

1934 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1934)  
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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days after the retaking, during which period the buyer, upon payment or tender by him of the amount due under the contract at the time of retaking, together with all costs and expenses of the retaking, may redeem the property and become entitled to the possession thereof, and to continue in the performance of the contract as if no default had occurred. Provided, however, that if the then owner of the contract so elects and the contract so provides, the buyer may be required to pay the entire balance of the purchase price, together with the costs and expenses of retaking the same. If the buyer pays such entire balance together with the costs and expenses he shall then have possession of and title to said property. Provided, further, that if the property is perishable so that retention for ten days, as herein prescribed, would result in its destruction or substantial injury, the provisions of this section shall not apply and the buyer shall have no right of redemption. (Act Apr. 25, 1931, c. 339, §3.)

Where conditional seller retakes a motor vehicle without having given notice of intention to retake, the seller is not required to report the retaking until the redemption period has expired. Op. Atty. Gen., June 20, 1931.

**8363-4. Provisions may not be waived.**—No act or agreement of the buyer before or at the time of the making of the contract, or any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of this act, but the buyer, by an agreement in writing executed subsequent to his default in payment, may waive the right of redemption hereby given. (Act Apr. 25, 1931, c. 339, §4.)

**8363-5. Application.**—This act shall not apply in any case where the conditional sale contract and the rights of the buyer thereunder shall be foreclosed by action in any court of this state. (Act Apr. 25, 1931, c. 339, §5.)

## FILING CHATTEL MORTGAGES, BILLS OF SALE OF CHATTELS, AND CONDITIONAL SALE CONTRACTS EXCEPT IN CITIES OF FIRST CLASS

### 8364. Filed with register of deeds.

**Correction.**—Citation 162-261, 205+481 should be 162-261, 202+481.

See notes under §§8346, 8370.

Except as provided in §8370, conditional sales contracts should be filed in the county wherein the property is given a fixed situs. 175M354, 221NW239.

Witnessing and acknowledging are unnecessary prerequisites to the filing of conditional sales contracts. 175M354, 221NW239.

Extension note agreement signed by purchaser is entitled to record, but assignment from original seller to finance corporation need not be recorded. Op. Atty. Gen., Feb. 18, 1930.

### 8365. Fees.

Witnessing and acknowledging are unnecessary prerequisites to the filing of conditional sales contracts. 175M354, 221NW239.

### 8370. Application.

Except as provided in §8370, conditional sales contracts should be filed in the county wherein the property is given a fixed situs. 175M354, 221NW239.

### 8373. Seed grain contracts to be filed, etc.

Chattel mortgage on crops held subordinate to seed grain notes and subsequent chattel mortgage to lessor of land for rent. 176M90, 222NW571.

Findings failed to show that defendants converted wheat or received proceeds from sale of wheat grown from seed furnished by plaintiff under a seed grain note given by tenant. *McCarthy v. T.*, 182M409, 234NW591. See Dun. Dig. 247(51).

### 8375. Chattel mortgage provision, how applicable.

This section does not make conditional sales, chattel mortgages, nor give a right of redemption after forfeiture thereof, nor prevent the vendor from retaking and forfeiting of property. 176M493, 223NW911.

## CHAPTER 67A Sale of Goods

### PART I

#### FORMATION OF THE CONTRACT

##### 8376. Contracts to sell and sales.

There is no reason why the Uniform Sales Act does not apply to a conditional sales contract, except that the contract itself is to control as to those elements which it covers. 176M483, 223NW908.

Vendor in conditional sale contract may upon default retake the property and hold it as his own. 176M493, 223NW911.

Section 8375 does not make conditional sales chattel mortgages, nor give a right of redemption after forfeiture, nor prevent the vendor from retaking and forfeiting the property. 176M493, 223NW911.

Evidence held to sustain finding that mother and not son living in the same house purchased groceries. *Buro v. M.*, 183M518, 237NW186.

