its date, is not within the statute if it is to be performed within a year from its adoption by the corporation. McArthur v. Times Printing Co., 48 Minn. 319, 51 N. W. Rep. 216.

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AGREEMENTS TO ANSWER FOR THE DEBTS, ETC., OF ANOTHER. A promise to a debtor to pay his debt to another is not within the statute. Goetz v. Foos, 14 Minn. 265, (Gil. 196;) following Yale v. Edgerton, 14 Minn. 194, (Gil. 144.)

An agreement to answer for the debt or default of another, founded on a new and original consideration between the parties thereto, is not within the statute of frauds, and such consideration need not be expressed in writing. Nichols v. Allen, 22 Minn. 283. See, also, Same v. Same, 23 Minn. 512.

A written guaranty of the collection of a note made by a third party is not void, as within the statute of frauds, because the consideration thereof is not therein expressed, where such consideration arises solely out of a valid discharge by the guarantee of an obligation in his favor against the guarantor, wholly distinct and independent of the note. Sheldon v. Butler, 24 Minn. 513.

The guaranty of another's debt, assigned at the same time by the guarantor to pay his debt to the guarantee, is not within the statute. Crane v. Wheeler, 48 Minn. 207, 50 N. W. Rep. 1033.

A verbal promise to pay the debt of another, on the strength of which the credit is given, is a sufficient consideration for the promisor's subsequent indorsement of a promissory note given for the debt. Rogers v. Stevenson, 16 Minn. 68, (Gil. 56.)

Where a debtor transfers his property to another, who, in consideration thereof, promises to pay the debts of the former, the promise is not within the statute of frauds. Sullivan v. Murphy, 23 Minn. 6.

A verbal promise to pay for goods to be supplied to another, if the buyer does not, is within the statute. Dufolt v. Gorman, 1 Minn. 301, (Gil. 234.)

A verbal promise to a landlord that if he will allow a tenant to stay on the premises, he (the promisor) will be responsible for the rent, and see that all is right, is within the statute, and void. Walker v. McDonald, 5 Minn. 455, (Gil. 368.)

Sufficiency of memorandum, see Jones v. Railroad Co., (Mass.) 7 N. E. Rep. 839.

In a contract of guaranty it is not necessary to state the consideration in express

terms, provided the memorandum is so framed that such consideration can be certainly inferred by a person of ordinary capacity. Wilson Sewing-Machine Co. v. Schnell, 20 Minn. 40, (Gil. 33.)

The words "for value received" are a sufficient expression of the consideration within the statute of frauds. Osborne v. Baker, 34 Minn. 307, 25 N. W. Rep. 606.

Contemporaneous lease and guaranty, expressing consideration, see Highland v. Dresser, 35 Minn. 345, 29 N. W. Rep. 55.

A complaint upon a promise to pay the debt of another need not allege that it was in writing. Walsh v. Kattenburgh, 8 Minn. 127, (Gil. 99.)

See Abbott v. Nash, 35 Minn. 451, 29 N. W. Rep. 65; Hoile v. Bailey, (Wis.) 17 N. W. Rep. 322; Weisel v. Spencer, (Wis.) 18 N. W. Rep. 165; Kelley v. Schupp, Id. 725; Windell v. Hudson, (Ind.) 2 N. E. Rep. 303; Tecters v. Lamborn, (Ohio,) 1 N. E. Rep. 513; McCraith v. National Bank, (N. Y.) 10 N. E. Rep. 862; Wolke v. Fleming, (Ind.) 2 N. E. Rep. 325.

Agreement upon consideration of marriage. See Slingerland v. Slingerland, 39 Minn. 197, 39 N. W. Rep. 146.

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56-M . 302

4210
67-NW 357
69-NW 215

4210
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99 - 201
64-M 450
66-M - 449
67-M - 230
69-M - 257

4210
71-M - 167
79-M - 371
84-NW 116

4210 87-M . 11
87-M . 230
88-M . 168
92-M . 208

§ 4210. Contracts for sale of goods void, when.

Every contract for the sale of any goods, chattels or things in action, for the price of fifty dollars or more, shall be void, unless,

First. A note or memorandum of such contract is made, in writing, and subscribed by the parties to be charged therewith; or,

Second. Unless the buyer accepts and receives part of such goods, or the evidences, or some of them, of such things in action; or,

Third. Unless the buyer, at the time, pays some part of the purchase-money. (G. S. 1866, c. 41, § 7; G. S. 1878, c. 41, § 7.)

An agreement to purchase, at five dollars a ton, the flax straw to be raised from forty-five bushels of flax seed, it appearing that the amount raised was from twenty to fifty tons, is an agreement for the sale of goods, etc., for the price of more than fifty dollars, and, unless there is part payment, acceptance of a part of the goods, or a note or memorandum in writing, signed by the party to be charged, is void. Brown v. Sanborn, 21 Minn. 402.

A parol contract to furnish ties to the amount of $50 more is a contract for the sale of goods and chattels. Russell v. Wisconsin, M. & P. Ry. Co., 39 Minn. 145, 39 N. W. Rep. 302.

A verbal contract to furnish material and prepare and fit the same for putting up four houses, of a particular kind and dimensions, at one price for the whole, is not a contract for the sale of personal property within the meaning of the statute, and is valid. Phipps v. McFarlane, 3 Minn. 109, (Gil. 61.)

Contract for the manufacture of an article involving special skill, see Meincke v. Falk, (Wis.) 13 N. W Rep. 545.

A contract for the sale of goods is within the statute, though it embraces other agreements not within it. Hanson v. Marsh, 40 Minn. 1, 40 N. W. Rep. 841.

THE MEMORANDUM. It is enough if the memorandum be subscribed by the party against whom it is sought to be enforced. Morin v. Martz, 13 Minn. 191, (Gil. 180;) Wemple v. Knopf, 15 Minn. 440, (Gil. 355.)

A written admission of the agreement will take it out of the statute, though addressed to a stranger. Warfield v. Wisconsin Cranberry Co., (Iowa,) 19 N. W. Rep. 224.

Contract contained in letters, the price being referred to only in an unsigned postscript, see Doughty v. Manhattan Brass Co., (N. Y.) 4 N. E. Rep. 747.

The price must be stated. Hanson v. Marsh, 40 Minn. 1, 40 N. W. Rep. 841.

An order for goods which is procured by the seller is to be deemed accepted by him at once, and, if signed by the buyer, becomes a contract binding on him, within the statute. Kessler v. Smith, 42 Minn. 494, 44 N. W. Rep. 794.

See, also, American Manuf'g Co. v. Klarquist, 47 Minn. 344, 50 N. W. Rep. 243.

See Seargeant v. Dwyer, 44 Minn. 309, 310, 46 N. W. Rep. 444.

RECEIPT AND ACCEPTANCE. A subsequent delivery and acceptance of the goods relieves the agreement of the statute. Jackson v. Tupper, (N. Y.) 5 N. E. Rep. 65; McCarthy v. Nash, 14 Minn. 127, (Gil. 95.)

See, also, Ortloff v. Klitzke, 43 Minn. 154, 44 N. W. Rep. 1085.

Delivery to a carrier selected by the vendor will not satisfy the statute. Simmons Hardware Co. v. Mullen, 33 Minn. 195, 22 N. W. Rep. 294. See Bullock v. Tschergi, 13 Fed. Rep. 345.

There must be acceptance, as well as receipt. Neither delivery to a carrier selected by the buyer, nor delivery by such carrier to the buyer, satisfies the statute. Fontaine v. Bush, 40 Minn. 141, 41 N. W. Rep. 465.

An oral order by the purchaser that the goods be shipped by a certain carrier does not give the carrier authority to accept the goods. Smith v. Brennan, (Mich.) 28 N. W. Rep. 892.

Receiving goods on trial, see Somers v. McLaughlin, (Wis.) 15 N. W. Rep. 442.

Where the defendant agreed to take railroad ties, no quantity being specified, ac-

ceptance of a quantity actually delivered does not bind the defendant to take more. Russell v. Wisconsin, M. & P. Ry. Co., supra.

PAYMENT OF PURCHASE MONEY. A payment upon a prior oral contract is insufficient of itself to make the agreement valid. There must be enough in addition to show a reaffirmance of the terms of the agreement, and, this being shown, a cause of action arises, not on the prior oral contract, but on the new contract made at the time of the payment. Jackson v. Tupper, (N. Y.) 5 N. E. Rep. 65.

The actual surrender of a promissory note of the vendor by the vendee, as part payment, will take the sale out of the statute. Sharp v. Carroll, (Wis.) 27 N. W. Rep. 832.

See Perkins v. Thorson, 50 Minn. 85, 52 N. W. Rep. 272.

§ 4211. Auctioneer's memorandum to be deemed note of contract.

Whenever goods are sold at public auction, and the auctioneer, at the time of sale, enters into a sale-book 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 the last section.

(G. S. 1866, c. 41, § 8; G. S. 1878, c. 41, § 8.)

4212 87-M . 173

§ 4212. Grants of existing trusts void, unless in writing.

Every grant or 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 agent lawfully authorized, shall be void.

(G. S. 1866, c. 41, § 9; G. S. 1878, c. 41, § 9.)

This section does not apply to the *making* of assignments in trust for creditors. Conrad v. Marcotte, 23 Minn. 55. An assignment of personal property for the benefit of creditors need not, prior to c. 44, Laws 1876, have been in writing. Id.

§ 4213. Conveyance, etc., of land to be in writing.

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56-M . 222
59-NW . 310
63 NW . 624

4218
57-M - 20
57-M - 383
61-M - 214
63-M - 9
65-NW 92

4213
67-M - 101

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78-M - 268

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.

(G. S. 1866, c. 41, § 10; G. S. 1878, c. 41, § 10.)

A contract by a pre-emptor about to pre-empt land, by which he agrees to give another an interest in the land, is utterly void, and incapable of becoming the foundation for any rights. Evans v Folsom, 5 Minn. 422, (Gil. 342.)

An oral agreement for the purchase and sale of real estate in the nature of a partnership is valid. Newell v. Cochran, 41 Minn. 374, 43 N. W. Rep. 84. And see Pennybacker v. Leary (Iowa) 21 N. W. Rep. 575; Snyder v. Wolford, 33 Minn. 175, 22 N. W Rep. 254; Babcock v. Read (N. Y.) 1 N. E. Rep. 141; Richards v. Grinnell (Iowa) 18 N. W. Rep. 668.

A mortgage upon real estate cannot be created by a deposit of title deeds, even though accompanied with a writing stating the object of the deposit. Gardner v. McClure, 6 Minn. 250, (Gil. 167.)

4213 87-M . 170
89-M . 509
91-M . 409

An oral lease for a term of three years, with a right in the lessor to terminate it at any time upon four months' notice, is void as being for a term "exceeding one year." But if the lessee goes into possession under it, it regulates the terms of the tenancy as respects rents. Evans v. Winona Lumber Co., 30 Minn. 515, 16 N. W. Rep. 404.

A parol demise, void under the statute, cannot be resorted to to ascertain the length of the term. Johnson v. Albertson, 51 Minn. 333, 53 N. W. Rep. 642.

See Jellett v. Rhode, cited in note to § 4209.

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 till May 1, 1884, is a lease for a term exceeding one year, and authority of an agent for the lessor to execute it must be in writing. Judd v. Arnold, 31 Minn. 430, 18 N. W. Rep. 151.

As applied to a lease, a surrender is the yielding up of an estate for life or years to him that has the immediate reversion or remainder, wherein the particular estate becomes extinct by a mutual agreement between the parties. It may be effected by express words evincing such agreement, or may be implied from conduct of the parties going to show that they have both agreed to consider the surrender as made. The agreement may be, and sometimes is, implied upon the principle of estoppel. Dayton v. Craik, 26 Minn. 133, 1 N. W. Rep. 813. A surrender by operation of law takes place where the owner of a particular estate has been a party to some act, the validity of

which he is by law afterwards estopped from disputing, and which would not be valid if his particular estate had continued to exist. Smith v. Pendergast, 26 Minn. 318, 3 N. W. Rep. 978.

