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To

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Containing the text of the acts of the 1941 Session 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 Law Review Articles and digest of all common law decisions.

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4. Diligence in discovering defects.

Trial court did not abuse its discretion in finding that notice of rescission for breach of warranty was given within a reasonable time. *Kavli v. L.*, 292NW210. See Dun. Dig. 8608.

6. Measure of damages.

In ascertaining damages to buyer of tractor because of seller's misrepresentations the amount allowable seller on account of old tractor turned in by him as part of the purchase price, was the market value thereof and not the higher turn-in value agreed upon. *Wiesehan v. C.*, 142SW(2d)(Tex)557.

8. Misrepresentation.

Buyer's independent investigation of a used tractor before sale, without more, may suggest, but does not always establish, nonreliance on seller's false representations, and it is enough if the latter were a substantial inducement to purchase. *Goldfine v. J.*, 294NW459. See Dun. Dig. 3821.

False representation, relied upon by purchaser, that a used tractor was just what buyer wanted, was in good

shape and in condition to go to work, held actionable. *Id.* See Dun. Dig. 3822.

9. Evidence.

Burden of proof is on party relying on a warranty to show the warranty and a breach thereof, and this burden is not sustained where evidence essential to proof of a breach consists of opinions of witnesses based exclusively on statements made to them by others. *Kavli v. L.*, 292NW210. See Dun. Dig. 8623.

In action for property damages sustained in an automobile accident when a tire blew out, based on negligence of seller of used car in servicing it, a speed of 45 to 50 miles an hour was no evidence of contributory negligence, though plaintiff had some difficulty in keeping car on road. *McLeod v. H.*, 294NW479. See Dun. Dig. 8626.

10. Questions for jury.

Evidence held to present issue for jury in action for breach of implied warranty of a sale of a chicken brooder. *Ray v. S.*, 200So(Ala)608.

CHAPTER 68

Frauds

STATUTE OF FRAUDS

8456. No action on agreement, when.

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

2. —Performance by one party within year.

While parties may have talked about a period of five years or "indicated" that performance should last at least that long, held that there was no compelling proof establishing that it was actually a contractual term definitely agreed upon. *Foster v. B.*, 291NW505. See Dun. Dig. 8859.

8459. Conveyance, etc., of land.**1. Conveyance, etc., generally.**

Since a profit a prendre is an interest in realty, it must be created, in contrast to a license, by a properly executed writing. *Minnesota Valley Gun Club v. N.*, 290NW 222. See Dun. Dig. 8876.

3. Trusts.

Statute does not prevent imposition of a constructive trust upon land acquired as result of violation of duty of a general agent even though agency rests in parol. *Whitten v. W.*, 289NW509. See Dun. Dig. 8878.

CONVEYANCES FRAUDULENT AS TO PURCHASERS

8463. When made to defraud, void—Exception.

Fraudulent conveyances of chattels—chattel mortgages—sales—conditional sales. 24 MinnLaw Rev 832.

CONVEYANCES FRAUDULENT AS TO CREDITORS

8467. Of chattels without delivery.

Whether there has been a delivery of personal property and an actual and continued change of possession as required is one of fact for determination by the trial court. *Andrews v. W.*, 292NW251. See Dun. Dig. 3855.

8472. Assignment of debt.

Filing of a wage assignment with register of deeds is not compliance with this statute. *Op. Atty. Gen.* (373B-3), June 10, 1940.

8473. Sale of stock of merchandise.

Where debtor jeweler's stock in trade did not exceed value of \$9500 pledge of certain of such stock of value of \$600 as security for loan of \$300, held a pledge of a substantial part of debtor's stock not made in the ordinary course of business, and hence invalid as to creditors where requirement of California Bulk Sales Law as to recording notice of intention to transfer the merchandise were not complied with. *Markwell & Co. v. L.*, (CCA 9), 114F(2d)373, 44AmB(NS)75.

UNIFORM FRAUDULENT CONVEYANCE ACT

8475. Definition of terms.

Foreign judgment which has not been established in this state according to law is not "creditor's claim established according to law or lien upon property conveyed", within meaning of N. J. Uniform Fraudulent Conveyance Act. *Montgomery v. A.*, 17Atl(2d)(NJChan)785.

Weight of authority is to effect that fraudulent grantor may not enforce any performance on part of grantee which remains executory, though there is a conflict on this point. *Angers v. S.*, 293NW(Wis)173.

As between fraudulent grantors and grantees transfer is valid. *Id.*

Fraudulent conveyances of chattels—chattel mortgages—sales—conditional sales. 24 MinnLaw Rev 832.

8476. Insolvency.

Solvency of a transferor when he transfers his property affords evidence against a claimed fraudulent purpose, but it is only an item of evidence to be considered with other facts and circumstances in passing upon question of good faith. *Andrews v. W.*, See Dun. Dig. 3919.

