

CHAPTER 513

FRAUDS

STATUTE OF FRAUDS

513.01 NO ACTION ON AGREEMENT

Waiver of benefit of future discharge. 31 MLR 491.

Suretyship and the statute of frauds. 31 MLR 633.

Broker's commission to come from buyer. 31 MLR 738.

Principal's refusal to convey under oral agreement non-actionable. 31 MLR 738.

Statute of frauds; intent to authenticate; signature. 34 MLR 277.

History of the statute of frauds. 35 MLR 1.

Parol contracts for the sale of lands when there is part performance. 35 MLR 431.

Effect of buyer's renunciation of an oral contract prior to receipt and acceptance of part of the goods. 36 MLR 293.

One may admit the making of an oral contract for the transfer of land without losing the benefit of the statute of frauds where it is asserted and insisted upon in defense to an action for specific performance. *Holste v Baker*, 223 M 321, 26 NW(2) 473.

Plaintiff's testate upon solicitation by defendants sold corporate stock and received therefor defendant's note for \$3,575 and 6 weeks later received from defendants a letter authorizing plaintiff to withdraw against the note amounts up to \$500 at any time. The evidence is sufficient to support a finding that the letter constituted a guarantee of payment of the note and was delivered as a part of the original transaction in which plaintiff's testate delivered certain stocks and received a note in exchange. The letter constituted a "guarantee" notwithstanding that no consideration was mentioned therein. The statute of limitations does not commence to run on a guarantee until the debt is due and payable. *Nelson v Hacking*, 225 M 125, 29 NW(2d) 889.

A judgment is entitled under the federal constitution to the same, but no more, faith and credit in the state other than the one wherein it was rendered as it is entitled to in the state of its rendition; and equitable relief may be granted against the decree of the probate court of a sister state distributing plaintiff's share of the estate of the decedent to the proponent-executor of the decedent's will and to others as residuary legatees where the decree was obtained by the proponent executive by concealing from the court a violation of his statutory duty, plaintiff's existence and his right to take under the will; and concealing from the plaintiff the pendency of the probate proceedings; and this notwithstanding the fact that the estate has been distributed. *Anderson v Lyons*, 226 M 330, 32 NW(2d) 849.

One repudiating a release for duress is not required in order to void it to tender to the party released money other than the consideration for the release which he received upon its execution. A threat to bring an action, not to recover upon a just claim, but for the purpose of inflicting hardship and oppression upon the person threatened, which overcomes his free will, constitutes duress. *Wise v Midtown Motors*, 231 M 46, 42 NW(2d) 404.

An employer who repudiates as void under the statute of frauds an oral contract for the rendition of services is not entitled, in an action by the employer, to recover upon quantum meruit for services rendered, to have the measure of re-

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covery determined by the void contract. *Wise v Midtown Motors*, 231 M 46, 42 NW(2d) 404.

Instructions unobjected to become the law of the case, and for the purposes of an appeal, must be taken as the law of the case, unless the record shows conclusively that the party recovering is not entitled to recover under any view of the law. A contract for one year's services, commencing on the date of the contract, is not within the statute of frauds. An oral contract for the performance of services for a term of one year to begin in the future, is within the statute of frauds. Where the terms of a contract are reaffirmed on the date when the services are to begin and extend for one year from that date, the contract is not within the statute of frauds. Oral contracts which are within this section are not void in the strict sense that no contract ever comes into being, but are unenforceable at the option of the party against whom enforcement is sought. The statute of frauds may be raised by a general denial. The defense is personal to the party to be charged and his privies, and it may be waived.

Where it appears from the face of the complaint that the contract is within the statute of frauds, defendant must either demur to the complaint or assert the defense by general denial or by specifically pleading the statute, and in such case there is a waiver if he fails to object to the admission of oral evidence to prove the contract. It is too late to raise the objection after a verdict by a jury or on motion for a new trial. An objection that the contract was within the statute may not be raised for the first time on appeal. *Borchardt v Kulick*, 234 M 308, 48 NW(2d) 318.

Upon demurrer to counterclaim for damages arising out of a breach of an oral contract, the allegation reciting transfer and receipt of crop share examined and held to constitute sufficient allegation of consideration. The statute of frauds is not applicable where the written contract has been executed, and an oral agreement is itself a complete contract fully performed on one side which, standing alone, is not required to be in writing. *Wojahn v Faul*, 235 M 397, 51 NW(2d) 97.

