

1944 Supplement  
To  
**Mason's Minnesota Statutes, 1927**  
and  
**Mason's 1940 Supplement**

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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**2. Rescission.**

Buyer's failure to exercise right of rescission for eight months after breach of warranty, if any, must have been known to him, is unreasonable as matter of law and a bar to rescission as against seller of an air conditioning unit. *Heibel v. U.*, 206M288, 288NW393. See Dun. Dig. 8607.

Trial court erred in granting judgment in favor of a counterclaiming defendant against assignee of vendors' interest in a rescinded conditional sales contract for sums paid thereunder by defendant to vendors. *Kavli v. L.*, 207M549, 292NW210. See Dun. Dig. 8654.

Right of vendee to recover sums paid under rescinded contract does not rest on the agreement, but is grounded on theory that vendor, having obtained money under a contract made void by rescission, is unjustly enriched at vendee's expense and should be subjected to a legal duty to restore that which has been improperly gained, and in replevin by assignee of vendor's interest in a conditional sales contract, plaintiff may not be subjected to counterclaim for money paid to vendor based on rescission. *Id.* See Dun. Dig. 8652.

Substantial repairs made by purchaser of a power blower or fan without notice to seller after many months of use defeated rescission. *Reliance Engineers Co. v. Flaherty*, 211M233, 300NW603. See Dun. Dig. 8566, 8606.

**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.*, 207M549, 292NW210. See Dun. Dig. 8608.

Seller of a machine may waive provision in contract of sale for three-day notice of breach of warranty. *Juuland v. Wood Bros. Thresher Co.*, 212M310, 3NW(2d) 772. See Dun. Dig. 8582a.

Provision for three-day notice in contract of sale of a corn picker applied to an implied warranty of fitness for the purpose. *Id.*

As affecting right to recover damages for breach of an implied warranty of fitness, purchaser of oil burner was not guilty of laches in attempting over a period of two years to remedy defect in the burner, suit being brought shortly after last explosion, which caused plaintiff finally to remove the burner. *Donohue v. Acme Heating Sheet Metal & Roofing Co.*, 214M424, 8NW(2d)618. See Dun. Dig. 8618.

Dealer purchasing oil which later turned dark gave timely and adequate notice of breach of warranty by giving notice when defect arose after it had put the oil into its own storage tank, though there was evidence that custom was to check tank cars of oil immediately for quantity. *Berry Asphalt Co. v. Apex Oil Products Co.*, 215M198, 9NW(2d)437. See Dun. Dig. 8560.

Under proper pleadings, purchaser may show fraud on part of seller inducing purchaser to accept defective merchandise and incorporate same into its electric system, and excusing its failure to reject such merchandise within the time provided for in contract. *De Witt v. Itasca-Mantrap Co-op. Electrical Ass'n*, 215M551, 10NW(2d)715. See Dun. Dig. 8582a, 8612.

**5. Damages.**

That purchaser of automobile unsuccessfully sought rescission after discovery of fraud did not bar subsequent action for damages for deceit, after subsequently completing contract. *Kohanik v. Beckman*, 212M11, 2NW(2d) 125. See Dun. Dig. 8612.

Trial court correctly awarded damages to defendant buyer in the amount of the difference between the sum paid for oil ordered and the value of that actually delivered, against which was set off the value of oil delivered but not paid for. *Berry Asphalt Co. v. Apex Oil Products Co.*, 215M198, 9NW(2d)437. See Dun. Dig. 8624.

**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.

Nothing in act prevents bringing of action on express agreement to reimburse buyer for all losses that he might sustain by reason of defects in goods sold. *Letres v. Washington Co-op. Chick Ass'n*, 8Wash64, 111 Pac(2d)594.

**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.*, 208M449, 294NW 459. See Dun. Dig. 8821.

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. 8822.

**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.*, 207M 549, 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.*, 208M473, 294NW479. See Dun. Dig. 8626.

In action on a note given for part of purchase price of an electric fan court did not err in receiving in evidence order for installation of fan containing a guarantee, though guarantee was not incorporated in conditional sales contract executed when order had been filled by installation of fan, which also provided that no warranties or representations not appearing therein existed, and no reformation of conditional sales contract was sought. *Reliance Engineers Co. v. Flaherty*, 211M 233, 300NW603. See Dun. Dig. 3387, 8550, 8582.