The terms "measurement and acceptance" in the contract were ambiguous, and the meaning intended by the parties was likewise properly submitted. *Hayday v. H.*, 184M8, 237NW600. See Dun. Dig. 8629b.

Contract for the sale of 20,000 cords of pulpwood, for "measurement and acceptance" on board cars at buyer's dock, as Erie, Pa., was properly held ambiguous as to being entire or severable in cargoes, and its construction with respect to intent correctly submitted to the jury. *Hayday v. H.*, 184M8, 237NW600. See Dun. Dig. 8629b.

A remainder in personal property cannot be created by parol. *Mowry v. T.*, 250NW52. See Dun. Dig. 3171a, 8870.

Oral remainder in personal property having failed, there was reversion of property to donor by operation of law and subsequent conveyance thereof by donor to remainderman gave him right to recover same from executors of donee. *Id.*

##### 8377. Capacity—Liabilities for necessities.

When infant, by fraudulent representation that he is of age, induces another to sell property to him, such other person may recoup damage due to depreciation of property when infant rescinds purchase and sues for what he has paid. *Steigerwalt v. W.*, 186M558, 244NW 412. See Dun. Dig. 4435(18).

A minor may purchase stock in a credit union. Op. Atty. Gen., Dec. 21, 1931.

#### FORMALITIES OF THE CONTRACT

##### 8379. Statute of frauds.

Evidence sustains finding that the time of performance of a written contract for the sale of merchandise was extended by a parol agreement. *Bemis Bros. Bag Co. v. N.*, 183M577, 237NW586. See Dun. Dig. 8870.

The time of performance of a written contract for the sale of merchandise may be extended by parol without additional consideration and without offending the statute of frauds. *Bemis Bros. Bag Co. v. N.*, 183M577, 237NW586. See Dun. Dig. 8870.

#### CONDITIONS AND WARRANTIES

##### 8387. Definition of express warranty.

A statement in advertisement that 95 per cent of a tested portion of seed corn germinated constituted an express warranty. 171M289, 214NW27.

An implied warranty of fitness of corn for seed was not excluded by reason of an express warranty. 171M 289, 214NW27.

A retailer who has sold a washing machine with a warranty or representations of quality is entitled to the benefit of anything thereafter done by the manufacturer in the way of repairs to make the machine comply with the representations or warranty. 176M232, 222NW920.

##### 8390. Implied warranties of quality.

There was an implied warranty that corn sold for seed was fit for that purpose. 171M289, 214NW27.

Implied warranty attached by this section is not excluded by provision in a written contract excluding warranties "made" by the seller. 173M87, 216NW790.

A sale consisting of four units, only one of which is sold under a trade-mark, is not free from an implied warranty. 173M87, 216NW790.

When the seller of personal property knows the purpose for which it is to be used when the buyer relies upon the seller's judgment that it is suitable therefore, there is an implied warranty that it is reasonably fit for such purposes. 173M87, 216NW790.

Plaintiff did not waive breach of warranty. 173M87, 216NW790.

In a suit to recover damages for breach of warranty in the sale of an automobile, the evidence supports the verdict for the plaintiff. 181M603, 233NW313. See Dun. Dig. 8627.

When the buyer, ignorant of his own requirements, informs the seller of his particular needs and the seller undertakes to select and supply an article suitable to the purpose involved, subd. 1, and not subd. 4, applies even though the article may be described in the contract of sale by its trade name. *Iron Fireman Coal Stoker Co. v. B.*, 182M399, 234NW685. See Dun. Dig. 8572.

The intent is that the seller is not held to an implied warranty because the buyer gets the exact article selected by him and for which he bargains. *Iron Fireman Coal Stoker Co. v. B.*, 182M399, 234NW685. See Dun. Dig. 8572.

**Subd. 1.**

180M19, 230NW114.