Where a husband as part of property settlement agreement entered into after the commencement of a divorce action by wife agreed to pay the wife \$10,000 after sale of the business, such agreement, though oral, was enforceable. *Smith v Smith*, 235 M 412, 51 NW(2d) 276.

In cases brought under the Federal Employee's Liability Act, plaintiff's choice of a forum cannot be defeated by doctrine of "forum non conveniens." In the instant case the evidence established that the contract by which the injured employee, in consideration of advancement by the company, agreed not to sue the railroad except within the state where the injuries occurred, was void as obtained by fraud. *Porter v Fleming*, 74 F Supp 378.

Where the city of Tracy by resolution accepted an offer for a lease of airport land for a farm and the city attorney drew a lease containing the terms of the acceptance by the city and the lease was signed by the operating farmer but not signed on the part of the city, the written minutes of the meeting authorizing the acceptance is sufficient to take the contract out of the operation of the statute of frauds; but as the minutes did not state the consideration the contract of leasing is voidable except that the farmer under his lease had taken possession and plowed and completely prepared the ground for putting in a crop and it is a question of fact as to whether or not the contract may be taken out of the statute of frauds by such part performance of the contract by the lessee. OAG Aug. 20, 1949 (234-B).

513.02 Repealed, 1949 c 280 s 1.

513.03 GRANTS OF TRUST, WHEN VOID

HISTORY. RS 1851 c 64 s 2; PS 1858 c 51 s 2; GS 1866 c 41 s 9; GS 1878 c 41 s 9; GS 1894 s 4212; RL 1905 s 3486; GS 1913 s 7001.

513.04 CONVEYANCE OF ESTATE OR INTEREST IN LAND; CERTAIN LEASES EXCEPTED

Performance of an oral contract to devise land. 31 MLR 496.

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Statute of frauds; intent to authenticate; signature. 34 MLR 277.

Parol contracts for the sale of lands, effect of part performance. 35 MLR 431.

Vendor, by admitting the making of the oral contract did not thereby lose the benefit of the statute of frauds, but may insist upon it as a defense to an action for specific performance. *Holste v Baker*, 223 M 321, 26 NW(2d) 473.

Taking possession by the purchaser with the assent of the vendor, acting under an oral contract, coupled with the making of improvements thereon, is sufficient to take the contract out of the statute of frauds. *Holste v Baker*, 223 M 321, 26 NW(2d) 473.

An actual parol grant of an easement is void under the statute of frauds. *Alstad v Boyer*, 228 M 307, 37 NW(2d) 372.

He who purchases a lot with reference to a plat is deemed to have thereby purchased as appurtenant to the lot all advantages, privileges, rights, and easements which the plat represents as belonging to the lot and as belonging to the owner thereof as a resident of the platted area and this principle is applicable not merely to roads and streets on which the purchased lot abuts, but to all roads and streets of advantage or utility to the platted area as a whole. *Bryant v Gustafson*, 230 M 1, 40 NW(2d) 429.

In an action for reformation of a contract for sale of land to plaintiff and specific performance of the contract as reformed causes of action alleging the agreement immediately before the written contract was executed that the vendor reserved the right to cut and remove certain white oak trees and that the parties' real intention was to reserve to the vendor only twelve such trees was insufficient as amounting simply to an aversion of a right to recover not on the written contract but on a prior contemporaneous utterance at variance therewith. Equity will not reform a written contract, in the absence of mutual mistake by the parties or mistake by one of them and fraud or inequitable conduct of the other, unilateral mistake alone being insufficient. *Karger v Wangerin*, 230 M 110, 40 NW(2d) 846.

An oral contract to devise real estate is within the statute of frauds and is void unless removed from its purview by sufficient part performance of a nature entitling plaintiffs to specific performance. *Goette v Howe*, 232 M 168, 44 NW(2d) 734.

An option is an agreement by which one binds himself to perform a certain act, usually to convey property, for a stipulated price within a designated time, leaving it to the discretion of the person to whom the option is given to accept upon the terms specified. An offer not supported by a consideration may be revoked before acceptance, even though it expressly gives an offeree a definite time in which to accept. *Johnson v Fitzke*, 234 M 216, 48 NW(2d) 37.

