

1940 Supplement
To
Mason's Minnesota Statutes
1927

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

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



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

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

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

CHAPTER 68

Frauds

STATUTE OF FRAUDS

8456. No action on agreement, when.

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

½. In general.

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

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

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

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

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

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

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

Comments. 14MinnLawRev746.

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

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

2. —Performance by one party within year.

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

4. —When year begins to run.

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

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

7. Promise to execute mortgage.

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

8. Promises to answer for another.

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

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

Statute of frauds in suretyship cases. 12MinnLawRev 716.

10. —Contracts held within the statute.

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

11. —Promises held not within the statute.

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

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

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

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

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

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

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

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

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

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

11½. Agreement upon consideration of marriage.

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

11¾. Promise to pay debt discharged in bankruptcy.

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

8458. Grants of trusts, when void.

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

8459. Conveyance, etc., of land.

1. Conveyances, etc., generally.

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

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

Verbal authority does not confer upon an agent authority to bind his principal to a conveyance of real estate. *Peterson v. S.*, 192M316, 256NW308. See Dun. Dig. 8882.

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

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

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

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

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

2. Leases.

178M330, 227NW46; note under §8640.

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

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

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

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

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

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

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

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

4. Partnership to deal in real estate.

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

7. Promise to execute mortgage.

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

8. Agreement modifying instrument affecting land.

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

8460. Leases—Contracts for sale of lands.

1. In general.

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

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

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

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

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

2. The memorandum.

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

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

3. Authority of agent.

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

4. Contracts held within statute.

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

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

5. Contracts not within statute.

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

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

7. Pleading.

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

8461. Specific performance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONVEYANCES FRAUDULENT AS TO CREDITORS

8467. Of chattels without delivery.

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

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

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

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

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

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

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

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

8470. Question of fact—Voluntary conveyances.

1. Question of fact.

179M7, 228NW177.

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

8473. Sale of stock of merchandise.

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

UNIFORM FRAUDULENT CONVEYANCE ACT

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

8475. Definition of terms.

175M47, 220NW400.

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

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

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

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

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

Remedy of creditors. 18MinnLawRev225.

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

8477. Fair consideration.

174M423, 219NW550; note under §8481.

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

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

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

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

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

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

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

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

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

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

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

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

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

8478. Conveyance by insolvent.

172M149, 214NW787; note under §8477.

173M576, 218NW108; note under §8475.

174M423, 219NW550; note under §8481.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8479. Conveyances by persons in business.

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

4 $\frac{1}{2}$. Subd. 3. Statement showing that materials were furnished by subcontractor to owner, though actually furnished to principal contractor, held sufficient. 199NW 475, 47SD494.

8481. Conveyance made with intent to defraud.

$\frac{1}{4}$. In general.

Brill v. W. B. Foshay Co. (CCA8), 65F(2d)420. *Cert. den.* 290US643, 54SCR61, note under §8478.

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

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

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

6. Subsequent creditors.

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

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

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

23. Transfer between husband and wife.

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

24. Transfers between near relatives.

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

31. Chattel mortgages.

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

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

32. Who may assail.

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

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

35. Action to set aside.

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

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

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

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

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

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

38. Burden of proof.

175M157, 220NW560.

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

39. Degree of proof required.

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

40. Evidence.

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

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

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

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

8483. Rights of creditors with matured claims.

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

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

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

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

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

(a).

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

8484. Creditors whose claims have not matured.

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

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

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

8488. Inconsistent legislation repealed.

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

CHAPTER 69

Liens for Labor and Material

FOR IMPROVEMENT OF REAL ESTATE

8490. Mechanics, laborers and materialmen.

$\frac{1}{4}$. In general.

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

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

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

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