A breeder of registered Guernsey cows, who sells them to a purchaser with the knowledge that they are to be used for breeding purposes and that his herd from which they are sold is infected with contagious abortion, is liable upon an implied warranty that the cows sold are fit for the purposes intended and are not infected with the disease. *Alford v. K.*, 183M158, 235NW903. See Dun. Dig. 8576(11).

### SALE BY SAMPLE

#### 8391. Implied warranties in sale by sample.

Fordson tractor, a two wheeled truck used as trailer, a connecting hitch and hydraulic hoist for unloading, held not sold by "sample." 173M87, 216NW790.

Shoes sold from samples carry implied warranty that they are free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample, and purchaser may rescind or may accept by conduct. 173M535, 217NW941.

### PART II

#### TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

#### 8392. No property passes until goods are ascertained.

Evidence held to sustain finding that title passed to cement in seller's warehouse. *Freeman v. M.*, 185M503, 241NW677. See Dun. Dig. 8511.

#### 8393. Property in specific goods passes when.

*Freeman v. M.*, 185M503, 241NW677.

Purchase money mortgage held superior to prior chattel mortgage. 177M441, 225NW389.

Passing of title is a question of intention of the parties. 177M441, 225NW389.

Whether at time of accident defendant was owner of truck and driver its agent, held for jury. *Ludwig v. H.*, 187M315, 245NW371. See Dun. Dig. 8541.

#### 8394. Rules for ascertaining intention.

*Freeman v. M.*, 185M503, 241NW677.

Where order for goods contemplated that they should be delivered to buyer and that title did not pass until goods were delivered to carrier, buyer relieved itself from liability for the purchase price by countermanding the order before the goods were delivered to the carrier, notwithstanding that the goods were set aside for the buyer in seller's warehouse. 172M4, 214NW475.

Title passed where calendars were manufactured and set aside for purchaser, and latter was liable for purchase price. *Louis F. Dow Co. v. B.*, 187M143, 244NW556. See Dun. Dig. 8514.

**Rule 1.**

Where corporation contracted to sell assets, received a part of the price in cash, and transferred the assets to trustees, who completed the sale and collected the balance of the purchase price, the profit from the sale was income to the corporation, and not to the stockholders receiving the proceeds in liquidation. 27 U. S. Board of Tax Appeals 524.

**Rule 2.**

Placing of seat covers and tire covers on automobile after conditional contract of sale did not amount to any manufacturing process or alteration such as to come within holding in *Louis F. Dow Co. v. Bittner*, 187M143, 244NW556. *Reese v. E.*, 187M568, 246NW250. See Dun. Dig. 8514.

**Rule 5.**

Evidence held not to conclusively show such delivery of an automobile as to vest either title or possession in defendant. *Reese v. E.*, 187M568, 246NW250. See Dun. Dig. 8511.

### TRANSFER OF TITLE

#### 8398. Sale by a person not the owner.

*Drew v. F.*, 185M133, 240NW114; note under §8467.

One purchasing personal property from a seller who has converted the goods is liable to the true owner as for conversion. 180M447, 231NW408.

Stolen Liberty bonds mailed by appellant to a Federal Reserve Bank with request to remit, bonds having been called by the government for redemption, were, before remittance, subject to replevin by true owners. The action was not against the United States. *Commercial Union Ins. Co. v. C.*, 183M1, 235NW634. See Dun. Dig. 961a(21), 8594a(89).

Where owner of personal property so clothes another with indicia of title as to deceive bona fide purchaser

relying upon such indicia of title, purchaser will be protected against true owner. *Gustafson v. E.*, 186M236, 243NW106. See Dun. Dig. 8599.

Rights of purchasers of timber from permittee of state. *National Surety Co. v. W.*, 244NW290, 187M50. See Dun. Dig. 7955.