The doctrine of part performance sufficient to take an oral contract out of the statute of frauds may rest either on the fraud theory or the unequivocal reference theory; where the plaintiff has failed to bring his cash within the confines of either of these theories, specific performance of the oral contract is denied. *Burke v Fine*, 236 M 52, 51 NW(2d) 818.

An oral contract for the transfer of an interest in land, whether by conveyance or by will, may be removed from the purview of the statute of frauds on either the unequivocal reference theory or on the fraud theory of part performance. *Ehmke v Hill*, 236 M 60, 51 NW(2d) 811.

The trial court's findings that no contribution toward the purchase price of the realty by any member of the family other than the holder of the legal title had been established sustained the judgment refusing to impress a trust on realty for the benefit of the title holder and his relatives on the theory that the realty had been purchased by members of the family as a joint enterprise. *Georgapolis v George*, 237 M 176, 54 NW(2d) 137.

Where there is no evidence of the market value of what plaintiffs would have received if defendants' representation had been true, the price agreed upon is strong evidence of the value as represented and is sufficient to support a verdict. *Marion v Miller*, 237 M 306, 55 NW(2d) 52.

In a real estate transaction, defendants may be held liable for fraud upon a showing that a false representation of a past or existing material fact, within their own knowledge or susceptible of knowledge was made by the defendants with the knowledge of the falsity thereof and with intent to induce the person to whom it is made to act in reliance upon it, if plaintiffs did not rely by acting to their damage. *Marion v Miller*, 237 M 306, 55 NW(2d) 52.

The specific performance of an oral contract to give or devise is not a matter of right but rests in the sound discretion of the trial court. The contract must be definite as to its terms, and satisfactory proof thereof must be submitted by plaintiff before specific performance will be decreed.

Where oral contract to devise was contingent upon plaintiff's remaining with decedent and operating the latter's farm throughout his lifetime, and where plaintiff failed in the performance of the conditions thus imposed upon him, the trial court's findings to effect that plaintiff's failure to perform such conditions terminated the agreement and relieved decedent of his obligations thereunder sustained by evidence. *Zuelch v Droege*, M, 56 NW(2d) 651.

An alleged oral contract under which a decedent agreed to leave his property to a specified person was within the statute of frauds and void unless removed from the effects of the statute by sufficient part performance entitling plaintiff to specific performance. *Als Dorf v Svoboda*, M, 57 NW(2d) 824.

Specific performance of a contract may be refused if the consideration is grossly inadequate, its terms unfair, or if its enforcement will cause unreasonable or disproportionate hardship or less to defendant or third persons or if it was induced by sharp practice, misrepresentation, or mistake. *Als Dorf v Svoboda*, M, 57 NW(2d) 824.

Where the city of Tracy by resolution accepted an offer for a lease of airport land for a farm and the city attorney drew a lease containing the terms of the acceptance by the city and the lease was signed by the operating farmer but not signed on the part of the city, the written minutes of the meeting authorizing the acceptance is sufficient to take the contract out of the operation of the statute of frauds; but as the minutes did not state the consideration the contract of leasing is voidable except that the farmer under his lease had taken possession and plowed and completely prepared the ground for putting in a crop and it is a question of fact as to whether or not the contract may be taken out of the statute of frauds by such past performance of the contract by the lessee. OAG Aug. 20, 1949 (234-B).

513.05 LEASES; CONTRACTS FOR SALE OF LANDS

Statute of frauds; intent to authenticate; signature. 34 MLR 277.

Oral contract to convey land. 31 MLR 497.

Broker's commission to come from buyer, principal's refusal to convey under an oral agreement is nonactionable. 31 MLR 738.

Where the owner's one-third interest in land, as evidenced by contract to repurchase from the state, was condemned for the benefit of the state university, alleged oral agreement by the university to pay taxes and balance due in the contract of repurchase, in consideration of agreement that payments be deducted from any award rendered in favor of the owner, was within the statute of frauds. *State v Barrett and Zimmerman*, 228 M 96, 36 NW(2d) 590.

In an action for reformation of a contract for sale of land to plaintiff and specific performance of the contract as reformed causes of action alleging the agreement immediately before the written contract was executed that the vendor reserved the right to cut and remove certain white oak trees and that the parties' real intention was to reserve to the vendor only twelve such trees was insufficient as amounting simply to an aversion of a right to recover not on the written contract but on a prior contemporaneous utterance at variance therewith. Equity will not reform a written contract, in the absence of mutual mistake by the parties or mistake by one of them and fraud or inequitable conduct of the other, unilateral mistake alone being insufficient. *Karger v Wangerin*, 230 M 110, 40 NW(2d) 846.