A conveyance by one is such a part performance as will take an agreement for the exchange of lands out of the statute of frauds. McClure v. Otrich, (Ill.) 8 N. E. Rep. 784. See, further, as to part performance, Robinson v. Thrailkill, (Ind.) 10 N. E. Rep. 647; Wallace v. Long, (Ind.) 5 N. E. Rep. 666; Brown v. Hoag, 35 Minn. 373, 29 N. W. Rep. 135.

The acceptance by the lessee of a lease for more than one year need not be in writing. Erhmanntraut v. Robinson, 52 Minn. 333, 54 N. W. Rep. 188.

See Rees v. Lowy (Minn.) 59 N. W. Rep. 310.

A parol agreement at the time of conveyance that the grantee shall hold the property for the grantor until sold, and pay the proceeds to him, is void as an attempt to create a trust by parol. Wolford v. Farnham, 44 Minn. 159, 46 N. W. Rep. 295.

Tenancies from year to year are not affected by the statute. Hunter v. Frost, 47 Minn. 1, 6, 49 N. W. Rep. 327.

The statutory right of a mechanic to enforce a lien on real property is not an estate or interest which cannot be surrendered or released except as provided in this section. Burns v. Carlson, 53 Minn. 70, 54 N. W. Rep. 1055.

The statute applied, Tatge v. Tatge, 34 Minn. 272, 25 N. W. Rep. 596, 26 N. W. Rep. 121. Cited, Johnson v. Krassin, 25 Minn. 117; Sanford v. Johnson, 24 Minn. 173; Sherwood v. St. Paul, etc., Ry. Co., 21 Minn. 130.

See, also, Arnold v. Wainwright, 6 Minn. 358, (Gil. 241;) Wentworth v. Wentworth, 2 Minn. 277, (Gil. 238;) Hastings v. Weber, (Mass.) 7 N. E. Rep. 846; Elliot v. Barrett, (Mass.) 10 N. E. Rep. 820; Mercantile Nat. Bank v. Parsons, 54 Minn. 56, 55 N. W Rep. 825, 826.

§ 4214. Limitation of preceding section.

4214
56-M . 96

The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament; nor to prevent any trust from arising or being extinguished by implication or operation of law.

(G. S. 1866, c. 41, § 11; G. S. 1878, c. 41, § 11.)

Parol evidence may be received to show that land, the title to which is in the name of one partner, is held by him in trust for the firm of which he is a member, and that it is in fact the property of the partnership. Sherwood v. St. Paul, etc., Ry. Co., 21 Minn. 128.

§ 4215. Leases for more than one year—Contracts for sale of land.

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60-NW 1075

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59-M - 200
61-M - 214

4215
99 - 13
69-M - 332
72-NW 698
78-NW 6

4215
01 - 31
71-M - 1
71-M - 121
74-M - 224
75-M - 356
78-NW 6

4215 89-M . 348

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 such agent, shall be entitled to record unless the authority of such agent be also recorded.

(G. S. 1866, c. 41, § 12; G. S. 1878, c. 41, § 12; as amended 1887, c. 26.)

A lease for a term not exceeding three years need not be attested by witnesses. Chandler v. Kent, 8 Minn. 524, (Gil. 467.)

A contract for the assignment of a lease of real estate for a term of years is within the statute of frauds. Benton v. Schulte, 31 Minn. 312, 17 N. W. Rep. 621.

The authority of an agent to make a contract for the sale of real estate need not be in writing. Dickerman v. Ashton, 21 Minn. 538. An agent authorized to sell real estate, by an instrument insufficient, for want of a seal, to give him authority to convey, may bind his principal by an executory contract to convey. Minor v. Willoughby, 3 Minn. 225, (Gil. 154.)

Where an agent, authorized to contract to sell, conveys real estate under a defective power, the deed will be treated in equity as a good contract to sell, within the statute. Hersey v. Lambert, 50 Minn. 373, 52 N. W. Rep. 963.

As to a parol agreement for a one-year lease, to begin in the future, see Whiting v. Ohlert, (Mich.) 18 N. W. Rep. 219.

See, also, Jellett v. Rhode, cited in note to § 4209.

The memorandum must not only contain a sufficient description of the property and statement of the price, but the vendor should be so designated that he can be identified without parol evidence. Clampet v. Bells, 39 Minn. 272, 39 N. W. Rep. 495; Morton v. Stone, 39 Minn. 275, 39 N. W. Rep. 496.

A memorandum designating the vendor as owner of N. W. ¼, Sec. 1, Tp. 49, R. 15, without designation of county or state held sufficientiy to describe land in St. Louis

county owned by him, it not appearing that he owned land in another state to which the description applied. Quinn v. Champagne, 38 Minn. 322, 37 N. W. Rep. 451.

A memorandum held bad for not specifying the kind of securities for deferred payments. George v. Conhaim, 38 Minn. 338, 37 N. W. Rep. 791.

"Five acres, lot 3, Sec. 23." held an insufficient description. Nippolt v. Kammon, 39 Minn. 372, 40 N. W. Rep. 266.

See Brockway v. Frost, 40 Minn. 155, 41 N. W. Rep. 411.

"Your land" held an insufficient description. The defect in the memorandum cannot be supplied by parol or by admissions in the answer. Taylor v. Allen, 40 Minn. 433, 42 N. W. Rep. 292.

A modification of the written contract must be in writing. Heisley v. Swanstrom, 40 Minn. 196, 41 N. W. Rep. 1029; Burns v. Fidelity Real-Estate Co., 52 Minn. 31, 53 N. W. Rep. 1017.

A contract for the sale and purchase of real estate is not binding on the purchaser unless executed by him. Yeager v. Kelsey, 46 Minn. 402, 49 N. W. Rep. 199.

Section cited, Johnson v. Krassin, 25 Minn. 118; Allis v. Goldsmith, 22 Minn. 127; Brown v. Sanborn, 21 Minn. 402; Sanborn v. Nockin, 20 Minn. 186 (Gil. 165); John Martin Lumber Co. v. Howard, 49 Minn. 404, 52 N. W. Rep. 34, 35.

§ 4216. Specific performance of oral agreements.

4216
63-M - 230
65-NW 444

Nothing in this chapter contained shall be construed to abridge the power of courts of equity to compel the specific performance of agreements, in cases of part-performance of such agreements.

(G. S. 1866, c. 41, § 13; G. S. 1878, c. 41, § 13.)

4216
75-M - 356
78-NW 6
84-NW 221

Taking possession of and improving land under a parol contract for its purchase is such part performance as takes the case out of the statute. Gill v. Newell, 13 Minn. 462, (Gil. 430.) The making of substantial improvements, pursuant to an oral agreement to convey the real estate improved, by a vendee in possession prior to and at the time of the agreement, is such a part performance as takes the agreement out of the statute of frauds. Pfiffner v. Stillwater, etc., R. Co., 23 Minn. 343.

4216 87-M . 174

Where there is a lease of land, and possession under it, and the lessor agrees orally to convey upon certain terms agreed on to the lessee, at any time within five days after the expiration of the term, and the lessee, after the term expires, continues in possession, and notifies the lessor that she will purchase the property at the terms agreed on, and requests a deed, such possession is a part performance that takes the case out of the statute of frauds. Place v. Johnson, 20 Minn. 219, (Gil. 198.)

To constitute a contract, valid within the statute of frauds, to convey real estate, an offer in writing to sell must be accepted in writing. A readiness by the purchaser to pay, and depositing the price with the purchaser's agent, and notifying the seller, is not a part performance to take an agreement to convey real estate out of the statute. Lanz v. McLaughlin, 14 Minn. 72, (Gil. 55.)

The defendant orally agreed to convey certain land to the plaintiff when the latter should marry a certain lady, if he would dismiss certain lawsuits. The plaintiff married the lady and dismissed the suits. In a suit for specific performance, held, that the dismissal of the suits was such part performance as to take the agreement out of the statute. Slingerland v. Slingerland, 39 Minn. 197, 39 N. W. Rep. 146.

A complaint for specific performance, not stating whether the agreement was written or oral, but alleging part performance, is sufficient to admit proof of a partly performed oral agreement. Slingerland v. Slingerland, 46 Minn. 100, 48 N. W. Rep. 605.

An oral agreement to convey real estate, where acts of part performance are not done pursuant to and relying upon it, will not prevent a recovery of the real estate by the owner. Watson v. Chicago, M. & St. P. Ry. Co., 46 Minn. 321, 48 N. W. Rep. 1129.

Where the vendor in a contract within the statute offers to perform, the purchaser cannot recover back purchase money. McKinney v. Harvie, 38 Minn. 18, 35 N. W. Rep. 668.

See Scanlon v. Oliver, 42 Minn. 538, 44 N. W. Rep. 1031. Otherwise if the vendor refuses to perform. Pressnell v. Lundin, 44 Minn. 551, 47 N. W. Rep. 161; Herrick v. Newell, 49 Minn. 198, 51 N. W. Rep. 819.

§ 4217. Logs—Agreements as to payment for manual labor.

Every agreement for extending the time of payment for manual labor, performed or to be performed, in cutting, hauling, banking or driving logs, beyond the date of the completion of such labor, shall be void unless such agreement is in writing, subscribed by the party to be charged therewith and expressing the true consideration therefor, and unless at the time of the completion of such labor or the making of such contract the person, partnership or corporation for whom such labor shall be performed shall execute and deliver to the person performing the same, his or its negotiable promissory note for the compensation therefor, with interest, due at such time as may be agreed upon; Provided, That it shall not be competent for any such laborer to waive

any of the provisions of this act, nor shall the right of such laborer to a lien upon any property to secure the payment for such labor be waived by the acceptance of such note, but such right of lien shall pass with the note and vest in and be enforceable by the holder thereof.

(1891, c. 76, § 1.)

TITLE 3.

CONVEYANCES RELATIVE TO LANDS, GOODS, AND CHATTELS, FRAUDULENT AS AGAINST CREDITORS.

4218-4226
62-M - 341
64-NW 818
67-NW 538

§ 4218. Conveyances, etc., in trust for grantor, etc., to be void.

All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

(G. S. 1866, c. 41, § 14; G. S. 1878, c. 41, § 14.)

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This section is not applicable to a case where the conveyance is primarily for the benefit of the grantee, and the reservation is merely partial, and incidental to the general purpose. Camp v. Thompson, 25 Minn. 175; Butler v. White, Id. 432.

An assignment which dictates to the creditors the terms upon which they may receive benefits under it is void. Banning v. Sibley, 3 Minn. 389, (Gil. 282.)

Section applied, Truitt v. Caldwell, 3 Minn. 364, (Gil. 257;) Chophard v. Bayard, 4 Minn. 533, (Gil. 418;) Brown v. Matthaus, 14 Minn. 205, (Gil. 149.) And see Hicks v. Stone, 13 Minn. 434, (Gil. 398, 403.)

Voluntary conveyances by a debtor who is financially embarrassed are prima facie fraudulent as to existing creditors; and where made mala fide, and the fraud is participated in by both parties, it may be assailed also by subsequent creditors. Walsh v. Byrnes, 39 Minn. 527, 40 N. W. Rep. 831.

As to when an assignment of wages to be earned is void as to creditors. O'Connor v. Meehan, 47 Minn. 247, 49 N. W. Rep. 982.

The burden of proving an assignment fraudulent is on the creditor. McMillan v. Edfast, 50 Minn. 414, 52 N. W. Rep. 907.

An express trust in favor of a grantor cannot be ingrafted on a conveyance, absolute in its terms, either by parol proof, or, under the doctrine of "part performance," by proof that the grantor, with the consent of the grantee, remained in possession and made improvements. Pillsbury-Washburn Flour-Mills Co. v. Kistler, 53 Minn. 123, 54 N. W. Rep. 1063.