In action for damages for misrepresentation that car was in perfect condition and had never been in a wreck, evidence that car consumed inordinate quantities of oil was admissible as evidence of bad condition. *Kohanik v. Beckman*, 212M11, 2NW(2d)125. See Dun. Dig. 8626.

In action based upon breach of implied warranty of fitness of a corn picker, with proper foundation, testimony that corn picker in question did as good a job as those of its competitors would be admissible to prove that corn picker was fit for purpose, though not the criterion of fulfillment of the implied warranty of fitness for the purpose. *Juuland v. Wood Bros. Thresher Co.*, 212M310, 3NW(2d)772. See Dun. Dig. 8576.

**10. Questions for jury.**

In an action for unliquidated damages jury has a right to give less than amount prayed for by plaintiff without subjecting itself to the charge that verdict is a compromise one. *Donohue v. Acme Heating Sheet Metal & Roofing Co.*, 214M424, 8NW(2d)618. See Dun. Dig. 8624.

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.

**11. Instructions.**

Where defense pleaded and tried was breach of express warranty as to specified matters, it was error to submit to jury issue of implied warranty in language inaccurate and confusing. *Reliance Engineers Co. v. Flaherty*, 211M233, 300NW603. See Dun. Dig. 8634.

**PART VI****INTERPRETATION****8445. Variation of implied obligations.**

Dealer purchasing oil which later turned dark gave timely and adequate notice of breach of warranty by giving notice when defect arose after it had put the oil into its own storage tank, though there was evidence that custom was to check tank cars of oil immediately for quantity. *Berry Asphalt Co. v. Apex Oil Products Co.*, 215M198, 9NW(2d)437. See Dun. Dig. 8560.

**8450. Definitions.**

A transfer of property other than an interest in land in satisfaction of or as security for a pre-existing debt or other obligation is a transfer for value, value being any consideration sufficient to support a simple contract. *Blumberg v. Taggart*, 213M39, 5NW(2d)388. See Dun. Dig. 8496.

A constructive trust which arises from obtaining of title to chattels by fraud is cut off by transfer of the chattels by the fraudulent person in satisfaction of or as security for an antecedent debt if the transferee has no notice of the fraud. *Blumberg v. Taggart*, 213M39, 5NW(2d)388. See Dun. Dig. 8602.

Uniform Sales Act applies to a conditional sales as respects implied warranty, and such a warranty may be urged against assignee of contract and notes. *General Electric Contracts Corp. v. Heimstra*, 6NW(2d)(SD)445. See Dun. Dig. 8492.

**CHAPTER 68****Frauds****STATUTE OF FRAUDS****8456. No action on agreement, when.****½. In general.**

Oral agreements enforced by estoppel. *Albachten v. Bradley*, 212M359, 3NW(2d)783. See Dun. Dig. 8852a.

**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.*, 207M286, 291NW505. See Dun. Dig. 8859.

### 8. Promises to answer for another.

A promise to pay the existing debt of another, which promise arises out of a new transaction and for which there is a fresh consideration, is an original undertaking and is not within the statute of fraud. *Smith v. Minneapolis Securities Corp.*, 211M534, 1NW(2d)841. See Dun. Dig. 8865.

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

Evidence held to sustain finding that agreement to pay for dental services rendered to sister was an original undertaking not within statute. *Wolfson v. Kohn*, 210M12, 297NW109. See Dun. Dig. 8868.

Contract of finance company in consideration of salesman continuing to sell for finance company sort of contracts theretofore sold for another company, in receivership, to pay what the other company owed plaintiff, was an original undertaking and not within statute of frauds. *Smith v. Minneapolis Securities Corp.*, 211M534, 1NW(2d)841. See Dun. Dig. 8868.

### 8457. Auctioneer's memorandum.

Oral agreements enforced by estoppel. *Albachten v. Bradley*, 212M359, 3NW(2d)783. See Dun. Dig. 8852a.

### 8458. Grants of trusts, when void.

Oral agreements enforced by estoppel. *Albachten v. Bradley*, 212M359, 3NW(2d)783. See Dun. Dig. 8852a.