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Although the Minneapolis municipal court has jurisdiction over actions of forcible entry and unlawful detainer, whether involving title to realty or not, such jurisdiction does not embrace the power to entertain or consider a defense which is insufficient per se and which could be asserted only with the aid of affirmative equitable relief. An unlawful detainer action merely determines the right to present possession and does not adjudicate the ultimate legal or equitable rights of ownership possessed by the parties. *Gallagher v Moffett*, 233 M 230, 46 NW(2d) 792.

Where the city of Tracy by resolution accepted an offer for a lease of airport land for a farm and the city attorney drew a lease containing the terms of the acceptance by the city and the lease was signed by the operating farmer but not signed on the part of the city, the written minutes of the meeting authorizing the acceptance is sufficient to take the contract out of the operation of the statute of frauds; but as the minutes did not state the consideration the contract of leasing is voidable except that the farmer under his lease had taken possession and plowed and completely prepared the ground for putting in a crop and its is a question of fact as to whether or not the contract may be taken out of the statute of frauds by such past performance of the contract by the lessee. OAG Aug. 20, 1949 (234-B).

513.06 SPECIFIC PERFORMANCE

The effect of a buyer's renunciation of an oral contract prior to the receipt and acceptance of part of the goods on the enforceability of the contract under the statute of frauds. 36 MLR 293.

Statute of frauds; acceptance and receipt. 37 MLR 459.

The law of the place of contracting determines the validity and effect of a promise with respect to fraud, illegality, or any other circumstances which may make it void or voidable; the law of the place of performance of a contract applies only to questions relating to the manner, time, location and sufficiency of the performance. This rule applies to the seller of a secret process or of an employee to whom it has been disclosed, not to disclose such secret or make use thereof. *Larx v Nicol*, 225 M 1, 28 NW(2d) 705.

In a suit for specific performance of an oral contract to make a will disposing of property or to adopt a child, the contract must be proved by clear, positive, and convincing evidence and it must be definite and certain in its terms. The burden is upon the plaintiff to show by full and satisfactory proof the fact of the contract and its terms before specific performance may be granted. In the instant case the evidence was insufficient to sustain the finding of the trial court that such an agreement was made. *McCarty v Nelson*, 233 M 362, 47 NW(2d) 595.

Defendants in an unlawful detainer action could not assert that pursuant to an oral agreement they entered into possession of the premises and thereafter faithfully performed their part of the agreement by rendering services of a nature not compensable in money, since an equitable defense was not available to the defendants in the Minneapolis municipal court. *Gallagher v Moffett*, 233 M 330, 46 NW(2d) 792.

The complaint alleging that a physically handicapped woman had promised to convey or devise to plaintiff a home and income property in consideration of plaintiff's agreement to care for the promisor as a daughter during the remainder of her life and that the promisor had subsequently purchased specified realty and designated it as the property to be devised or conveyed to the plaintiff and that the plaintiff had given the promisor filial devotion, companionship, and affectionate care and acted in all respects as a daughter would have done, stated a cause of action for specific performance of an oral contract. *O'Brien v Demeules*, 234 M 133, 47 NW(2d) 772.

An option is an agreement by which one binds himself to perform a certain act, usually to convey property, for a stipulated price within a designated time, leaving it to the discretion of the person to whom the option is given to accept upon the terms specified. An offer not supported by a consideration may be revoked before acceptance, even though it expressly gives an offeree a definite time in which to accept. *Johnson v Fitzke*, 234 M 216, 48 NW(2d) 37.

In a suit for specific performance of an option to purchase realty, where defendant alleged cancelation of the option through a contract to build, construction of the building by the defendant was such performance as would take the contract out of the operation of the statute of frauds. *Knaus Truck Lines, Inc. v Donaldson*, 235 M 328, 51 NW(2d) 99.

Where a plaintiff shows that his acts of part performance in reliance upon an alleged oral contract to convey land have so altered his position that he will incur unjust and irreparable injury in the event defendant is permitted to rely on the statute of frauds, equity requires that the contract be specifically enforced. *Burk v Fine*, 236 M 52, 51 NW(2d) 818.