See May v. Walker, 35 Minn. 194, 196, 28 N. W. Rep. 252; Adamson v. Cheney, 35 Minn. 474, 475, 29 N. W. Rep. 71; Erickson v. Paterson, 47 Minn. 525, 50 N. W. Rep. 699.

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§ 4219. Sale of chattels without delivery, etc., presumed fraudulent.

Every sale made 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 and assigned, shall be presumed to be fraudulent and void as against the creditors of the vendor or assignor, or 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.

(G. S. 1866, c. 41, § 15; G. S. 1878, c. 41, § 15.)

See § 4148.

Whether there has been a delivery and change of possession depends largely upon the kind and nature of the chattels, the situation of the parties, and the circumstances peculiar to each case. Tunell v. Larson, 39 Minn. 269, 39 N. W. Rep. 628.

If the subject of the sale is not reasonably capable of actual delivery, a constructive delivery is sufficient, as where it would be injurious or unusual to remove the property. Lathrop v. Clayton, 45 Minn. 124, 47 N. W. Rep. 544.

The change of possession must be actual and continued. A mere formal and constructive taking of possession, the property remaining in the actual possession of the vendor, is not sufficient. Murch v. Swensen, 40 Minn. 421, 42 N. W. Rep. 290; Chickering v. White, 42 Minn. 457, 44 N. W. Rep. 988.

The acts and declarations of the vendor remaining in actual possession, tending to characterize his possession, are admissible against the buyer. Murch v. Swensen, supra.

Where, at the time of sale, the goods are in the hands of one who has a lien on them, notice to him constitutes delivery as against attaching creditors. Freiberg v. Steenbock, 54 Minn. 509, 56 N. W. Rep. 175.

One who in good faith purchases personal property, and takes posssesion, may afterwards lend or rent it to the vendor. Deere v. Needles, (Iowa,) 21 N. W. Rep. 203.

Authority to an employe of the vendor to take possession of the goods sold is not a compliance with the statute requiring an immediate delivery and actual change of possession. Seavey v. Walker, (Ind.) 9 N. E. Rep. 347.

The questions of good or bad faith and fraudulent intent are questions of fact for a jury. Molm v. Barton, 27 Minn. 530, 8 N. W. Rep. 765.

As to a chattel mortgage providing that the mortgagor may remain in possession, and continue the business of selling the stock mortgaged, see Fisher v. Syfers, (Ind.) 10 N. E. Rep. 306. See, also, Potts v. Hart, (N. Y.) 1 N. E. Rep. 605; Chicago Lumber Co. v. Fisher, (Neb.) 25 N. W. Rep. 340; Barmon v. Bowler, 34 Minn. 416, 26 N. W. Rep. 237; Meyer v. Evans, (Iowa,) 23 N. W. Rep. 386; Anderson v. Patterson, (Wis.) 25 N. W. Rep. 541; Daggett, Bassett & Hills Co. v. McClintock, (Mich.) 22 N. W. Rep. 105; Livingstone v. Brown, 18 Minn. 308, (Gil. 278.)

See Mullen v. Noonen, 44 Minn. 541, 47 N. W. Rep. 164; Mackellar v. Pillsbury, 48 Minn. 396, 51 N. W. Rep. 222.

§ 4220. Term "creditors" defined.

The term "creditors," as used in the preceding section, includes 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.

(G. S. 1866, c. 41, § 16; G. S. 1878, c. 41, § 16.)

This section applies not only to existing creditors of the vendor, but also to those who become creditors at any time while he retains possession. Murch v. Swensen, 40 Minn. 421, 42 N. W. Rep. 290; Hopkins v. Swensen, 41 Minn. 292, 42 N. W. Rep. 1062.

§ 4221. Limitations of two last sections.

Nothing contained in the two preceding sections shall apply to contracts of bottomry or respondentia, or assignments or hypothecations of vessels or goods at sea or in foreign ports, or without this state: provided, the assignee or mortgagee takes possession of such vessel or goods as soon as possible after the arrival thereof within this state.

(G. S. 1866, c. 41, § 17; G. S. 1878, c. 41, § 17.)

§ 4222. Conveyances, etc., with intent to defraud creditors, to be void.

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64-NW 825
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79-NW 306

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88-M . 511

Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or of any rents or profits issuing therefrom, and every charge upon lands, or upon the rents or profits thereof, made with the intent to hinder, delay or defraud creditors or other persons of their lawful actions, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, actions commenced, order or judgment suffered, with the like intent, as against the persons so hindered, delayed, or defrauded, shall be void.

(G. S. 1866, c. 41, § 18; G. S. 1878, c. 41, § 18.)

An assignment, by a debtor, of his property, purporting to be for the benefit of his creditors, and fair on its face, if in fact executed by the assignor with the intent and for the purpose of thereby effecting a compromise with his creditors, is void, even though the assignee have no notice of such intent. Bennett v. Ellison, 23 Minn. 242.

A conveyance of real estate by a debtor, for the purpose of putting it beyond the reach of his creditors, and upon the understanding with the grantee that the latter should hold it in trust for him, is void as to creditors of the grantor, although it was also conveyed upon the understanding that the grantee should hold it as security for a debt actually due from the grantor to him, and such debt does not in any way affect the rights of the creditors. Thompson v. Bickford, 19 Minn. 17, (Gil. 1.) If such fraudulent grantee has received the rents and profits of the real estate, or has sold it to a *bona fide* purchaser, and received the proceeds, he is liable therefor to the grantor's creditors, without any deduction for the debt due from the grantor to him, or for any taxes or liens on the property paid by him; and if he has invested the same in specific stocks or securities, the creditors may have such stocks or securities sold to satisfy their demands. Id. Such grantee gets no title as against such creditors by a deed from the purchaser at the foreclosure of a mortgage existing on the real estate at the time of the fraudulent

conveyance, and afterwards foreclosed, which deed was given as upon redemption, nor by assignment of the certificate of foreclosure sale. Id.

A conveyance of a homestead with intent to defraud creditors is void as to them, if their judgment would be a lien on it. Piper v. Johnston, 12 Minn. 60, (Gil. 27.) But in such case the conveyance is valid as to the grantor, so that he cannot afterwards claim a homestead in the premises. Id. If, by the fraudulent conveyances, the title is vested in the debtor's wife, he cannot, upon her death, claim as tenant by the curtesy, as against the creditors intended to be defrauded. Id.

Where the intent of an assignor, in executing an assignment for the benefit of creditors, was to prevent a forced sale of the property, and in order that his business might be continued, and the goods sold at retail, the assignment is void. Gere v. Murray, 6 Minn. 305, (Gil. 213.) The assignee in such an assignment is not a purchaser for value, and his innocence of any fraudulent intent will not cure the fraud of the assignor. Id.

A conveyance in trust, purporting to be for the benefit of creditors, and authorizing the trustee to sell on credit, is void as to creditors. Greenleaf v. Edes, 2 Minn. 264, (Gil. 226.) A provision, in a trust deed for the benefit of creditors, that the trustee may sell on credit, vitiates the whole deed; and the trust, as to other parts, cannot be sustained, upon the rule "*ut res magis valeat quam pereat.*" Id. The intent of the debtor to hinder or delay his creditors must always be implied, where such is the necessary effect of any provision in the instrument of assignment, or of the exercise of any authority or power which the instrument confers. Id.

A mortgage in good faith and for value is not invalid because it overstates the debt. Nazro v. Ware, 38 Minn. 443, 38 N. W. Rep. 359.

Where the debtor is financially embarrassed, and executes a mortgage for more than he owes, the excess not being for future advances or the result of mistake, it is evidence of fraud as to creditors. Hanson v. Bean, 51 Minn. 546, 53 N. W. Rep. 871.

A mortgage given for a larger sum than the legitimate indebtedness it is intended to cover is *prima facie* fraudulent. Taylor v. Wendling, (Iowa,) 24 N. W. Rep. 40. But see Hoey v. Pierron, (Wis.) 30 N. W Rep. 692.

The payment of a fair consideration affords strong evidence of good faith. Nugent v. Jacobs, (N. Y.) 8 N. E. Rep. 367. But the fact of payment of a valuable consideration is not inconsistent with a fraudulent intent. Billings v. Sawyer, (N. Y.) 4 N. E. Rep. 531.

As to a chattel mortgage executed the day before the mortgagor made an assignment for benefit of creditors, see In re Guyer, (Iowa,) 29 N. W. Rep. 826.

Conveyance to wife, to whom the grantor was indebted, see Hoes v. Boyer, (Ind.) 9 N. E. Rep. 427.

As to conveyances between parent and child, see Higgins v. White, (Ill.) 8 N. E. Rep. 808; Clase v. Horton, (Mass.) 9 N. E. Rep. 31.

A sale, fraudulent as against creditors, is voidable, but not absolutely void. It may be affirmed or avoided by such creditors, at their election, but they cannot do both. Hathaway v. Brown, 22 Minn. 214.

A judgment creditor, who institutes against his debtor proceedings supplementary to execution, and, in those proceedings, receives money found due the debtor as the purchase price of land conveyed by him, is thereby estopped from claiming, as against the grantee, that the conveyance was in fraud of the grantor's creditors. Lemay v. Bibeau, 2 Minn. 291, (Gil. 251.)

A creditor, who receives a benefit under an assignment for the benefit of creditors, or becomes a party to it voluntarily, with a full knowledge of its provisions or of the circumstances rendering it fraudulent as to creditors, is thereby estopped from afterwards impeaching it. Scott v. Edes, 3 Minn. 377, (Gil. 271.) Though the creditor be in fact ignorant of the fraudulent character of the assignment, if he have the means of knowledge, or have notice of facts which should have put him upon inquiry, he is equally estopped. So held where the assignment was in law fraudulent on its face, and the creditor might have seen it had he desired. Id. A creditor who, without notice of the fraud in the assignment, accepts a benefit under it, cannot afterwards impeach it without returning the benefit received. Id.

A creditor does not ratify a fraudulent assignment by a debtor, of his property, by commencing garnishee proceedings against the assignee to reach the property. Banning v. Sibley, 3 Minn. 389, (Gil. 282.)

A judgment creditor may levy on and sell real estate of the debtor, notwithstanding the debtor has conveyed it with intent to hinder, delay, or defraud creditors. Campbell v. Jones, 25 Minn. 155, 159. When the creditor has sold the land, and the alleged fraudulent grantee brings an action against the purchaser to determine his title, the validity of the conveyance may be tried without bringing in the grantor. Id.

A creditor must prove the existence of the debt at the time of the conveyance; as against the grantee the judgment does not prove it. Bloom v. Moy, 43 Minn. 397, 45 N. W. Rep. 715.

See Welch v. Bradley, 45 Minn. 540, 48 N. W. Rep. 440.

A subsequent creditor cannot avoid a conveyance merely because it was made to defraud creditors existing at the time of its execution. Fullington v. Northwestern Importers' & Breeders' Ass'n, 48 Minn. 490, 51 N. W. Rep. 475.

The creditor need not show that he has followed his legal remedy further than to docket his judgment. Scanlan v. Murphy, 51 Minn. 536, 53 N. W. Rep. 799.

A mortgagor may maintain an action to enjoin foreclosure, on the ground that the mortgage was without consideration, though made to hinder and delay creditors. Devlin v. Quigg, 44 Minn. 534, 47 N. W. Rep. 258.

By the common law, transfers of goods and chattels with intent to hinder or defraud "creditors or other persons of their lawful actions," etc., are voidable, though "goods and chattels" are not named in the statute. Byrnes v. Volz, 53 Minn. 110, 54 N. W. Rep. 942. In whose favor such transfers are voidable. Id.

See, also, Benton v. Snyder, 22 Minn. 247; Sanford v. Johnson, 24 Minn. 172, 173; Matthews v. Torinus, 22 Minn. 132, 136; Furman v. Tenny, 28 Minn. 77, 9 N. W. Rep. 172; Blake v. Boisjoli, 51 Minn. 296, 53 N. W. Rep. 637, 638.

§ 4223. Heirs, etc., of creditors and purchasers — Their rights.