### 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.*, 207M126, 290NW222. See Dun. Dig. 8876.

Where defendant owned farm and induced plaintiffs to live there with her and operate farm, in consideration of which defendant was to furnish home, certain food and fuel, and plaintiffs entered upon performance of such unenforceable oral contract and were willing to continue in its performance, but were ousted by defendant, who refused to abide by agreement and to leave property to plaintiffs at her death, plaintiffs could recover on theory of unjust enrichment for value of services rendered less benefits received thereunder until defendant's breach. *Pfuhl v. Sabrowsky*, 211M439, 1NW(2d)421. See Dun. Dig. 8885.

An oral agreement with husband and wife that if they would give up their work and residence and move to defendant's farm, defendant would give them the farm, together with all of personal property thereon at her death, she to live with them and furnish them with flour, butter, meat and wood, was invalid and unenforceable, and an action for damages for breach thereof would not lie, and included within such damages which could not be recovered would be loss to husband because of abandonment of his seniority position and rights with railroad company. *Id.* See Dun. Dig. 8883.

Where purchase price has been paid, in whole or in part, on an oral contract to sell land, and seller refuses or is unable to convey, an action lies for money had and received. *Id.* See Dun. Dig. 8885.

Oral agreements enforced by estoppel. *Albachten v. Bradley*, 212M359, 3NW(2d)783. See Dun. Dig. 8852a.

#### 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.*, 206M423, 289NW509. See Dun. Dig. 8878.

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

#### 1. In general.

Oral agreements enforced by estoppel. *Albachten v. Bradley*, 212M359, 3NW(2d)783. See Dun. Dig. 8852a.

### 8461. Specific performance.

Where services have been rendered under a contract void under statute of frauds, and employer refuses to abide by oral agreement, recovery for value of services may be had on theory of quasi contract. *Pfuhl v. Sabrowsky*, 211M439, 1NW(2d)421. See Dun. Dig. 8885.

Evidence held to establish oral agreement of 39-year old man to leave his property to 72-year old mother-in-law, in view of health of man, warranting specific performance. *Dill v. Kucharsky*, 212M276, 3NW(2d)585. See Dun. Dig. 8789a, 8811.

To warrant specific performance of oral contract to leave property at death, proof must be clear, positive and convincing. *Id.*

As affecting right to specific performance of oral agreement to leave property at death, an equity in favor of plaintiff arises from fact that her right to recover money which she surrendered in reliance upon agreement has long since expired. *Id.* See Dun. Dig. 8776, 8789a.

Services by plaintiff in household of widowed son-in-law, who had a nephew from an orphanage living with him, held of such a personal and family nature that equity could not say that their value was estimable with reasonable accuracy so that it would be improper to award specific performance of oral agreement to leave property to plaintiff. *Id.* See Dun. Dig. 8789a.

Specific performance of contract to leave property by will will be ordered where real estate is involved, regardless of nature of services rendered, though part of

contract relates to personal property. *Herman v. Kelehan*, 212M349, 3NW(2d)687. See Dun. Dig. 8789a, 10207.

Services in furnishing food, clothing, shelter and nursing were such that remedy at law was inadequate and entitled plaintiff to specific performance of contract to leave property by will. *Id.* See Dun. Dig. 8776, 8789a, 10207.

A minor may be estopped by the acts and conduct of the ancestor through whom he claims title. *Seitz v. Sitze*, 215M452, 10NW(2d)426. See Dun. Dig. 3212, 4449, 8852a, 8885.

Where parents enter into oral contract with son to devise or convey homestead if son provides for parents throughout their lives, and the son fully performs, and benefits are accepted by both parents with full knowledge of the agreement, statute requiring joinder of both husband and wife cannot be invoked to prevent enforcement of the contract. *Id.* See Dun. Dig. 8789a.

If a deceased person were estopped by conduct from invoking homestead statute after performance of an oral contract to convey or devise real property, the heirs are likewise estopped. *Id.* See Dun. Dig. 8789a.

Oral contracts to convey or devise real property will be enforced in equity when one party thereto has partially or fully performed its provisions and has no adequate remedy at law. *Id.* See Dun. Dig. 8789a.

Cause of action to compel performance of an oral contract to devise or convey realty by parents to son upon death of survivor of the parents, provided son maintained them throughout their lives, did not mature until death of survivor. *Id.* See Dun. Dig. 8797.