Where the promisee, in reliance on the promisor's oral agreement to devise land to the promisee, operated the farm for the promisor and maintained close personal relationship with the promisor and assisted him with his business affairs and personal errands, the promisee was entitled to specific performance after promisor died without devising the land of the promisee, in view of the fact that the promisee's services were not subject to pecuniary evaluation. *Ehmke v Hill*, 236 M 60, 51 NW(2d) 811.

In a suit by a stockholder against a corporation for specific performance of a contract entered into by the corporation and the stockholder for repurchase by the corporation, on opposition by the stockholder, of the stock for a sum of money per share equal to twelve months "net earnings" per share of stock for preceding twelve months, the evidence sustained the finding of the mistake that "net earnings" meant "net profits." *Sanitary Farm Dairies v Gammel*, 195 F(2d) 106.

CONVEYANCES FRAUDULENT AS TO PURCHASER

513.09 WITH POWER OF REVOCATION, DETERMINATION OR ALTERATION; WHEN VOID

In the absence of a settled case or bill of exceptions, it is presumed that the orders of the trial court are regular and that its orders are sustained by the trial proceedings. An order of the district court, where it has jurisdiction of the person and subject matter, is conclusive unless set aside upon review by the appellate court. If such order is not reviewed, but is acquiesced in by the parties, it is to be treated as the law of the case and is final.

Where a new trial is granted as to all issues, the former trial is wiped out and the parties are in the same position as if there had been no trial. As to damages alone, the remainder of the decision stands and is as conclusive, in the absence of an appeal, as any other decision from which there is no appeal. On an appeal from a judgment after a new trial on the question of damages alone, we may review any intermediate orders involving the merits or necessarily affecting the judgment. We may not review intermediate orders, but such appeal brings up for review only those matters involved in the order.

Where the trial court determines the question of liability and grants a new trial on the issue of damages only, the court's determination of liability is conclusive in the absence of an appeal therefrom. Where evidence was admitted on an erroneous theory respecting the measure of damages, and later evidence was submitted on the proper theory and the case was submitted to the jury on the correct theory, the error was without prejudice. The mere fact that the verdict in each of two cases tried together was in the same amount does not compel a finding that they were based on passion and prejudice where each verdict was sustained by the evidence. *Zywiec v So. St. Paul*, 234 M 18, 47 NW(2d) 465.

The gist of fraud is not the failure to perform a promise, but the fraudulent intent of the promisor, at the time of making the promise, not to perform the promise.

Fraud cannot be predicated on a mere promise or agreement to perform. It must affirmatively appear that at the time the promise was made there was no intention to perform.

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Evidence was insufficient to sustain a finding that at the time the promise was made there was no intention to perform. *Wojtkowski v Peterson*, 234 M 63, 47 NW (2d) 455.

CONVEYANCES FRAUDULENT AS TO CREDITORS

NOTE: Minnesota adopted the Uniform Acts by Laws 1921, Chapter 415. Section 14 expressly repealed RL 1905, Sections 3495, 3498, and GS 1913, Sections 7010, and 7013. The following states have adopted the Act: Arizona, California, Delaware, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, Tennessee, Utah, Washington, Wisconsin, and Wyoming.

513.12 SALE OF CHATTELS WITHOUT DELIVERY, FRAUD PRESUMED

Recovery from insured of payments by the insurer to a third party beneficiary after discovery of insured's fraud. 33 MLR 426.

Right of guarantor to set aside a conveyance; fraudulent conveyance. 37 MLR 389.

The evidence supports a finding by the trial court that L, plaintiff's brother, in consideration of substituting a tenancy in common for an existing joint tenancy of the brothers in a certain property, contracted to make a will devising to plaintiff the income from L's share of the property for life and that L never performed his part of the contract. The evidence supports a finding by the trial court that the promise to make such a will was made with the intent not to fulfill that promise and that defendant, with the purpose of defrauding plaintiff of L's share in the property in controversy, participated throughout the transaction which induced plaintiff to substitute a tenancy in common for a joint tenancy. The court was justified in decreeing a rescission of all instruments executed in furtherance of the scheme to defraud. *Hafften v Kirsch*, 227 M 523, 36 NW(2d) 35.

The general rule that contracts required to be in writing under the statute of frauds cannot be modified, contradicted, or altered orally is subject to the exception that an agreement for a substituted method of performance may be shown by parol. Method for settlement of loss under insurance policy could be orally altered so as to substitute another method of settlement if mutually agreed upon between insurer and insured. Evidence examined and held insufficient to sustain finding of oral agreement to change method of settlement under policy of insurance. *Mandel v Atlas Assur. Co.*, 230 M 347, 41 NW(2d) 590.