8477. Fair consideration.

Discharge of a debt owing by husband does not constitute a fair consideration for a conveyance by one having creditors. *Neumeyer v. W.*, 295NW(Wis)775.

8478. Conveyance by insolvent.

Parol agreement by corporation made in December, 1936, to assign to corporation furnishing material for processing, accounts receivable of purchasers of finished material, approval of agreement Mar. 12, 1937, by directors of promisor corporation, execution of written assignment on June 26, 1937, bearing date Mar. 12, 1937, held not fraudulent, either under uniform fraudulent conveyance act, or bankruptcy act, under which adjudication was made Aug. 11, 1937, the assignor not having been insolvent on Mar. 12, 1937. *Spencer v. H.*, (CCA6) 112F(2d)221. Cert. den. 61SCR137.

Husband and wife had burden of proving that conveyance made by husband to an intermediary who conveyed to the husband and wife as tenants by the entirety without consideration did not render the husband insolvent and was not made within intent to defraud his creditors; and such burden was not satisfied by evidence of certain property possessed by the husband without the showing as to its value. *Ferguson v. J.*, 14 Atl(2d)(Pa)74.

Evidence held to sustain finding that assignment of property by debtor to pay obligation of her husband rendered her insolvent and the conveyance invalid as to her creditors. *Neumeyer v. W.*, 295NW(Wis)775.

8481. Conveyance made with intent to defraud.**6. Subsequent creditors.**

A surety on a note was a creditor of the principal at time his principal made a conveyance of property to his wife, where surety subsequently paid the note. *McDonald v. B.*, 148SW(2d)(Tenn)385.

8. Intent.

Voluntary transfer by husband to his wife of his assets without retaining sufficient property to meet his liabilities held fraudulent as to his stockholders' liability on bank stock though there was no proof of actual intent to defraud or that the wife knowingly participated in the fraud. *McKey v. R.*, (CCA7), 114F(2d)129. Cert. den., 61SCR72.

Transfer made with intent to delay creditors though made with reasonably well founded belief that it would enable debtor to weather a financial storm and pay his debts in full was invalid not only as to existing creditors but as to future creditors as well where transferee participated in such intent. *Fish v. E.*, (CCA10), 114F(2d) 177, 44AmB(NS)206.

A conveyance by a debtor to satisfy an obligation of her husband for which she is not liable, rendering her insolvent, was invalid as to her creditor regardless of lack of any intentional fraud. *Neumeyer v. W.*, 295NW(Wis)775.

14. Transfer with trust for grantor.

Evidence did not require a finding of existence of a secret trust, fraudulent as to plaintiff, as claimed by him, nor was trial court required to find that payment of taxes was in fraud of creditors. *Andrews v. W.*, 292NW251. See Dun. Dig. 3854.

23. Transfers between husband and wife.

If debtor intended to defraud either present or future creditors, when he made a conveyance of land to his wife,

transaction is fraudulent as to both present and future creditors. *McDonald v. B.*, 148SW(2d)(Tenn)385.

31. Chattel mortgages.
Mortgaging of chattels and then transferring them to a corporation subject to the mortgage did not constitute fraud, where parties were contemplating a profitable business, and creditors attacking validity of mortgage were required to prove fraud in fact. *Club Evergreen*, (DC-NJ)33FSupp536.

32. Who may assail.
A surety may bring an action to set aside a fraudulent conveyance of its principal before any loss occurred or payments were made. *McDonald v. B.*, 148SW(2d)(Tenn)385.

40. Evidence.
On record trial court was not bound to find that transfer of property covered by so-called Torrens title was fraudulent. *Andrews v. W.*, 292NW251. See Dun. Dig. 3910.

42. Findings.
A finding that a transfer was made without intent to hinder, delay or defraud existing or subsequent creditors implies good faith on part of transferor. *Andrews v. W.*, 292NW251. See Dun. Dig. 3929.

8483. Rights of creditors with matured claims.
The Uniform Fraudulent Conveyance Act, so far as it purports to authorize action to set aside fraudulent conveyance without existence of lien is unconstitutional. *F. W. Horstmann Co. v. R.*, 15Atl(2d)(NJ)623.

Action to set aside transfer by corporate debtor made through judicial proceeding, and not one based on disregard of conveyance, and is governed as to limitations by statute relating to suits in equity to avoid transfer, and not by limitations applicable to fraud actions. *Hearn*,

45 St. Corp. v. J., 27NE(2d)814, 283NY139, rev'g 16NYS(2d)778, 17NYS(2d)1000, 258 AppDiv923, 965.

(1).
Good faith grantee may not continue payments to his fraudulent grantor upon learning that conveyance to him was designed to hinder, delay or defraud creditors of the grantor, and assuming fraudulent purpose of grantor, conveyance is subject to be set aside by creditors of the latter. *Angers v. S.*, 293NW(Wis)173.