Every conveyance, charge, instrument or proceeding, declared to be void, by the provisions of this and the two preceding titles, as against creditors or purchasers, shall be equally void against the heirs, successors, personal representatives or assignees of such creditors or purchasers.

(G. S. 1866, c. 41, § 19; G. S. 1878, c. 41, § 19.)

§ 4224. Fraudulent intent, a question of fact—Consideration.

The question of fraudulent intent, in all cases arising under the provisions of this title, 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.

(G. S. 1866, c. 41, § 20; G. S. 1878, c. 41, § 20.)

The question of fraudulent intent in the transfer is one of fact, and the decision of the referee on such question, where there is evidence to support the same, will not be disturbed. Vose v. Stickney, 19 Minn. 367, (Gil. 312.)

If the fraudulent intent appears from the conveyance, or from the facts admitted by the pleadings, the instrument is void, and there is no necessity for a jury to try the question of intent. Burt v. McKinstry, 4 Minn. 204, (Gil. 146.)

Every question of fraudulent intent, arising under the statute, must be submitted to the jury, unless the instrument carries upon its face the evidence of the intent, in which case, it being indisputable, the jury could find only one way, and the court might declare the fraud to exist without the form of a verdict. Filley v. Register, 4 Minn. 391, (Gil. 296.)

Where there is no conflict of testimony, the court may direct a verdict. Fish v. McDonnell, 42 Minn. 519, 44 N. W. Rep. 535; Cortland Wagon Co. v. Sharvy, 52 Minn. 216, 53 N. W. Rep. 1147.

Where a conveyance is claimed to have been made with intent to defraud creditors, and the grantee is charged to have been a party to the fraudulent intent, it is proper to allow the grantee to state, when sworn as a witness, whether he knew anything about the grantor's affairs at the time the conveyance was made. Id.

As to voluntary conveyances by insolvent, see Faurote v. Carr, (Ind.) 9 N. E. Rep. 350; Taylor v. Duesterberg, Id. 907. And see note to § 4222.

Section applied, Vose v. Stickney, 19 Minn. 367, (Gil. 312;) Truitt v. Caldwell, 3 Minn. 364, (Gil. 257;) Molm v. Barton, 27 Minn. 530, 533, 8 N. W. Rep. 765. See, also, Hathaway v. Brown, 18 Minn. 414, (Gil. 373;) Union Nat. Bank v. Pray, 44 Minn. 168, 46 N. W. Rep. 304; Lathrop v. Clayton, 45 Minn. 124, 47 N. W. Rep. 544; Mackellar v. Pillsbury, 48 Minn. 396, 400, 51 N. W. Rep. 222.

§ 4225. Purchaser without notice protected.

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65-NW 122

The provisions of this title 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.

(G. S. 1866, c. 41, § 21; G. S. 1878, c. 41, § 21.)

A purchaser who has paid nothing on his purchase from a fraudulent vendee, is not a *bona fide* purchaser for value so as to be protected. Hicks v. Stone, 13 Minn. 434, (Gil. 398.)

As to what evidence is material on the issue whether a party is a bona fide purchaser. Riddell v. Munro, 49 Minn. 532, 52 N. W. Rep. 141.

See note to § 4222.

§ 4226. Term "conveyance" defined.

The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

(G. S. 1866, c. 41, § 22; G. S. 1878, c. 41, § 22.)

See Sanford v. Johnson, 24 Minn. 172, 173.

[TITLE 4.]

[ASSIGNMENTS FOR BENEFIT OF CREDITORS.][1]

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55-M . 19
62-NW . 325
59-NW 1003
59-NW 1023
59-NW 1045
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58-M - 210
60-M - 358
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65-NW 78
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§ 4227. Qualifications of assignees—Requisite of assignment—Filing.

Every conveyance or assignment made by a debtor or debtors of the whole or any part of their estate, real or personal, in trust, to an assignee or assignees, for the benefit of creditors, shall be void, unless the assignee or assignees therein named are residents and freeholders of this state, and unless such conveyance or assignment be in writing, subscribed by such debtor or debtors, and duly acknowledged before an officer authorized by law to take acknowledgment of deeds, and the certificate of such acknowledgment be endorsed thereon; and until such conveyance or assignment be filed in the office of the clerk of the district court in and for the county wherein such debtor or debtors reside, or wherein the business in reference to which the same is made, has been principally carried on.

(1876, c. 44, § 1; G. S. 1878, c. 41, § 23.)

Prior to the passage of Laws 1876, c. 44, an assignment of personal property, in trust for the benefit of creditors, accompanied with such delivery to the assignee as the nature of the property admitted, was not required to be in writing. Conrad v. Marcotte, 23 Minn. 55.

This statute was intended to apply only to assignments made within this state. It does not change the unwritten law relative to the validity of foreign assignments. In re Paige, etc., Lumber Co., 31 Minn. 136, 16 N. W. Rep. 700.

An assignment made under the insolvent law of 1881 (Laws 1881, c. 148) is not void because the assignee named therein is not a freeholder of this state. Simon v. Mann, 33 Minn. 412, 23 N. W. Rep. 856.

The rule of law, that a fraudulent intent on the part of the assignor will vitiate an assignment, is not changed by this statute. It simply regulates the mode of executing such conveyances, and the manner of executing the trusts created thereby, leaving the question of their validity to be determined by the existing rules of law, except so far as expressly provided by the statute itself. Lesher v. Getman, 28 Minn. 93, 9 N. W. Rep. 585.

The *subscription* of a partnership assignment by one of the partners only, in the firm name, is sufficient. Williams v. Frost, 27 Minn. 259, 6 N. W. Rep. 793.

An assignment had indorsed on it a notary's certificate of its acknowledgment, signed by the notary, but with no notarial seal attached to it. Following this certificate, and on the same page, was the same notary's certificate of the assignee's acknowledgment of the execution of his acceptance of the trust. Attached to this certificate was the notary's seal. Held, the first certificate, for want of a seal, is a nullity and the assignment void. De Graw v. King, 28 Minn. 118, 9 N. W. Rep. 636.

The jurisdiction over assignments for the benefit of creditors granted by this chapter is vested in the district court, to be exercised by the judges thereof. Clark v. Stanton, 24 Minn. 232.

A general description in a recorded assignment held not limited by a schedule referred to, nor the assignment affected by failure to record the schedule. Strong v. Lynn, 38 Minn. 315, 37 N. W. Rep. 448.

As to acknowledgment of an assignment by a surviving partner. Hanson v. Metcalf, 46 Minn. 25, 48 N. W. Rep. 441.

An assignment providing for paying all creditors, and not merely those filing releases, the surplus to be repaid to the assignor after paying all debts in full, creditors cannot be required to file releases; and this whether it be considered a common-law assign-

[1] An act to protect the creditors of assignors and to regulate the duties of assignees. Approved March 4, 1876 (Laws 1876, c. 44).

ment or under the act of 1881. In re Bird, 39 Minn. 520, 40 N. W. Rep. 827. See, also, In re Fuller, 42 Minn. 22, 43 N. W. Rep. 486.

An assignment providing for payment of such creditors as should file releases, and of those who should otherwise be entitled to payment of their claims, but not reciting facts authorizing an assignment under the act of 1881, held invalid as against such creditors as elect to ignore it. McConnell v. Rakness, 41 Minn. 3, 42 N. W. Rep. 539.

An assignment, after acceptance, cannot be changed or revoked by the assignor or assignee, or by the court on their application. Mackellar v. Pillsbury, 48 Minn. 396, 51 N. W. Rep. 222. Nor can it be corrected or reformed by action on the ground of mistake, if the beneficiaries will not be placed in statu quo if the relief is granted. Cottrell v. Citizens' Sav. Bank, 53 Minn. 201, 54 N. W. Rep. 1111.

Section cited, Bannon v. Bowler, 34 Minn. 416, 26 N. W. Rep. 237; In re Mann, 32 Minn. 64, 19 N. W Rep. 347; Donohue v. Ladd, 31 Minn. 246, 17 N. W. Rep. 381; Kingman v. Barton, 24 Minn. 295; Langdon v. Thompson, 25 Minn. 509; Mann v. Flower, Id. 500; Leuthold v. Young, 32 Minn. 122, 19 N. W. Rep. 652.

§ 4228. Deed of assignment—Recording.

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59-NW 1024

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68-M 236

No deed of assignment for the benefit of creditors, whether under the general assignment law or the insolvent law of this state, and no order or decree of assignment under said insolvent law, by any court, shall be valid or of any force or effect whatsoever as a conveyance of any land or of any estate or interest therein in this state until a copy of such deed, order, or decree, certified by the clerk or his deputy of the court wherein the original deed, order, or decree is filed, shall be filed for record in the office of the register of deeds of the county wherein such land is situated.

(1887, c. 206, § 1;[2] G. S. 1878, v. 2, c. 39, § 23a.)

Laws 1887, c. 206, is a registry law merely. An unrecorded assignment is valid as between the parties and as to others having actual notice. Paulson v. Clough, 40 Minn. 494, 42 N. W. Rep. 398.

A bona fide purchaser from the assignee, whose deed of assignment is of record, is preferred to a prior grantee in an unrecorded deed from the assignor. Strong v. Lynn, 38 Minn. 315, 37 N. W. Rep. 448.

§ 4229. Same—Act not retrospective.

Provided, that this act shall not apply to cases where deeds of assignments for the benefit of creditors have heretofore been made.

(1887, c. 206, § 2; G. S. 1878, v. 2, c. 39, § 23b.)

§ 4230. Schedule of creditors, debts, assets, etc., to be filed by assignor.

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55-M 131

4230
69-M 71

Every debtor or debtors, so making an assignment, shall, at the date thereof, or within ten days thereafter, make and file with the clerk of the court aforesaid a just and true statement or inventory, under his oath or affirmation, containing—

First—A full and true account of all the creditors of such debtor or debtors.

Second—The place of residence of each creditor, if known to such debtor or debtors; and if not known, the fact to be so stated.

Third—The sum owing to each creditor, and the nature of such debt or demand, whether arising upon written security, account or otherwise.

Fourth—The true cause and consideration of all such indebtedness, in each case, and the place where such indebtedness arose.

Fifth—A statement of any existing judgment, mortgage, collateral or other security for the payment of any such debt.

Sixth—A full, true and complete inventory of such debtor or debtors' estate, both real and personal, in law or in equity, and the incumbrances existing thereon, and of all vouchers and securities relating thereto, and the value of such estate and each item thereof, to the best knowledge, information and belief of such debtor or debtors.

(1876, c. 44, § 2; G. S. 1878, c. 41, § 24.)

The omission of the assignor to file an inventory within the time specified does not defeat the proceedings initiated, nor avoid the trust created by the filing of the assign-

[2] An act to provide for the recording, in the office of register of deeds, of certified copies of deeds or decrees of assignment for the benefit of creditors, affecting real estate. Approved February 28, 1887.

ment, nor affect the title of the assignee. Distinguishing Kingman v. Barton, 24 Minn. 295; Swart v. Thomas, 26 Minn. 141, 1 N. W. Rep. 830.

See Perkins v. Zarracher, 32 Minn. 71, 19 N. W. Rep. 385.

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69-M - 70

§ 4231. Bond of assignee—Filing and approval—Additional bonds.

Before any such assignee or assignees shall have power or authority to sell, dispose of, or convert to the purposes of the trust, any part of such estate, and not later than five days after the filing of the inventory, as provided for in section two of this act, he or they shall execute, and file with the clerk of the court where such assignment is filed, a good and sufficient bond to the state of Minnesota, to be approved by the judge of such district court, with two or more sureties, freeholders and residents of the state of Minnesota, in an amount at least double the value of the estate assigned, as shown by such inventory, if made, or by the affidavit of the debtors, or one of them, if the bond be given before the inventory be made, conditioned on the faithful and just performance of all the duties of such assignee or assignees. And the judge may at any time thereafter, if he shall deem such bond insufficient in amount, or that the sureties are insufficient, require the assignee or assignees to give new or additional bonds, in his discretion.