Although a corporation should never be regarded as a fiction, and although corporate identity should never be disregarded, courts will not let interposition of corporate entity or action prevent judgment otherwise required. Where the sham nature of a corporation and its fraudulent use by another cannot be disclosed otherwise, and the party inquiring into internal affairs is one who will suffer by the fraud, rule that only creditors and shareholders have standing to inquire into internal affairs of corporation does not apply. *General Underwriters Inc. v Kline*, 233 M 345, 46 NW(2d) 794.

Where creditors of assignor of account receivable levied upon the account, and debtors gave sheriff check therefor, and thereafter the assignee brought action on the account alleging that it was due and payable, debtors could question title of assignee since presented with conflicting claims of ownership of the debt. Generally a debtor has no standing to question the validity of an assignment which is accepted as valid between the creditor and his assignee, but that rule is inapplicable where the debtor is faced with conflicting claims of ownership. *General Underwriters, Inc. v Kline*, 233 M 345, 46 NW(2d) 794.

513.14 RIGHTS OF HEIRS

A policy of insurance on the life of donor may be made the subject of a gift in the same manner as any other chose in action; but in order for the gift to be

effective all essential elements of a valid gift must be present. *Cooney v Greenwalt*, 235 M 377, 51 NW(2d) 285.

The evidence did not establish decedent's intent to give an irrevocable interest in a bank account to a person named as joint depositor, and hence decedent's revocation of the account by changing it to a joint account for herself and third party was legal and effective. *Cashman v Mason*, 166 F(2d) 693.

513.15 FRAUDULENT INTENT QUESTION OF FACT

A note and a mortgage, inferior to a loan of the Home Owners' Loan Corporation, when given in addition to bonds of the corporation, are not ipso facto void, if executed with the knowledge and consent of the corporation, but same are void when executed secretly or fraudulently exacted. *Ressen v N. W. Nat'l Bank & Trust Co.*, M, 56 NW(2d) 663.

The presumption against the validity of transfers between husband and wife disappears when overcome by all the evidence. In the instant case in an action by divorced wife against former husband's widow to subject certain property to plaintiff's claim under divorce decree on ground of fraudulent transfers, finding of the trial court that there was no fraudulent intent in creating a joint tenancy or in paying insurance premiums on policies in favor of second wife, was sustained by the evidence. *Paulling v Paulling*, 159 F(2d) 531.

Where there is no evidence of the market value of what plaintiffs would have received if defendants' representation had been true, the price agreed upon is strong evidence of the value as represented and is sufficient to support a verdict. *Marion v Miller*, 237 M 306, 55 NW(2d) 52.

In a real estate transaction, defendants may be held liable for fraud upon a showing that a false representation of a past or existing material fact, within their own knowledge or susceptible of knowledge, was made by the defendants with the knowledge of the falsity thereof and with intent to induce the person to whom it is made to act in reliance upon it, if plaintiffs did not rely by acting to their damage. *Marion v Miller*, 237 M 306, 55 NW(2d) 52.

513.16 BONA FIDE PURCHASERS

Vendor's obligation as to the fitness of land for a particular purpose. 37 MLR 108.

Whether defendant represented to plaintiff that the house which, as agent for the owner, he sold to plaintiff was modern and had city water, sewer, and gas connections and whether the representations were relied upon by plaintiff were questions of fact for the jury. Although plaintiff might, by examining the premises or by going to the proper public office, have ascertained the fact that there were no water, sewer, or gas connections to the house which he purchased, defendant cannot impute to him negligence as a defense in this action if, relying on defendant's representations, plaintiff did not deem it necessary to make such examination, following *Porter v Fletcher*, 25 M 493, and *Bonness v Felsing*, 97 M 227, 106 NW 909, 114 Am. St. Rep. 707. *Erickson v Midgarten*, 225 M 153, 31 NW(2d) 919.

A person is liable for fraud if he makes false representation of a past or existing material fact susceptible of knowledge, knowing it to be false, or as of his own knowledge without knowing whether it is true or false, with the intention to induce the person to whom it is made to act in reliance upon it, or under such circumstances that such person is justified in acting in reliance on it; and such person is thereby deceived and induced to act in reliance upon it to his pecuniary damage. A bad motive is not an essential element of fraud. An unqualified affirmation amounts to an affirmation as of one's own knowledge. A purchaser is justified in relying upon the truth of the seller although he had an opportunity to ascertain the falsity of the statement by investigation. *Spieß v Brandt*, 230 M 246, 41 NW (2d) 561.