### PART III

#### PERFORMANCE OF THE CONTRACT

#### 8415. Seller must deliver and buyer accept goods.

In action to recover purchase price of tractor after purchasing retailer had ordered it reshipped as not salable, whether block man to whom reshipment order was given was a representative with whom defendant was entitled to deal, held for jury. *Northwestern Rock Island Plow Co. v. T.*, 182M622, 235NW378. See Dun. Dig. 152, 8534, 8644.

Evidence did not require a finding of a sale and delivery of merchandise by the plaintiff to the defendants. *Great Lakes Varnish Works v. B.*, 184M25, 237NW609. See Dun. Dig. 8532.

Contract and accompanying correspondence construed, and held to require judgment for plaintiff for unpaid balance of purchase price of player piano sold defendants under an earnings contract. *Morse v. N.*, 185M266, 240NW399. See Dun. Dig. 8520a.

#### 1. Injuries caused by defects in thing delivered or installed.

Contract of milking machine manufacturer held not to obligate it to install or connect a milking machine with the motive power, but merely provided for free service to make the parts sold work properly. *Diddams v. E.*, 185M270, 240NW895. See Dun. Dig. 8510.

Members of family, not parties to contract, could recover for negligence of furnace company in installing furnace pipe causing fire. *Wright v. H.*, 186M265, 243NW387. See Dun. Dig. 6978.

Instruction construing ordinances regarding installation of stacks from furnaces, held correct. *Wright v. H.*, 186M265, 243NW387.

Whether defendant's installation of smoke pipe from furnace was negligent, and whether it was proximate cause of burning of house, held for jury. *Wright v. H.*, 186M265, 243NW387.

Complaint against washing machine manufacturer for injuries to hand in wringer, held to state cause of action. *Stone v. P.*, 187M173, 244NW555. See Dun. Dig. 7549, 7687, 7688.

#### 8418. Delivery of wrong quantity.

Estimate as to quantity made by buyer's representative should be considered as final unless attacked by pleading and proof of fraud or gross mistake, where seller's representative refused to participate. 176M315, 223NW614.

**(2).**

When merchandise is wrongfully delivered in violation of order, buyer may reject excess or all, but when he does an act in relation to such goods which is inconsistent with ownership of seller, he accepts all goods. *Bashaw Bros. Co. v. C.*, 187M621, 246NW358. See Dun. Dig. 8538.

#### 8422. What constitutes acceptance.

Shoes sold from samples carry implied warranty that they are free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample, and purchaser may rescind or may accept by conduct. 173M535, 217NW941.

When merchandise is wrongfully delivered in violation of order, buyer may reject excess or all, but when he does an act in relation to such goods which is inconsistent with ownership of seller, he accepts all goods. *Bashaw Bros. Co. v. C.*, 187M621, 246NW358. See Dun. Dig. 8538.

#### 8423. Acceptance does not bar action for damages.

Attempted rescission of sale of fur coat seven months after purchase and six months after discovery of breach, held not within reasonable time. 181M347, 232NW522. See Dun. Dig. 8607.

Purchaser of pulpwood did not waive terms of contract as to subsequent cargoes by having accepted cargoes of larger balsam content than prescribed. *Hayday v. H.*, 184M8, 237NW600. See Dun. Dig. 8566.

Right to rescind a sale of personal property on account of breach of warranty must be exercised within a reasonable time after discovery of facts. *Laundry Service Co. v. F.*, 187M180, 245NW36. See Dun. Dig. 8606, 8607, 9764.

Whether right to rescind sale of personal property for breach of warranty is made within reasonable time is usually fact for jury. *Laundry Service Co. v. F.*, 187M180, 245NW36.

Purchaser of laundry machinery held as matter of law to have waived right to rescind for breach of warranty. *Laundry Service Co. v. F.*, 187M180, 245NW36.

### PART IV

#### RIGHTS OF UNPAID SELLER AGAINST THE GOODS

#### 8427. Remedies of an unpaid seller.

176M267, 223NW288.