In action for specific performance evidence was sufficient to sustain finding of a contract to devise or convey whereby plaintiff was to receive the homestead of his parents upon the death of the survivor of them, provided he had maintained them throughout their lives. *Id.* See Dun. Dig. 8789a.

## 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.*, 207M404, 292NW251. See Dun. Dig. 3855.

### 8472. Assignment of debt.

*Nash v. S. M. Braman Co.*, 210M196, 297NW755. 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.

Statutes invalidating fraudulent conveyances are designed to prevent debtors from putting property which is available for payment of their debts beyond reach of creditors. *Kummet v. Thielen*, 210M302, 298NW245. See Dun. Dig. 3843.

A transfer of legal title to beneficial owner is not a fraudulent conveyance as to creditors. *Id.* See Dun. Dig. 3850.

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.*, 235Wis422, 293NW173.

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.**

A debtor's transfer of property to beneficial owner to carry out terms of an unenforceable parol trust is not fraudulent as to creditors. *Kummet v. Thielen*, 210M302, 298NW245. See Dun. Dig. 3870.

Conveyance by deceased to his 3 daughters in payment of debt to a son-in-law, with his consent, was based upon an adequate consideration. *Mason v. Mason*, 296Mich622, 296NW703.

Discharge of a debt owing by husband does not constitute a fair consideration for a conveyance by one having creditors. *Neumeyer v. W.*, 236Wis534, 295NW775.

(b). Testimony that a transfer of money by a husband to his wife was made in part in consideration of an antecedent debt and in part as proceeds of insurance on property belonging to wife sustained a finding that transfer was not fraudulent as to creditors. *Kummet v. Thielen*, 210M302, 298NW245. See Dun. Dig. 3850, 3867a.

**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.

In action to remove cloud from title, where a mortgage was being attacked as fraudulent conveyance because allegedly given by mortgagor when insolvent for less than fair consideration, it was prejudicial for trial judge to reject proof that notes which mortgage secured were executed for fair consideration, particularly where his own remarks had induced mortgagee to believe that such proof was unnecessary until notes were attacked. *McIntyre v. Peterson*, 210M419, 298NW713. See Dun. Dig. 3907.

Burden of showing good faith of transfer from husband to wife which renders husband insolvent rests upon wife, who must clearly and satisfactorily show that a valuable consideration was paid by wife or by someone in her behalf. *Brennan v. Friedell*, 212M115, 2 NW(2d)547. See Dun. Dig. 3907.

A transfer from husband to wife which renders husband insolvent is fraudulent as to creditors without regard to actual intent if made without a fair consideration, and wife will be held to have notice of contracts and debts of husband. *Id.* See Dun. Dig. 3859.

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.

A mortgage given by debtor for the benefit of a group of creditors, the face value of which was in excess of the actual debt, in the absence of fraudulent intent was a valid obligation, entitled to preference over the claim of another creditor. *Peoples-Pittsburgh Trust Co. v. Holy Family Polish Nat. Catholic Church*, 341Pa390, 19Atl(2d)360.

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.*, 236Wis534, 295NW775.

**8481. Conveyance made with intent to defraud.****½. In general.**

A transfer of property to true owner by one who has bare legal title is not fraudulent as to creditors. *Kummet v. Thielen*, 210M302, 298NW245. See Dun. Dig. 3850.

Plaintiff must establish that assignment of corporate stock by judgment debtor to his wife was made with actual intent to defraud, or that such assignment rendered judgment debtor insolvent or left him with unreasonably small capital to carry on his business, and also that there was no fair consideration for the assignment. *Dean v. Torrence*, 299Mich24, 299NW793.

Renunciation of a testamentary gift to defeat claims of creditors. 25MinnLawRev951.

**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.*, 24TennApp670, 148SW(2d)(Tenn)385.

**7. Essential elements.**

Rules concerning invalidity of transfers made with intention of defrauding creditors had no application to an accounting of trustees who used part of the corpus to pay debts of trust donor, there being no obligation at time trust was created and rights of remaindermen being involved. *Watland*, 211M84, 300NW195. See Dun. Dig. 3854, 9945.