(1876, c. 44, § 3, as amended 1877, c. 67, § 1; G. S. 1878, c. 41, § 25.)

If the bond is seasonably executed, and delivered to the judge for approval, the rights of the assignee will not be affected by the fact that the judge retains the bond until after the expiration of the time within which it should be filed. Johnson v. Bray, 35 Minn. 248, 28 N. W. Rep. 504.

See Prosser v. Hartley, 35 Minn. 340, 29 N. W. Rep. 156.

The assignee may accept the trust and take possession before executing his bond. Upon such acceptance he becomes amenable to the jurisdiction, and the parties and the estate become subject to the control, of the court; and thereafter the property is not subject to attachment for his failure to file his bond within the statutory time. Strong v. Brown, 41 Minn. 304, 43 N. W. Rep. 367.

See, also, Perkins v. Zarracher, 32 Minn. 71, 19 N. W. Rep. 385.

As to the effect of a failure to file the bond before the amendment of Laws 1887, see Kingman v. Barton, 24 Minn. 295.

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69-M 71

§ 4232. Notice of assignment to be given by assignee.

Upon taking possession of any estate so assigned, the assignee or assignees shall forthwith give notice of such assignment, by publication in one or more newspapers printed and published in the county where the same is made, if any; and if none, then in some newspaper printed and published in some adjoining county, if any; and if none, then in some newspaper printed and published at the city of St. Paul; and shall also forthwith send notice of such assignment by mail to each creditor named in the statement or inventory of the assignor, or of whom he or they shall have or receive information.

(1876, c. 44, § 4; G. S. 1878, c. 41, § 26.)

Publication is not constructive notice to the assignor's debtors, so as to invalidate payments to him. Graham v. Evans, 39 Minn. 382, 40 Minn. 368.

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§ 4233. Assignee represents creditors—May avoid fraudulent conveyances, etc.

That in all cases of general assignments for the benefit of creditors, the assignee or assignees shall be considered as representing the rights and interests of the creditors of the debtor or debtors making the assignment, as against all transfers and conveyances of property which would be held to be fraudulent or void as to creditors; and shall have all the rights which such creditors would have to avoid such fraudulent conveyances and transfers.

(1877, c. 142, § 1; G. S. 1878, c. 41, § 27.)

The right to impeach or set aside a mortgage, which is fraudulent and void as against the creditors of the mortgagor, does not pass to an assignee of the mortgagor, by a voluntary general assignment in trust for the benefit of creditors, subsequently executed, and unaffected by any statute in force at the time. Flower v. Cornish, 25 Minn. 473.

The assignee may avoid a chattel mortgage whenever creditors of the assignor could do so. Merrill v. Ressler, 37 Minn. 82, 33 N. W. Rep. 117.

See, also, Gallagher v. Rosenfield, 47 Minn. 507, 50 N. W. Rep. 696.

The assignee or receiver may sue to reach assets of a debtor fraudulently concealed

or disposed of by him, whether the action be to set aside a conveyance by him or to enforce a resulting trust for creditors. Chamberlain v. O'Brien, 46 Minn. 80, 48 N. W. Rep. 447.

The claims of the creditors need not have been reduced to judgment. Id.

Where a contract of conditional sale is not filed, notice to the assignee or receiver of the purchaser is not notice to his creditors. Thomas Manuf'g Co. v. Foote, 46 Minn. 240, 48 N. W. Rep. 1019. See Hunter v. Cleveland Co-operative Stove Co., 31 Minn. 509, 18 N. W. Rep. 645; Mackellar v. Pillsbury, 48 Minn. 396, 399, 51 N. W. Rep. 222.

§ 4234. Proof of claims—Order of payment—Preferred claims—Secured claims.

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No claim or demand, except for debts owing to the United States or the state of Minnesota, or for taxes or assessments against the debtor or debtors, shall be paid in whole or in part, unless the same be first verified by the oath or affirmation of one of the creditors making such claim or demand, or in case of a corporation creditor, by some officer thereof. And after the payment, by the assignee or assignees, of the costs, charges and expenses of making and executing the assignment and executing the trust, all debts of the debtor or debtors shall be paid in the order and precedence following, that is to say:

First.—All debts owing to the United States, and all debts owing to the state of Minnesota, and all taxes and assessments levied and unpaid, shall be paid in full before the payment of any other debts.

Second.—All debts owing for the wages of servants, laborers, mechanics and clerks, for labor and services performed for the debtor or debtors, within three months next preceding the date of the assignment, shall next be paid in full, to the exclusion of all other indebtedness, if there shall be sufficient wherewith to pay the same in full; if not, they shall be paid pro rata, so far as they can be paid; but to entitle a creditor for wages to payment under this subdivision, the proof or verification of the claim must show the character of the labor or services, and that the same was performed within the time above mentioned.

Third.—All other debts of the debtor, properly claimed and verified, shall be paid in full, if there shall be sufficient left in the hands of the assignee or assignees wherewith to pay the same in full; if not, the moneys in the hands of the assignee or assignees applicable thereto shall be paid upon the same pro rata, so far as it will extend: provided, that no debts for which the creditor holds a mortgage, pledge or other security, shall be so paid until the creditor shall have first exhausted his security, or shall surrender and release the security to the assignee or assignees.

(1876, c. 44, § 5, as amended 1877, c. 67, § 2; G. S. 1878, c. 41, § 28.)

Under the act of 1881, rent accruing after the assignment is not provable. Wilder v. Peabody, 37 Minn. 248, 33 N. W. Rep. 852.

See, also, In re Shotwell, 49 Minn. 170, 51 N. W. Rep. 909, and 52 N. W. Rep. 1078.

As to the effect of the act of a secured creditor in inadvertently making proof of his claim, which he afterwards abandons, see Nichols v. Smith, (Mass.) 9 N. E. Rep. 810.

As to who are laborers, servants, or employes, see Lang v. Lang, (Wis.) 25 N. W. Rep. 650.

See Hanson v. Metcalf, 46 Minn. 25, 48 N. W. Rep. 441.

§ 4235. District judge—Powers—Assignee—Removal—Discharge.

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All proceedings under this act shall be subject to the order and supervision of the judge of the district court aforesaid; and such judge may from time to time, in his discretion, on [the] petition of one or more of the creditors, by order, citation, attachment, or otherwise, require any assignee or assignees to render accounts and file reports of his or their proceedings, and of the condition of such trust-estate; and may order or decree distribution thereof. And such judge may, in his discretion, for cause shown, remove any assignee or assignees, and appoint another or others instead, who shall give such bonds as the judge may, in view of the conditions and value of the estate, may direct; and such order of removal and appointment shall in terms transfer to such new assignee or assignees all the trust-estate, and shall operate as a full transfer and conveyance to such new assignee or assignees of all the trust es-

tate, real, personal, and mixed, and may be recorded in the deed records in the office of the register of deeds of any county wherein any real estate affected by the assignment may be situated. And such judge may by order, which may be enforced as upon proceedings for contempt, compel the assignee or assignees so removed to deliver all property, money, choses in action, book-accounts, and vouchers to the assignee or assignees so appointed, and to make, execute, and deliver to such new assignee or assignees such deeds, assignments, and transfers as such judge may deem proper, and to render a full account and report of all matters connected with such trust-estate. Whenever any assignee so removed shall have fully accounted for and turned over to the assignee or assignees appointed by the judge all the trust-estate, and made full report of all his doings, and complied with all orders of the judge touching such estate, and, also, whenever an assignee has fully completed his trust, he may, by the order of the judge, be fully discharged from all further duties, liabilities, and responsibilities connected with the trust. In either case he shall give notice, by publication in some newspaper of the county, if there be one printed and published therein, if not, in a newspaper printed at the capital of the state, once in each week, for at least three weeks, that he will apply to such judge for such discharge, at a time and place to be stated in such notice, which time shall be not more than three weeks after the last publication of the notice. If, upon the hearing, the judge shall be satisfied that the assignee is entitled to be discharged, he shall make an order accordingly; or if, in the opinion of the judge, anything remains to be done by such assignee, he may require the performance thereof before making such order. Such order shall have the effect of discharging the assignee and his sureties from all further responsibility in respect to the trust; and such order shall not be refused on account of any failure on the part of the assignee to comply with the formal provisions of law where no loss or damage to any one shall have occurred through such failure. Whenever the trust-estate shall have been taken out of the hands of the assignee, by proceedings in bankruptcy in the federal court, the assignee may in like manner be discharged, upon showing that he has fully accounted with the assignee in bankruptcy, and turned over to him the whole of the trust-estate. And whenever said trust-estate shall have been, or shall be, taken out of the hands of said assignee, by means of any legal proceedings or actions in any court or courts, and whenever said assignment shall have been declared void as to creditors, or by reason of said proceedings, or from any cause, the further administration of said trust is or has been rendered impracticable, unadvisable, or nugatory, said assignee shall, upon proper showing thereof, and upon such notice as shall be required by the court, be in like manner discharged, and the sureties on his official bond released.
(1876, c. 44, § 6, as amended 1877, c. 67, § 3; G. S. 1878, c. 41, § 29; 1885, c. 82.)

The district court may remove an assignee for any misconduct in the administration of his trust that shows such removal necessary to insure a faithful performance of the trust, and speedy close of the same by final decree of settlement and distribution. Clark v. Stanton, 24 Minn. 232.

The jurisdiction of the district court ends with the final decree distributing the trust-estate, or directing a reassignment of the residue pursuant to the assignment, and does not extend to a determination of the respective interests of the assignors in such residue. Id.

A receiver cannot be retained merely to get assets for his compensation. An order of discharge may be made, his compensation being left for further order. Joslyn v. Athens Coach & Car Co., 43 Minn. 534, 46 N. W. Rep. 77.

As to the allowance of a sum paid by the assignee in settlement of an invalid claim. In re Shotwell, 49 Minn. 170, 52 N. W. Rep. 1078. See, also, Id., 49 Minn. 170, 51 N. W. Rep. 909.

See Swart v. Thomas, 26 Minn. 141, 1 N. W. Rep. 830; State v. Young, 44 Minn. 76, 46 N. W. Rep. 204.

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§ 4236. Action by creditor on bond of assignee.

Whenever any such assignee or assignees shall omit or refuse to perform any decree or order made by any such judge pursuant to this act, or shall fail to

do and perform any of his or their duties as such assignee or assignees, any creditor or creditors of such debtor or debtors may, upon leave of the court first had and obtained, proceed to prosecute the bond of such assignee or assignees, and apply the proceeds thereof in satisfaction of the debt or debts of such debtor or debtors.

(1876, c. 44, § 7; G. S. 1878, c. 41, § 30.)

Action by receiver, see Prosser v. Hartley, 35 Minn. 340, 29 N. W. Rep. 156.

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§ 4237. Duty of clerk of court.

The clerk of the court wherein any such assignment, inventory or bond shall be filed, shall forthwith endorse thereon the day, hour and minute at which the same is filed, and make a record of such filing, and the day, hour and minute thereof, in a suitable book to be by him kept for that purpose.

(1876, c. 44, § 8; G. S. 1878, c. 41, § 31.)

See Perkins v. Zarracher, 32 Minn. 71, 19 N. W. Rep. 385.

§ 4238. Payment of dividends—List of creditors to be filed.

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At least twenty days before any such assignee or assignees shall make payment of any dividend, or distribution of any such estate, he or they shall file with the clerk of the district court aforesaid a just and true statement, under his or their oath or affirmation, of all creditors who shall have filed with such assignee or assignees their claims or demands properly verified, with the amount and nature of their claims respectively; and as often thereafter as any creditor shall in like manner present his claim or demand, the assignee or assignees shall also file a similar statement thereof with said clerk, and shall pay nothing on any said claim until the expiration of twenty days after filing said statement with the clerk.

(1876, c. 44, § 9: G. S. 1878, c. 41, § 32.)

As to the liability of the assignee for omitting to pay dividends upon accounts properly filed, but misplaced, see In re Robbins, 36 Minn. 65, 30 N. W. Rep. 304.