Replevin to recover property conditionally sold, plaintiff dismissing the case, was not an election to proceed against the property and to rescind the contract, and plaintiff could sue for the debt. 171M483, 214NW284.

The lien mentioned in §8430(2) relates to the possessory lien mentioned in §8427(1)(a), which is a statutory affirmation of the unpaid seller's common-law lien. 176M483, 223NW908.

The lien which the seller in a conditional sale contract may foreclose on default is the unpaid seller's common-law lien, which rests upon possession, the reservation of title being the equivalent of the necessary possession. 176M483, 223NW908.

Where a contract is completed, an action will lie on the common counts for the balance due. 173M275, 226NW933.

The issue as to whether defendant's signature to a bill of sale was forged held, on conflicting evidence, one of fact and so settled by the verdict. Lincoln Furnace Corp. v. D., 183M19, 235NW392. See Dun. Dig. 9707.

If check of purchaser of personal property is not good, seller may retake property. Gustafson v. E., 186M236, 243NW106. See Dun. Dig. 8604(22).

Sale of diamond with payment by forged check, did not pass title, and seller could retake property. Gustafson v. E., 186M236, 243NW106.

If purchaser in cash sale of personal property evades payment upon obtaining possession of property, seller may immediately reclaim property. Gustafson v. E., 186M236, 243NW106.

(2). Where buyer of goods, under a conditional sales contract, has received possession of goods and defaults in payment therefor, seller may (1) reclaim property, (2) treat sale as absolute and sue for unpaid price, or (3) enforce his lien upon property by lawful sale thereof and recover judgment for any deficiency. Reese v. E., 187M568, 246NW250. See Dun. Dig. 8651.

#### UNPAID SELLER'S LIEN

##### 8428. When right of lien may be exercised.

(2). Where buyer of automobile under conditional sales contract refuses to accept it, seller may foreclose his lien or sue for damages. Reese v. E., 187M568, 246NW250. See Dun. Dig. 8651.

##### 8430. When lien is lost.

Replevin to recover property conditionally sold did not bar an action for the debt on the theory of a rescission or election, the replevin action being dismissed by plaintiff. 171M483, 214NW284.

The lien mentioned in §8430(2) relates to the possessory lien mentioned in §8427(1)(a), which is a statutory affirmation of the unpaid seller's common-law lien. 176M483, 223NW908.

While the unpaid seller in a conditional sale contract has a right to reduce his debt to judgment without losing the lien, such lien is lost where he does not bring the property into actual possession before making an election of remedies which would terminate the conditional sale contract. 176M483, 223NW908.

(1) (c). Where conditional purchaser of automobile refused to accept it and seller retained car and sued for damages, buyer did not become invested with title and possession. Reese v. E., 187M568, 246NW250. See Dun. Dig. 8511.

#### PART V

#### ACTIONS FOR BREACH OF THE CONTRACT

##### REMEDIES OF THE SELLER

##### 8437. Action for the price.

Title to goods held still in the seller until they were delivered to carrier, and buyer was not liable for the price where he countermanded the order before delivery to carrier, though seller set aside the goods for buyer in its warehouse. 172M4, 214NW475.

Evidence held to show that defendant was the real purchaser of the goods in controversy and that there was no novation of the indebtedness. 177M560, 225NW725.

(1). In action to recover part of purchase price of contract and notes, verdict for plaintiff, held sustained by evidence. Adams v. R., 187M209, 244NW810.

##### REMEDIES OF THE BUYER

##### 8440. Action for converting or detaining goods.

The vendee's measure of damages, for the conversion by the vendor of the property covered by a conditional sales contract, is the value of the chattel at the time of the conversion, less the unpaid purchase price. Novak v. B., 183M254, 236NW221. See Dun. Dig. 8652a.