**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.*, 236Wis534, 295NW775.

**9. Property must be appropriable.**

If property transferred is not subject to claims of creditors, rules as to fraudulent conveyances do not apply. *Kummet v. Thielen*, 210M302, 298NW245. See Dun. Dig. 3850.

**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.*, 207M404, 292 NW251. See Dun. Dig. 3854.

**17. Preferences.**

A debtor can prefer one creditor to another although he is insolvent. *Mason v. Mason*, 296Mich622, 296NW703.

**23. Transfers between husband and wife.**

A transfer between husband and wife is presumed to be fraudulent as to existing creditors, but this presumption, like all others, disappears when facts are shown. *Kummet v. Thielen*, 210M302, 298NW245. See Dun. Dig. 3859.

A transfer by husband to his wife of property which belongs to her legally or equitably is not fraudulent as to his creditors. *Id.*

Where husband took out fire insurance on real estate and personal property in a building under a policy including coverage of property of members of family, transfer by insured to his wife of insurance money representing her loss of property was not fraudulent as to creditors. *Id.* See Dun. Dig. 3870.

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.*, 24TennApp670, 148SW(2d)(Tenn)385.

**24. Transfers between near relatives.**

Evidence held to sustain finding that conveyance to children in payment of antecedent debt was not made for purpose of defrauding creditors, though parents reserved a life estate. *Bloodgett v. Hollo*, 210M298, 298NW249. See Dun. Dig. 3858.

**27. Assignment of claims.**

Assignment by an insolvent debtor of accounts receivable, whereby assignor agreed to account for any sums received by it on the assigned accounts, either by payment of the sum to the assignee or by the substitution of other accounts, was constructively fraudulent and void as to creditors of debtor and constituted an act of bankruptcy. *De Luxe Oil Co.*, (DC-Minn), 36FSupp287. See Dun. Dig. 743, 3857, 3925.

**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.

**38. Burden of proof.**

Burden is upon plaintiff to show inadequate consideration for deed. *Mason v. Mason*, 296Mich622, 296NW703.

Where plaintiff has established that assignment of corporate stock rendered judgment debtor insolvent, or left him with unreasonably small capital, and also that there was no fair consideration for assignment, order of proof shifted to defendant to go forward with evidence that consideration was in fact fair and adequate. *Dean v. Torrence*, 299Mich24, 299NW793.

Burden of proof is upon plaintiff even though transaction assailed is one between husband and wife. *Id.*

**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.*, 207M404, 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.*, 207M404, 292NW251. See Dun. Dig. 3929.

**8483. Rights of creditors with matured claims.**

Trustee of a bankrupt to whom property has been fraudulently transferred is entitled to the proceeds of the sale of such property over the claim of the creditor of a transferor. *Maxwell Sheraton, Inc.*, (DC-NY), 46FSupp680. See Dun. Dig. 3893.

In as much as a sale of property claimed to have been fraudulently conveyed will not be restrained by injunction, it is clear that assertion of such a claim after the sale and after a determination of the transfer as being fraudulent in fact cannot be permitted to stand in the way. *Brennan v. Friedell*, 215M499, 10NW(2d)355. See Dun. Dig. 3906(84).

A judgment creditor who claims his debtor has made a transfer of corporate stock in fraud of creditors may disregard the transfer and levy upon the property by execution and leave the issue of fraudulent transfer to be later determined. *Id.* See Dun. Dig. 3906.

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.

The rule under New Jersey statute that a suit to recover payment made in fraud of creditors may be maintained only by a judgment creditor applied by analogy to a statute providing for a lien on an insurance policy up to the amount of premiums paid by insured when insolvent. *Cohen v. Metropolitan Life Ins. Co.*, 129NJ289, 19Atl(2d)332.

Mortgagee did not have right to attack conveyance from mortgagor as fraudulent before having a lien on property, even though foreclosure decree showed that there was a deficiency. *Nield v. Norris*, 130NJEq53, 21Atl(2d)153.

Provision in act that a conveyance could be attacked as fraudulent before complainant had any lien or judgment against property conveyed was unconstitutional. *Id.*

Provision that a creditor could have a fraudulent conveyance set aside without having a judgment lien on the property, held valid. *Epstein v. Bendersky*, 130NJEq180, 21Atl(2d)815.

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.