§ 4239. Assignments heretofore made—Duties of assignee.

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That in all cases of assignment heretofore made, which have not been closed by final settlement, it shall be the duty of any assignee or assignees having any such trust estate in his or their hands, or under their control, to report to the judge of the district court where such assignee or assignees may reside, the situation and amount of such trust estate, and the creditors having claims against the same, with the amounts due to each, as far as the same have come to his or their knowledge, within thirty days after the taking effect of this act; and in case of any neglect to file such report, any creditor or person interested in such estate may, on filing a petition to that effect with the clerk of said court, obtain a citation to such assignee or assignees, to be served as in case of an original notice, requiring such assignee or assignees to appear before said judge, to show cause why such a report should not be filed; and on such hearing, the judge shall order such report, and shall require such assignee or assignees to give bond, with sureties, for the faithful performance of the trust, and shall fully investigate the proceedings of such assignee or assignees in the premises, and may summon such assignee or assignees, and make all such orders in the matter as may be proper and necessary to insure a faithful performance of the trust, and a speedy close of the same by a final distribution and settlement of the estate, as in case above provided.

(1876, c. 44, § 10; G. S. 1878, c. 41, § 33.)

This statute is a remedial statute, and to be liberally construed. Clark v. Stanton, 24 Minn. 232.

One of two or more assignors for the benefit of creditors is a person interested in the estate, within the meaning of this section, and may file the petition therein authorized for default of assignee in filing his report. Id.

The investigation into the conduct of an assignee herein authorized is a summary proceeding, conducted under the control and in the discretion of the court, to obtain the information requisite to enable it to act advisedly in the exercise of its supervisory jurisdiction, and any fact tending to give such information may be inquired into, and creditors be admitted as parties and allowed to participate in such investigation at any stage of the proceedings. Id.

[TITLE 5.]

[INSOLVENT LAW OF 1881.]

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§ 4240. Insolvent debtors—Assignment for benefit of creditors—Garnishment, etc.

Whenever any debtor shall have become insolvent, or garnishment shall have been made against any debtor, or property of any debtor shall have been levied upon by virtue of an attachment, execution or legal process issued against him for collection of money, he may make an assignment of all his unexempt property, for the equal benefit of all his bona fide creditors, who shall file releases of their demands against such debtor, as herein provided; such an assignment shall be made, acknowledged and filed, in accordance with and be governed by the laws of this state relating to assignments by debtors for the benefit of creditors, except as herein otherwise provided; and such assignment, if made within ten days after garnishment shall have been made against the assignor, or within ten days after property of such assignor shall have been levied upon by virtue of an attachment, execution or other legal process against him for collection of money, as aforesaid, shall operate to vacate every garnishment and levy then pending, and to discharge all property therefrom, upon qualification of the assignee, or his successor, as provided by law, unless he shall, within five days thereafter, file in the office of the clerk of the court, where such assignment was filed, notice of his intention to retain all pending garnishments and levies; in which case the same shall inure to the benefit of the creditors under such assignment, and may be prosecuted by such assignee and his successors; provided, however, that such assignment shall not vacate or affect any levy made by virtue of an execution issued on a money judgment entered against such debtor on a complaint which was on file during at least twenty days next prior to entry of such judgment in the court in the county where the defendant resided meanwhile; and provided further, that the release of any debtor under this act shall not operate to discharge any other party liable as surety, guarantor or otherwise for the same debt.

(1881, c. 148, § 1,[3] as amended 1885, c. 73; G. S. 1878, v. 2, c. 41, § 34; 1889, c. 30, § 1.)

Laws 1881, c. 148, does not violate the constitution of the United States by impairing the obligation of contracts, when applied to debts incurred after its passage; nor is it invalid as to an attaching creditor who is a citizen of another state. Denny v. Bennett, 128 U. S. 489, 9 Sup. Ct. Rep. 134.

The only authorized voluntary assignment is of all the debtor's property not exempt from execution. May v. Walker, 35 Minn. 194, 28 N. W. Rep. 252. A voluntary assignment by a partnership of partnership property exclusively is upon its face partial, and not general. Id. A creditor, who will have nothing to do with an invalid assignment, may lay hold of the property or its proceeds in the hands of the assignee by garnishment or otherwise. As to him it is not *in custodia legis*. Id.

An assignment by two partners held to pass their separate as well as their partnership property, and to be valid. Security Bank v. Beede, 37 Minn. 527, 35 N. W. Rep. 435.

Rule of May v. Walker, supra, as to a partnership assignment, applied. In re Allen, 41 Minn. 430, 43 N. W. Rep. 382.

See, also, Thompson v. Winona Harvester Works, 41 Minn. 434, 43 N. W. Rep. 383.

An assignment which does not on its face appear to assign all the debtor's unexempt property is void on its face as against his creditors. Tarbox v. Stevenson (Minn.) 58 N. W. Rep. 157.

An assignment with proper recitals, providing for distribution to creditors who shall file releases "as by law provided," is valid. Smith v. Bean, 46 Minn. 138, 48 N. W. Rep. 687.

An assignment may be executed out of the state, and by a nonresident, it being filed in the county in this state where his business has been carried on. Id.

See, also, In re Howes and In re Dalpay, cited in note to § 4241.

[3] An act to prevent debtors from giving preference to creditors, and to secure the equal distribution of the property of debtors among their creditors, and for the release of debts against debtors. Approved March 7, 1881 (Laws 1881, c. 148).

The assignment must include all the debtor's unexempt property, wherever situated. In re Harrison, 46 Minn. 331, 48 N. W. Rep. 1132.

Creditors who have filed releases and received dividends under a void assignment remain creditors for the unpaid portion of their claims, and are not estopped from instituting new insolvency proceedings. In re Walker, 37 Minn. 243, 33 N. W. Rep. 852, and 34 N. W. Rep. 591.

Where an assignment is defective on its face, a creditor who proves his claim, and, though notified of its allowance, permits it to stand, is estopped to question the assignment. Olson v. O'Brien, 46 Minn. 87, 48 N. W. Rep. 453.

See, also, Aberle v. Schlichenmeir, 51 Minn. 1, 52 N. W. Rep. 974.

An attaching creditor who unsuccessfully contests an assignment may prove his claim. In re Van Norman, 41 Minn. 494, 43 N. W. Rep. 334.

An assignment regular on its face cannot be attached in collateral proceedings, though the facts which would alone justify an assignment did not exist. Second Nat. Bank v. Schranck, 43 Minn. 38, 44 N. W. Rep. 524.

The insolvent law applies to private corporations. The board of directors may authorize an assignment. Tripp v. Northwestern Nat. Bank, 41 Minn. 400, 43 N. W. Rep. 60. See Id. 45 Minn. 383, 48 N. W. Rep. 4; Mohr v. Minnesota Elevator Co., 40 Minn. 343, 41 N. W. Rep. 1074.

Upon an assignment by a corporation, the court may make calls upon the unpaid subscriptions to stock. Minnehaha Driving-Park Ass'n v. Dickens (Minn.) 55 N. W. Rep. 598.

A surviving partner may make an assignment of partnership and his individual property, which will pass the equitable title to the partnership real estate, though standing in the name of the deceased partner. Hanson v. Metcalf, 46 Minn. 25, 48 N. W. Rep. 441.

A discharge of the surviving partner will not discharge the representatives of the deceased partner from their liability for the deficiency after application of the firm assets. Id.

A married woman may make an assignment of all her unexempt property, including real estate, without her husband joining. Kinney v. Sharvey, 48 Minn. 93, 50 N. W. Rep. 1025.

Garnishment is not superseded or dissolved by a subsequent assignment, at common law, or under Gen. St. 1878, c. 41, nor by an assignment under the act of 1881, filed more than 10 days after the garnishment proceedings are instituted. Fairbanks v. Whitney, 36 Minn. 305, 30 N. W. Rep. 812.

The insolvent proceedings themselves work a dissolution of prior attachments, and an order of the court vacating them is not necessary. Johnson v. Bray, 35 Minn. 248, 28 N. W. Rep. 504.

An action may be maintained against an insolvent debtor notwithstanding an assignment by him, nor is the creditor barred by reason of having filed his claim with the assignee. Smith v. St. Paul German Fire Ins. Co. (Minn.) 57 N. W. Rep. 475.

Judgment was recovered and docketed December 9, 1887, and February 5, 1888, the debtor made an assignment. Held not to affect the lien of the judgment on real estate, and that it could only be avoided as a preference. In re Church & Graves Manuf'g Co., 40 Minn. 39, 41 N. W. Rep. 241.

The discharge of an insolvent corporation does not release stockholders from their liability for its debts. Willis v. Mabon, 48 Minn. 140, 50 N. W. Rep. 1110. Otherwise before the amendment of 1889. Mohr v. Minnesota Elevator Co., 40 Minn. 343, 41 N. W. Rep. 1074.

See Tripp v. Northwestern Nat. Bank, 41 Minn. 400, 43 N. W. Rep. 60; Ames v. Wilkinson, 47 Minn. 148, 49 N. W. Rep. 696.

As to the constitutionality of Laws 1889, c. 30, Willis v. Mabon, supra; John V. Farwell & Co. v. Matheis, 48 Fed. Rep. 363.

See note to § 4227.

§ 4241. Receiver—Creditors may petition for, when—His powers.

Whenever any insolvent debtor shall confess judgment, or do anything whereby any of his creditors shall obtain preference over any other of his creditors, or shall omit to do anything which he might lawfully do to prevent any of his creditors from obtaining preference over any other of his creditors, or shall not make an assignment under the first section of this act, within ten days after garnishment made against him or within ten days after levy made on any of his property by virtue of an attachment, execution or other legal process against him for collection of money, or shall conceal, remove, or dispose of any of his unexempt property with intent thereby to delay or defraud his creditors, then, or within sixty days thereafter, any one or more of his creditors having claims against him

to the aggregate amount of at least two hundred dollars, may petition the district court, or a judge thereof, setting forth facts constituting one or more of said cases, and asking that a receiver be appointed of all the unexempt property of such debtor, and for such other and further relief as may be proper; and said petition may be heard in any county designated by the judge; and upon notice of the time and place of such hearing given as the court or judge shall direct, to the debtor and any creditor about to be preferred, the court in term time, or the judge thereof, in vacation, shall proceed to hear and determine such petition summarily, and shall receive such evidence as may be pertinent, and if it shall appear to the court, or judge, that such insolvent debtor has confessed judgment, or has done anything whereby any of his creditors have obtained preference over any other of his creditors, or has omitted to do anything which he might have lawfully done to prevent any of his creditors obtaining preference over any other of his creditors, or that he has not made an assignment under the first section of this act, within ten days after garnishment made against him, or within ten days after levy made on any of his property by virtue of an attachment, execution, or other legal process against him for collection of money, or that he has concealed, removed, or disposed of any of his unexempt property with intent thereby to delay or defraud his creditors, then the court or judge shall appoint a receiver, who shall have power and authority to, and who shall take possession of all the property of such debtor, not exempt by law, including all property concealed, removed or otherwise disposed of by such debtor in violation of any provision of this act, and also all property then under garnishment, attachment or levy, except such as was levied upon under an execution issued upon a judgment against such debtor entered on a complaint which was on file in the court in the county where the debtor then resided during the period of at least twenty days next before entry of such judgment; and such receiver shall have power and authority to, and he shall, within four months from his appointment, unless the court or judge shall otherwise direct and shall allow further time, convert said property into money and distribute the net proceeds thereof ratably and in proportion to the amount of their several demands among the creditors of such debtor who shall come in and make due proof of their respective demands within such time and in such manner as the court or judge shall direct, and who shall, in consideration of the benefit of the provisions of this act, execute and file releases of their respective demands against such debtor as herein provided; and the court or judge shall order the debtor to make, verify and file in the court a schedule of all his debts, showing to whom due, when payable, and the consideration of each, and a schedule of all his property. The court in term time, and the judge thereof during vacation, may also make such further and other orders as may be necessary or proper to carry into full effect the provisions of this act, and such orders and applications therefor may be made, served and enforced on Sunday when necessary to protect the rights of creditors or others hereunder.