##### 8443. Remedies for breach of warranty.

###### 1. In general.

Retention and use of property purchased does not estop purchaser from bringing suit for breach of warranty or from presenting a counterclaim for breach of warranty in a suit by seller for purchase price. Donaldson v. C., 247NW522. See Dun. Dig. 8565.

###### 2. Rescission.

In action for price of carbide lighting plant, evidence held sufficient to show breach of warranty and fraud. 171M211, 213NW902.

Whether purchaser exercises his right to rescind within a reasonable time is usually a question of fact. 172M535, 217NW941.

Held there was no rescission by consent of sale of hotel property when it was abandoned by purchaser. 177M208, 225NW19.

Attempted rescission of sale of fur coat seven months after purchase and six months after discovery of breach, held not within reasonable time. 181M347, 232NW522. See Dun. Dig. 8607.

A rescission of a sale of personal property on account of breach of warranty must be sought within a reasonable time after discovery of the facts out of which the right arises. 181M547, 233NW302. See Dun. Dig. 8607.

A request for fulfillment of a warranty nullifies a previous attempt to rescind on account of breach of warranty in the sale of personal property. 181M547, 233NW302. See Dun. Dig. 8607(36).

Purchaser of laundry machinery held as matter of law to have waived right to rescind for breach of warranty. Laundry Service Co. v. F., 187M180, 245NW36.

Right to rescind a sale of personal property on account of breach of warranty must be exercised within a reasonable time after discovery of facts. Laundry Service Co. v. F., 187M180, 245NW36. See Dun. Dig. 8606, 8607, 9764.

###### 4. Diligence in discovering defects.

Purchaser waives fraud in sale of goods where he gives renewal note with full knowledge of false representations, or is chargeable with such knowledge. Wiebke v. E., 248NW702. See Dun. Dig. 8593a, 3833b.

###### 5. Damages.

180M19, 230NW114. A vendee of corporation stock who has rescinded for good cause, may recover of the vendor in action for money had and received the purchase price, with interest from the time of its payment. Dohs v. K., 183M379, 236NW620. See Dun. Dig. 6128, 6129.

###### 9. Evidence.

Unmerchantable condition of shoes held sufficiently made to appear by testimony of experts, without aid of those who wore the shoes. 173M535, 217NW941.

Defendant pleading breach of warranty as to fitness of fire escapes must show that warranty was broken. Potter Mfg. Co. v. B., 246NW470. See Dun. Dig. 8642.

In action on notes, evidence held to sustain verdict for defendant for damages for breach of warranty as to condition of motor truck. Donaldson v. C., 247NW522. See Dun. Dig. 8546.

###### 10. Questions for jury.

Whether cows sold were infected with contagious abortion and whether purchaser's herd thereby became infected, held for jury. Alford v. K., 183M158, 235NW903. See Dun. Dig. 8627.

Whether right to rescind sale of personal property for breach of warranty is made within reasonable time is usually fact for jury. Laundry Service Co. v. F., 187M180, 245NW36. See Dun. Dig. 8606, 8607, 9764.

Whether or not certain fire escapes purchased satisfied warranty of suitability for purpose installed, held question of fact. Potter Mfg. Co. v. B., 246NW470. See Dun. Dig. 8576.

In action on notes, evidence held sufficient to sustain finding that ginseng plants and seed were infected with disease which caused failure of growth. Wiebke v. E., 248NW702. See Dun. Dig. 8576.

##### 8444. Interest and special damage.

Vendee of corporate stock having rescinded and received the purchase price paid from the vendor cannot recover interest from the broker or agent of the vendor except upon an alleged express agreement. Dohs v. K., 183M379, 236NW620. See Dun. Dig. 6137.

#### PART VI

#### INTERPRETATION

##### 8445. Variation of implied obligations.

Evidence held to show liability for goods by one taking over a business and continuing the account. Mammen v. R., 183M175, 235NW878. See Dun. Dig. 8644.