(2).
Grantees who are guilty of no actual fraud are entitled to a lien for payments made for maintenance and preservation of property from tax and other liens, even if those payments are made after learning of fraudulent purpose of grantor, and the better rule would seem to be to protect even guilty grantees in such respect. *Angers v. S.*, 293NW(Wis)173.

Where a grantee innocently makes part payments upon purchase price prior to learning of fraudulent purpose of conveyance, he may have a lien upon premises as security for those payments. *Id.*

An innocent grantee paying part of purchase price and making payments to preserve property may maintain an action to establish his lien against property conveyed to him. *Id.*

8484. Creditors whose claims have not matured.
Where there was nothing in allegations of complaint to indicate that ancestor in title in disposing of assets involved any fraud as to future creditors, plaintiff as a successor in title to real estate, had no cause of action against transferee of such ancestor in title arising from fact that he was an innocent purchaser of real estate and would have some rights if transfer to him were set aside, at suit of creditors of the ancestor. *Angers v. S.*, 293NW(Wis)173.

CHAPTER 69

Liens for Labor and Material

FOR IMPROVEMENT OF REAL ESTATE

8494. When lien attaches—Notice.

A mechanic's lien, in proper form, filed with registrar of title, attaches to land as of commencement of improvements, the same as a lien filed in office of register of deeds for improvement upon land not registered under Torrens Act. *Armstrong v. L.*, 296NW405. See Dun. Dig. 6062.

No notice of lien is required to be given owner by person who contracts directly with owner and furnishes materials under such contract to owner in order to establish lien as between owner and material men. *Roughan v. R.*, 193So(Fla)572.

Notice of lien is sufficient to meet statutory requirements though it is drawn in rather slipshod fashion. *Id.*
Person furnishing materials for construction of building on married woman's separate property under contract with married woman may avail himself of Uniform Mechanic's Lien Act, but he must follow provisions of act. *Id.*

MOTOR VEHICLES

8524. To whom given—For what services rendered.

Holder of a motor vehicle lien for storage or repairs is not estopped by his mere silence to assert his superior right against a purchaser with notice at foreclosure sale under chattel mortgage, though such purchaser believed lien to be outlawed. *Conner v. C.*, 294NW650. See Dun. Dig. 5579a.

A subsequent bona fide encumbrancer of an automobile takes subject to motor vehicle lien given by this act. *Id.* See Dun. Dig. 5584a.

8525. Statement of claim for lien; etc.

Record of an unsatisfied and undischarged lien, which was filed and upon which foreclosure was commenced within time allowed by statute, is notice not only of lien but of action to foreclose it, although statute does not require filing of a notice of lis pendens and none is filed. *Conner v. C.*, 294NW650. See Dun. Dig. 5579a.

8526. Foreclosure.

Chattel mortgagee foreclosing and selling automobile in exclusion and defiance of lien rights of one furnishing storage or repairs, may be held in conversion. *Conner v. C.*, 294NW650. See Dun. Dig. 5579a.

Proceedings for foreclosure commenced within period allowed need not be brought to final adjudication within such period. *Id.*

IN OTHER CASES

8548. For wages as against attachment, etc.

In bankruptcy proceeding, claims for wages earned within 6 months but more than 3 months before filing of petition were not entitled to priority of payment over claim of United States for taxes due under Social Security Act. *Penticoff*, (DC-Minn), 36FSuppl.

GENERAL PROVISIONS

8558. Inaccuracies in lien statement.

Evidence held to sustain finding that materialman knowingly by lien statement demanded more than was justly due, where it appeared owner gave check payable to contractor and materialman, and materialman credited materials for amount of check and then gave contractor a check and added it to material account. *Standard Lumber Co. v. A.*, 289NW827. See Dun. Dig. 6074.

8561. Pledgee permitted to buy pledge where sold at public sale.

In case of a pledged commercial paper, foreclosure is not permitted, where a sale would result in sacrifice, especially when obligor is insolvent. *First & Am. Nat. Bank of D. v. W.*, 292NW770. See Dun. Dig. 7751.

A pledgee of tangible personalty may not resort to it for his own purposes prior to foreclosure of pledge, but a pledgee of a chose in action pursuant to his duty to conserve collateral must use reasonable diligence to collect. *First & Am. Nat. Bank of D. v. W.*, 292NW770. See Dun. Dig. 7744.

CHAPTER 70

Marriage

8562. Marriage a civil contract.—Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties, capable in law of contracting, is essential. Lawful marriage hereafter may be contracted only when a license has been obtained therefor as provided by law and when such

marriage is contracted in the presence of two witnesses and solemnized by one authorized, or who the parties in good faith believe to be authorized, so to do. Marriages subsequent to the passage of this act not so contracted shall be null and void. (As amended Act Apr. 26, 1941, c. 459, §1.)