(1881, c. 148, § 2; G. S. 1878, v. 2, c. 41, § 35; as amended 1889, c. 30, § 2.)

"Insolvent" defined. Daniels v. Palmer, 35 Minn. 347, 29 N. W. Rep. 162. See, also, Daniels v. Bank, 35 Minn. 351, 29 N. W. Rep. 165. What constitutes "reasonable cause to believe" debtor insolvent, see Daniels v. Bank, *supra*.

In proceedings under this section the court cannot, in the order appointing a receiver, vacate prior attachments or garnishments. In re Shakopee Manuf'g Co., 37 Minn. 91, 33 N. W. Rep. 219.

Attachments and garnishments are vacated only on the qualification of the receiver. In re Shakopee Manuf'g Co., 37 Minn. 91, 33 N. W. Rep. 219.

The 10 days runs from the service of garnishee summons. Maxfield v. Edwards, 38 Minn. 539, 38 N. W. Rep. 701.

The lien of an execution levied on personal property is not dissolved by the subsequent appointment of a receiver, where the execution was issued upon a judgment in an action in which the complaint was filed 20 days prior to the entry of judgment. In re Jones, 33 Minn. 405, 23 N. W. Rep. 835.

See, also, Bean v. Schmidt, 43 Minn. 505, 46 N. W. Rep. 72.

As to the mode of enforcing such levy. Creditors basing their petition on such levy cannot dispute its validity. Bean v. Schmidt, supra.

The debtor is not entitled to a trial by jury. In re Howes, 38 Minn. 403, 38 N. W. Rep. 104.

As to the sufficiency of the petition. In re Stevens, 38 Minn. 432, 38 N. W. Rep. 111.

The rule of the district court relative to hearing of orders to show cause on affidavits solely has no application to the hearing of a petition for the appointment of a receiver. The court should hear such evidence as may be pertinent, without regard to the manner in which the alleged insolvent has been brought into court. Prouty v. Hallowell, 53 Minn. 488, 55 N. W. Rep. 623.

The question whether a preference given by a nonresident insolvent doing business in this state constitutes an act of insolvency must be determined by the laws of this state. In re Howes, supra.

See, also, In re Dalpay, 41 Minn. 532, 43 N. W. Rep. 564; Kahn v. Fischbein (Minn.) 57 N. W. Rep. 154.

Debts due an insolvent whose domicile is in this state have a situs here. In re Dalpay, supra.

The filing of petition for a receiver does not ipso facto avoid a transfer made after petition and before hearing. Williamson v. Hatch (Minn.) 57 N. W. Rep. 56.

Where an assignment was made pending an application for a receiver, and no preferences were secured thereby, and the purpose of the application was answered by the assignment, held, that the application was properly denied. Hyde v. Weitzner, 45 Minn. 35, 47 N. W. Rep. 311. But as to an assignment pending an application under c. 76, see State v. Bank of New England (Minn.) 56 N. W. Rep. 575.

A creditor whose claim is not yet due, and though it be secured by the obligation of a surety, may petition. Citizens' Nat. Bank v. Minge, 49 Minn. 454, 52 N. W. Rep. 44.

§ 4242. Preferences—Penalty—Injunction—Ne exeat.

No assignment hereafter made for the benefit of such creditors shall give to any one creditor any preference over the claims of another creditor, except in cases expressly provided by law. If any insolvent debtor shall confess or suffer judgment to be procured in any court with intent that any one of his creditors shall obtain a preference over any other of his creditors, such insolvent debtor shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding five hundred dollars, and in default of payment shall be imprisoned in the county jail for a period not exceeding six months. The court may at any time, upon the filing of affidavits or other evidence satisfactory to the court, grant an order restraining such debtor from collecting any bills, notes, accounts, or other property, or from disposing of, or in any manner interfering with, the property of said estate, or may, by writ of *ne exeat* or by order, restrain said debtor from leaving the state until the further order of the court, or may require him at any time to appear and make full disclosure as to any disposition of property, or in relation to any other matter pertaining to said estate.

(1881, c. 148, § 3; G. S. 1878, v. 2, c. 41, § 36.)

See In re Church & Graves Manuf'g Co., 40 Minn. 39, 40, 41 N. W. Rep. 241.

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§ 4243. Conveyance, etc., in anticipation of insolvency.

Conveyances and payments made, and securities given, by any insolvent debtor, or a debtor in contemplation of insolvency, within ninety days of making an assignment, as provided in section one of this act, with a view of giving a preference to any creditor upon a pre-existing debt, or to any persons under liability for such debtor, over another, shall be void as to all creditors or persons receiving the same, who shall have reasonable cause to believe that such debtor was insolvent; and all such conveyances made and securities given at any time, unaccompanied with a delivery or change of possession of the property to the grantee, unless the instrument containing the grant or conveyance shall have been duly filed or docketed before the commencement of ninety days, shall be void as a preference as to any creditor; and the assignee may, by action or other proper proceedings, have all such conveyances, payments, and preferences annulled and adjudged void, and recover the property so conveyed, or the value thereof, and recover the payment so made, and convert all proceeds into money, as provided in this act: *provided*, that the provisions of this act shall not apply to any payment or satisfaction, in whole or in part, of a past due debt made in the usual course

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55-M . 348
62 NW . 387
60-NW . 344

4243
60-M - 323
62-M - 364
64-NW 908
68-NW 65
69-NW 334
69-NW 696

4243
65-M - 412
66-M - 463
67-M - 57
68-M - 36
68-M - 87
68-M - 226
69-M - 74
69-M - 127
70-M - 214
70-NW 868
71-NW 29
78-NW 1

4243
72-M - 27
73-M - 198
74-M - 58
75-M - 173
75-M - 543
78-NW 1

of business, without any intent on the part of the creditor to evade the provisions of this act.

(1881, c. 148, § 4; G. S. 1878, v. 2, c. 41, § 37; as amended 1881, Ex. S. c. 23, § 1; 1889, c. 30, § 3.)

This section is applicable to involuntary proceedings under § 4241. Bliss v. Doty, 36 Minn. 168, 30 N. W. Rep. 466.

The receiver may maintain an action to avoid a disposition of property whereby a creditor is preferred without first obtaining leave. Moore v. Hayes, 35 Minn. 205, 28 N. W. Rep. 238. But as to maintaining replevin in such case, see Id.

A preference may be avoided if within 90 days of the petition for a receiver, though more than 90 days before his appointment. Beardslee v. Beaupre, 44 Minn. 1, 46 N. W. Rep. 137.

An order appointing a receiver for giving a preference is not an adjudication that it is voidable. Baker v. Wyman, 47 Minn. 177, 49 N. W. Rep. 649.

Either party may have a jury trial. Tripp v. Northwestern Nat. Bank, 45 Minn. 383, 48 N. W. Rep. 4.

The holder of a receipt issued by a grain warehouseman is a creditor. Daniels v. Palmer, 41 Minn. 116, 42 N. W. Rep. 855.

The assignee may attack a mortgage as a preference in an action by the mortgagee against him for conversion of the mortgaged property. Dow v. Stutphin, 47 Minn. 479, 50 N. W. Rep. 604.

A preferential conveyance of property in this state may be avoided, though the preferred creditor is a nonresident. Macdonald v. First Nat. Bank, 47 Minn. 67, 49 N. W. Rep. 395.

Where the preference is in fact a conveyance by the debtor, the assignee cannot refuse to take back the property, and elect to recover its value. Clerihew v. West Side Bank, 50 Minn. 538, 52 N. W. Rep. 967.

What are "other proper proceedings." Kahn v. Fischbein (Minn.) 57 N. W. Rep. 154.

The court may refuse to allow a claim of a creditor unless he restores a preferential payment. Id.

As to what is necessary to constitute "delivery or change of possession." The provisions of the second clause are not limited to contracts in writing. "Such conveyances," in the second clause, refers to those described in the first clause. (Modifying Weston v. Sumner, 31 Minn. 456, 18 N. W. Rep. 149.) Chickering v. White, 42 Minn. 457, 44 N. W. Rep. 988.

A judgment collusively obtained for the purpose of obtaining a preference is a "security given" with intent to give a preference. Wright v. Fergus Falls Nat. Bank, 48 Minn. 120, 50 N. W. Rep. 1030.

See In re Church & Graves Manuf'g Co., cited in note to § 4240.

The application by a bank of a customer's deposit to pay his note, with reasonable cause to believe him insolvent, is a preference. Tripp v. Northwestern Nat. Bank, supra.

The conveyance of real estate in pursuance of a valid contract held not a preference. Williams v. Clark, 47 Minn. 53, 49 N. W. Rep. 398.

Evidence held to show that the creditor had not reasonable cause to believe the debtor insolvent. Baker v. Wyman, supra.

The rule as to "reasonable cause" is less stringently applied where the insolvent is not a "trader." Williamson v. Hatch (Minn.) 57 N. W. Rep. 56.

Creditors are charged with such knowledge as reasonable inquiry would disclose. Holcombe v. Ehrmanntraut, 46 Minn. 397, 49 N. W. Rep. 191; Hastings Malting Co. v. Heller, 47 Minn. 71, 49 N. W. Rep. 400; Dow v. Sutphin, 47 Minn. 479, 50 N. W. Rep. 604; Thompson v. Johnson (Minn.) 57 N. W. Rep. 223.

It is necessary to show, not only insolvency and the creditor's knowledge of it, but the intent to give a preference. Baumann v. Cunningham, 48 Minn. 292, 51 N. W. Rep. 611.

See Hastings Malting Co. v. Heller, supra.

The insolvent is not a necessary party to an action to set aside a preference. Williamson v. Selden, 53 Minn. 73, 54 N. W. Rep. 1055.

A preferential transfer is not valid because to a creditor who paid part of the price in money. Thompson v. Johnson (Minn.) 57 N. W. Rep. 223.

Where the preference is given by transferring property to a creditor and others, who pay part in money, the transfer is not valid as to them, if they knew the purpose was to prefer the creditor. Id.

A judgment declaring a transfer void as a preference relates back, so that the defendant may be charged with the value of the use of the property and damages to it while in his possession. Id.

An assignee may maintain a suit in a federal court in Massachusetts to recover the value of property acquired by the defendant in Minnesota, in violation of this section. Greaves v. Neal, 57 Fed. Rep. 816.

See Parsons v. George, 44 Minn. 151, 46 N. W. Rep. 325; Hawkes v. Fraser, 52 Minn. 201, 53 N. W. Rep. 1144.

§ 4244. Actions—Venue—Dismissal—New parties.

4244
62 NW . 327

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All actions or proceedings brought under the provisions of this chapter shall be commenced in the county where the debtor, debtors, or any one of them, resides, if a resident of this state; and if not a resident of this state, such action or proceeding may be brought in any county which the plaintiff shall designate in his complaint, or where such debtors, or any of them, has property subject to attachment or levy. The court or judge may, at any time during the pendency of the petition under the second section of this act, allow new parties to come in and be joined in such petition. No such petition shall be dismissed except on order to show cause, duly served upon all the creditors either personally or by mail, or by publication, as the court shall direct.

(1881, c. 148, § 5; G. S. 1878, v. 2, c. 41, § 38; as amended 1889, c. 30, § 4.)

§ 4245. Attachment, etc.—Costs.

4245
95 . 66-2

Costs in cases upon which attachments or levies are made, which are dissolved under the provisions of this act, and a reasonable fee not exceeding twenty-five dollars, in the discretion of the court, and disbursements, to an attorney for creditors petitioning under the act, shall be preferred and be paid first by the receiver appointed hereunder.

(1881, c. 148, § 6; G. S. 1878, v. 2, c. 41, § 39; as amended 1889, c. 30, § 5.)

§ 4246. Actions—Parties—Application of laws.