8455 1/2. \* \* \*

#### DECISIONS RELATING TO STOCKBROKERS AND OTHER BROKERS DEALING IN PERSONAL PROPERTY

##### 1. Employment of broker.

Where customer places order with stockbroker, a contractual relationship between principal and agent exists, as regards broker's duties. Drake-Jones Co. v. D., 246NW664. See Dun. Dig. 1125, 1126.

##### 2. Duties and liabilities.

Customer held not to have ratified stockbroker's act in failing to have stock issued in customer's name at once. Drake-Jones Co. v. D., 246NW664. See Dun. Dig. 1124c, 1126.

In action by stockbroker to recover loss occasioned by refusal of customer to accept stock, court did not err in excluding defendant's testimony relative to number

of shares of stock dealt in on exchange between certain dates, offered to excuse delay in delivery of stock. *Drake-Jones Co. v. D.*, 246NW664. See Dun. Dig. 1124c, 1126.

Stockbroker must execute customer's order in conformity with instructions. *Drake-Jones Co. v. D.*, 246NW664. See Dun. Dig. 1124c, 1126.

Where customer ordered stock from broker to be issued in his name at once, broker could not recover for losses where customer repudiated transaction on tender

30 days after purchase of stock not in his name. *Drake-Jones Co. v. D.*, 246NW664. See Dun. Dig. 1124c, 1126.

**3. Compensation.**  
Stock brokers on Minneapolis-St. Paul stock exchange were entitled to commissions at the rate prescribed by its rules. *McCormick v. H.*, 184M374, 238NW633.

In action to recover money advanced in purchase of stock "rights" and commission for services, evidence held to show that such "rights" were to be delivered at the office of the plaintiffs and that plaintiffs were entitled to recover. *McCormick v. H.*, 184M374, 238NW 633.

CHAPTER 68

Frauds

STATUTE OF FRAUDS

**8456. No action on agreement, when.**

*Renn v. W.*, 185M461, 241NW581.

**¾. In general.**

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

**8. Promises to answer for another.**

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

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

**10. —Contracts held within the statute.**

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

**11. —Promises held not within the statute.**

Promise to pay existing debt of another, which promise arises out a new transaction between parties to it and for which there is fresh consideration, is original undertaking and not within statute of frauds. *Marckel Co. v. R.*, 186M125, 242NW471. See Dun. Dig. 8865.

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

**1¼. Promise to pay debt discharged in bankruptcy.**

Promise to pay debt discharged by bankruptcy. 172M390, 215NW784.

**8450. Conveyance, etc., of land.**

**1. Conveyances, etc., generally.**

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

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

**2. Leases.**

178M330, 227NW46; note under §8640.

Taking possession of and operating a farm under an oral lease void under the statute of frauds creates a tenancy at will, which may be terminated only by statutory notice. *Hagen v. B.*, 182M136, 233M822. See Dun. Dig. 5440.

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

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

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

Lessor held not estopped to deny termination of lease by lessee after fire. *Hoppman v. P.*, 248NW281. See Dun. Dig. 8877.

**8460. Leases—Contracts for sale of lands.**

**1. In general.**

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

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

**3. Authority of agent.**

Agent who had exclusive management of property under an agreement to pay all expenses and a fixed monthly income to the owner, and retain the difference,

had authority to lease an apartment for more than a year and take in payment of the rent a conveyance of an equity in a house and lot. 172M40, 214NW759.

**5. Contracts not within statute.**

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

**7. Pleading.**

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

**8461. Specific performance.**

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

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

CONVEYANCES FRAUDULENT AS TO CREDITORS

**8467. Of chattels without delivery.**

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

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

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

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

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

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

**8470. Question of fact—Voluntary conveyances.**

**1. Question of fact.**

179M7, 228NW177.

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

FRAUDULENT CONVEYANCES

**8475. Definition of terms.**

175M47, 220NW400.

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

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

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

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

**8477. Fair consideration.**

174M423, 219NW550; note under §8481.