Conveyance to wife by a joint tenant results in severance of joint tenancy, and if conveyance is in fraud of creditors husband's interest becomes subject to claims of creditors, and to sale in a proper suit by husband's administrator, where judgment is obtained against husband prior to his death, but the conveyance is valid and binding as between husband and wife, subject to prior rights of creditors. *Campbell v. Drozdowicz*, 243Wis 354, 10NW(2d)158. See Dun. Dig. 3850, 3859, 3899.

(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.*, 235Wis422, 293NW173.

(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.*, 235Wis422, 293NW173.

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.*, 235Wis422, 293NW(Wis)173.

## CHAPTER 69

### Liens for Labor and Material

#### FOR IMPROVEMENT OF REAL ESTATE

##### 8490. Mechanics, laborers and materialmen.

###### 6. Subcontractors.

Subcontractor doing plastering under contract with general contractor was not entitled to recover from general contractor for extra work required by agent of owner of the building, such agent having no authorization from general contractor to change its contractual relationship. *Warner v. A. G. Anderson, Inc.*, 213M376, 7NW(2d)7. See Dun. Dig. 6053.

###### 10%. Installations and fixtures.

Heavy heating boiler "installed" was part of real estate and lienable. *Willcox Boiler Co. v. Messier*, 211M304, 1NW(2d)130. See Dun. Dig. 6040.

Doctrine of "trade fixtures" cannot be invoked as against a claimant otherwise entitled to a lien, no rights of a tenant being involved. *Id.*

Partitions, doors, plumbing, etc. placed in structure by a tenant so as to make it usable for restaurant purposes, removal of which would cause considerable damage to physical property both as it was and even more so as changed by improvements, were properly found to be improvements, rather than "trade fixtures" or "repairs", and laborers and material men were entitled to a lien as against landlord who had knowledge thereof. *Knoff Woodwork Co. v. Zotalis*, 213M204, 6NW(2d)264. See Dun. Dig. 6040(63).

###### 15. Held not to defeat lien.

Discharge of contractor in bankruptcy does not affect lien of materialman. *Willcox Boiler Co. v. Messier*, 211M 304, 1NW(2d)130. See Dun. Dig. 749, 6067-6076.

##### 8491. Defrauding contractor on improvement of real estate; etc.

President and secretary of corporation may individually be prosecuted without bringing criminal action against corporate contractor, if they aid and abet or counsel or encourage or command or procure the commission of the crime. *Op. Atty. Gen.* (494b-10), Oct. 20, 1942.

##### 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.*, 209M373, 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.*, 199So(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.*

##### 8495. Vendors, consenting owners, etc.

###### 2. Consent implied—Notice.

Where owner of a building leased it to another for use as a restaurant and had knowledge of installation of partition, doors, plumbing, etc., his failure to give notice to laborers and material men as prescribed by this section gives rise to a presumption that improvements are deemed to have been made at his instance. *Knoff Woodwork Co. v. Zotalis*, 213M204, 6NW(2d)264. See Dun. Dig. 6035, 6036, 6037.

##### 8496. Payment to subcontractors, etc.

Construction contract providing that owner make monthly payments of 85% of cost of labor and material furnished each month by contractor entitled the contractor to only 85% of cost of labor and material actually paid for by him. *First Church of Christ, Scientist v. Lawrence*, 210M37, 297NW99. See Dun. Dig. 1847a.

##### 8497. Mechanic's lien—Filing—Contents of statement.

###### 2. Time of filing.

Evidence held sufficient to support findings as to timeliness of filing and commencing action to foreclose lien. *Steele v. Vernes*, 212M281, 3NW(2d)425. See Dun. Dig. 6087, 6100.

##### 8500. Summons, pleadings; etc.

Laws 1943, c. 134, provides that state may be made party defendant in action to quiet title, or to foreclose mortgage or other lien on real or personal property.

###### 3. Complaint.

Where claim for which a mechanics' lien is sought is but a single item, labor, no bill of particulars is necessary. *Steele v. Vernes*, 212M281, 3NW(2d)425. See Dun. Dig. 6106.

###### 7. No reply necessary.

No reply is necessary in actions to foreclose mechanic's liens. *Ylijarvi v. Brockphaler*, 213M385, 7NW(2d)314. See Dun. Dig. 6108.