4246
62-NW . 326
62-NW 1129

4246
60-M - 323
60-M - 360

4246
69-M - 126
71-NW 925

All actions and proceedings, to be commenced under the provisions of this act, may be commenced and prosecuted in the name of the assignee or receiver appointed as herein provided, and all laws of the state of a general nature, applicable to receivers and assignments, and not in conflict with the provisions of this act, shall apply to assignees and receivers appointed hereunder, as the case may require.

(1881, c. 148, § 7; G. S. 1878, v. 2, c. 41, § 40.)

See Merrill v. Ressler, 37 Minn. 82, 33 N. W. Rep. 117.

§ 4247. Disallowance of claim—Notice—Appeal.

4247
95 . 66-6
55-M . 510
62-NW . 273
63-NW . 625

4247
62-M - 428
64-NW 923

4247
68-M - 208

Any creditor, whose claim is disallowed in whole or in part, by any assignee or receiver appointed or selected under this act, or under the provisions of the assignment laws of this state regarding the assignment of debtors, may appeal from such disallowance to the district court, and there have such claims tried as other civil actions. The assignee shall, within ten days after his disallowance of any claim, in whole or in part, give written notice to such creditor of such disallowance, which notice may be served personally or by mail, as in other cases, on such creditor, his agent, or attorney, and thereupon such creditor may appeal from such disallowance within ten days after the service upon him of such notice of disallowance made by the assignee, and which notice may be served on such assignee personally or by mail, as aforesaid; and in case such service is by mail, the time within which such notice of appeal is to be given shall be within twenty days from the time of such notice of disallowance.

(1881, c. 148, § 8; G. S. 1878, v. 2, c. 41, § 41.)

On appeal from the disallowance, the matter is to be tried without reference to what proofs may have been offered to the assignee. Crane v. Wheeler, 48 Minn. 207, 50 N. W. Rep. 1033.

As to the right of the debtor or other person interested, upon the allowance of a claim by the assignee, to apply to the court for a judicial decision upon such claim. In re Minnehaha Driving Park Ass'n, 53 Minn. 423, 55 N. W. Rep. 598.

See Clark v. Lindeke, 44 Minn. 112, 46 N. W. Rep. 326; Id., 44 Minn. 179, 46 N. W. Rep. 339.

§ 4248. Assignee or receiver—Vacancy—Removal.

4248
55-M . 132
61-NW . 330

4248
73-NW 842

4248
71-M - 281

In case of the death of any assignee or receiver, the court may appoint another to fill the vacancy, and the court may, for any proper cause, remove such assignee or receiver, and appoint another in his stead. And upon peti-

tion of a majority in number and amount of the creditors, it shall be the duty of the court to remove any assignee or receiver appointed hereunder, and if he is shown, and the court believes him to be a proper person, the court shall appoint the party specified in the petition, otherwise the court shall appoint some other suitable person as assignee or receiver.

(1881, c. 148, § 9; G. S. 1878, v. 2, c. 41, § 42; as amended 1889, c. 30, § 6.)

Any person to whom the insolvent is actually indebted is a "creditor," and such creditor need not file his claim to take part in the proceedings provided for in this section. Nicolin v. Weiland (Minn.) 56 N. W. Rep. 587.

A petition under this section may be heard on order to show cause. Id.

4249
95 . 66-4
59-NW . 634
63-NW . 110

4249
62-M - 427
64-NW 922
67-NW 205
68-NW 850

4249
64-M - 384
66-M - 135
68-M - 208
68-M - 258
74-NW 286

4249
71-M - 508
78-M - 261
80-NW1123

§ 4249. Release—Fraudulent concealment—Distribution without release, when.

No creditor of any insolvent debtor shall receive any benefit under the provisions of this act, or any payment of any share of the proceeds of the debtor's estate, unless he shall have first filed with the clerk of the district court, in consideration of the benefits of the provisions of this act, a release to the debtor of all claims other than such as may be paid under the provisions of this act, for the benefit of such debtor; and thereupon the court or judge may direct that judgment be entered discharging such debtor from all claims or debts held by creditors who shall have filed such releases: Provided, however, that when any creditor of such insolvent debtor who has made an assignment of his property hereunder, or of whose property a receiver has been appointed hereunder, shall petition to the court or judge, before entry of the final order for distribution of the insolvent's estate among his creditors as herein provided, setting forth that such debtor has willfully sworn falsely in relation to any specified material fact, in any affidavit or upon any examination under this act, or that he has concealed from the assignee or receiver any of his property, or evidence thereof, or that he has destroyed or falsified any of his account books, or other evidences of his property, or has been privy to any such doings, with intent to delay or defraud his creditors, or that he has removed or has connived at the removal of any of his property, or evidences thereof, from this state, with intent to defeat or delay the operation of this act, or that he has given, or permitted, any preference, contrary to the provisions of this act, or that having knowledge that any person has presented a false or fictitious demand against his estate, he has not disclosed the same to the assignee or receiver within thirty days thereafter, or that he has not kept books of account or records from which his true condition can be ascertained, or that he has, within six months prior to his assignment or to the appointment of the receiver, concealed, removed or disposed of all or some part of his property with intent thereby to delay or defraud his creditors, then the court or judge shall require the insolvent debtor to appear before him at a time and place designated for that purpose, and, after notice to such complaining creditor of the time and place of such hearing in such manner as the court or judge may direct, the court, or judge shall proceed upon such petition summarily, and if the allegations thereof shall be controverted or denied, shall hear such evidence as may be pertinent, and after said hearing the court or judge may, in his discretion, order and direct that all of the debtor's property not exempt by law, be distributed among his creditors, as hereinbefore provided, without their filing releases as aforesaid; and creditors may in like manner be examined with respect to the validity of their demands.

(1881, c. 148, § 10; G. S. 1878, v. 2, c. 41, § 43; as amended 1889, c. 30, § 7.)

The discharge is effected by the order of the court, and not by the release filed by the creditors. Bank v. Wilder, 35 Minn. 94, 27 N. W. Rep. 201. The including in such release of an express reservation of all rights of the creditor against other debtors will not affect the legal operation of the judgment to be entered, and does not invalidate the release. Id.

The judgment of discharge discharges all debts held by a creditor who files a claim and receives a dividend. Kimball Co. v. Coon, 45 Minn. 45, 47 N. W. Rep. 315.

See, also, Adamson v. Cheney, 35 Minn. 474, 29 N. W. Rep. 71.

As to proceedings under the proviso, see In re Gazett, 35 Minn. 532, 29 N. W. Rep. 347.

On the hearing of an application for an order directing dividends without releases,

fraud may be found from a dishonest disclosure by the insolvent on his examination, without direct proof. In re Rees, 39 Minn. 401, 40 N. W. Rep. 370.

A refusal to disclose a dishonest disclosure, while it may show fraudulent intent, will not itself dispense with releases. In re Shotwell, 43 Minn. 389, 45 N. W. Rep. 842.

Evidence held to justify a finding that the insolvent had not fraudulently disposed of or concealed his property. In re Lyons, 42 Minn. 19, 43 N. W. Rep. 568; In re Miller, 42 Minn. 96, 43 N. W. Rep. 840.

Losing money in dealing in "options" after knowledge of insolvency, held not a fraudulent disposition. In re Miller, supra.

An honest inability on the part of the debtor to account for the expenditure of his property does not justify dividends without releases. Purchase of a homestead in the wife's name and making a false statement are not sufficient. In re Welch, 43 Minn. 7, 44 N. W. Rep. 667.

The debtors, on the eve of assignment, each took $600 from the firm's money for support of their families. Held not to show fraudulent intent. In re Shotwell, supra.

As to when an order dismissing a creditor's petition under this section is appealable. In re Harrison, 46 Minn. 331, 48 N. W. Rep. 1132.

As to the requisites of the petition. Id.

The doing by a debtor, in this state or elsewhere, of any act made a bar to his discharge, will defeat his right, whether the property is in this state or elsewhere. Id.

§ 4250. Notice of appointment of assignee.

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Such assignee or receiver shall, within ten days after his appointment, publish a notice in a daily newspaper published at the capital of this state, and also in a daily or weekly newspaper in the county where the debtor, debtors, or any of them, reside, if any is there published, and by sending notices through the mail to such creditors whose residences are known to the assignee or receiver of his appointment, and all creditors claiming to obtain the benefits of this act shall file with such assignee or receiver their claims, within twenty days after such publication.

(1881, c. 148, § 11; G. S. 1878, v. 2, c. 41, § 44.)

See Adamson v. Cheney, 35 Minn. 474, 29 N. W. Rep. 71.

§ 4251. Preferred debts.

4251
64-M - 402
70-M - 397
73-NW 152

After the payment of costs, disbursements and expenses as herein provided, debts due the United States, the state of Minnesota, all taxes or assessments levied and unpaid, expenses of the assignment and executing the trust, the assignee or receiver shall pay in full, if sufficient then remains for that purpose, the claims duly proven of all servants, clerks, or laborers, for personal services or wages owing from said debtor, for services performed for the three months preceding said assignment, not exceeding fifty dollars in each case, and the balance of said estate shall then be equally distributed among the general creditors thereof, under the direction of the court.

(1881, c. 148, § 12; G. S. 1878, v. 2, c. 41, § 45; as amended 1889, c. 30, § 9.)

§ 4252. Attachment, etc., from justices' courts.

Whenever, at the time of the appointment of a receiver, under sections one or two of this act, the property, or any part thereof, of said insolvent debtor is under attachment, levy, or garnishment, by virtue of any writ or process issued by any justice of the peace of this state, said attachment, levy, or garnishment shall be dissolved in the same manner as when said attachment, levy, or garnishment is by virtue of any writ or process issued by any court of record of this state, and the plaintiff therein, and the officer making the same, shall thereafter have the same rights, and no greater rights, by virtue thereof, and the attachment, levy, or garnishment shall thereafter be proceeded with in the same manner as though the same had been made by virtue of a writ or process issued out of a court of record of this state: *provided, however*, that section one shall not apply to any case when an execution has been issued upon a judgment in an action wherein the complaint has been filed with the justice of the peace twenty days prior to the date of the levy upon said execution.

(1881, c. 148; G. S. 1878, v. 2, c. 41, § 46; 1885, c. 70.)

This act is not retrospective so as to affect levies made prior to its passage under attachments issued out of justice's court. Parkinson v. Brandenburg, 35 Minn. 294, 28 N. W. Rep. 919. Where a statute provides that it shall take effect "from and after its passage," it does not take effect on the day of its passage. Id.

4253
59-NW . 315
63-NW . 108
95 . 66-6

§ 4253. Fees of assignees and attorneys.

That the fees to be allowed to the assignees or receivers hereunder shall not, in ordinary cases, exceed ten per cent. upon the amount received by them up to one thousand dollars; five per cent. upon the amount in excess of one thousand dollars up to five thousand dollars; and two per cent. upon the amount in excess of five thousand dollars; and the allowance for attorneys' fees shall not exceed one hundred and fifty dollars, where the gross proceeds of the estate do not exceed three thousand dollars, and where they do exceed three thousand dollars, or in extraordinary cases, involving unusual litigation, the fees of the assignees or receivers, as well as of the attorneys, shall be fixed by the court at the reasonable value of their services.

(1889, c. 30, § 8)

§ 4254. Partnership—Minor—Special partner.

All assignments under the provisions of this act made by any co-partnership of which a minor is a member, or of which there shall be a special partner or partners shall be valid if executed by the adult or general partner or partners, and such assignment shall pass to the assignee all the unexempt individual property of the adult or general partner or partners and all of the co-partnership property of such firm, and the court may appoint receivers of such co-partnerships in the manner herein provided, and all the property of such co-partnership and the individual property of the adult or general partner or partners shall pass to such receiver in like manner as to an assignee provided for in this act.

(Id.)

As to the compensation of the assignee. In re Shotwell, 49 Minn. 170, 51 N. W. Rep. 909, and 52 N. W. Rep. 1078.

See Joslyn v. Athens Coach & Car Co., cited in note to § 4235.