Purchaser of legal title who wishes to avail himself of protection of the rule in favor of a bona fide purchaser, must not only raise the issue positively by ex-

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pllicit and appropriate pleadings, but must bear the affirmative burden of proving concurrence and co-existence of payment of a valuable consideration and good faith without any purpose to take an unfair advantage of third persons and absence of notice, actual or constructive, of the outstanding rights of others. *Goette v Howe*, 232 M 168, 44 NW(2d) 734.

513.18 SALE OF STOCK OF MERCHANDISE

Property transferred to a bankrupt in violation of the Bulk Sales Act; validity of transferror's creditor's judicial lien obtained on the property within four months of bankruptcy and while the bankrupt was insolvent. 35 MLR 486.

The owner and operator of a garage in selling his business and entire stock of merchandise fully complied with the provisions of section 513.18 and the purchase money from the transaction was placed in the hands of a trustee to be held until the 5-day period had expired. After the 5-day period has expired and the stock of merchandise has been delivered to the purchaser, the money held by the trustee is not subject to garnishment. If the county is a creditor having a preference then it should file a complaint in any garnishment proceeding which may be brought in which it will allege all the facts on which its claim is based and preference claimed. The arrangement set up between the seller, the buyer, and the stakeholder was a trust; the stakeholder is a trustee; the money belongs to the trustee being in trust for the purposes for which it was paid to him. It cannot be used for any other purpose and in any other way. OAG Feb. 6, 1950 (843).

513.19 CONVEYANCE

Where it is alleged that a quit claim deed was procured by overreaching, undue influence, and misrepresentation, all amounting to constructive fraud, and the evidence is conflicting, the jury and trial court finding that the deed was not procured in the manner alleged must stand unless they are manifestly and palpably against the weight of evidence. *Caskey v Lewandowski*, 233 M 334, 46 NW(2d) 865.

513.20 DEFINITION

Trust receipts as voidable preferences; 1950 amendment, section 60a. 34 MLR 469.

Right of guarantor to set aside a conveyance; fraudulent conveyance. 37 MLR 389.

513.21 INSOLVENCY DEFINED

In proceedings by trustee in bankruptcy to set aside transfers of bankrupt's property in Minnesota in alleged fraud of bankrupt's creditors, Minnesota law controlled the question whether transfers were fraudulent. In the instant case the evidence was insufficient to show that realty or personalty was conveyed by bankrupt in fraud of bankrupt's creditors by failure of bankrupt to redeem from mortgage foreclosure or by registration of Torren's certificate of title. *Sprague v Vogt*, 164 F(2d) 312.

513.22 FAIR CONSIDERATION DEFINED

A conveyance which renders the grantor insolvent is fraudulent as to creditors, regardless of the intent of the grantor, if such conveyance is made without consideration; and credits arising out of board and room furnished grantor by grantee's brother, is not fair consideration for such conveyance. *Tomason v Wagner*, 228 M 124, 36 NW(2d) 587.

513.23 CONVEYANCE BY INSOLVENT

Credits arising out of board and room furnished to grantor by grantor's brother could not constitute fair consideration for a conveyance which was attacked as fraudulent. *Tomason v Wagner*, 228 M 124, 36 NW(2d) 587.

The presumption against the validity of transfers between husband and wife disappears when overcome by all the evidence. In the instant case in an action by divorced wife against former husband's widow to subject certain property to plaintiff's claim under divorce decree on ground of fraudulent transfers, finding of the trial court that the was no fraudulent intent in creating a joint tenancy or in paying insurance premiums on policies in favor of second wife, was sustained by the evidence. *Paulling v Paulling*, 159 F(2d) 531.

513.26 CONVEYANCE MADE WITH INTENT TO DEFRAUD

HISTORY. RS 1851 c 63 s 1; RS 1851 c 64 s 1; PS 1858 c 50 s 1; PS 1858 c 51 s 1; GS 1866 c 41 s 14, 18; GS 1878 c 41 s 14, 18; GS 1894 s 4218, 4222; RL 1905 s 3495, 3498; GS 1913 s 7010, 7013; 1921 c 415 s 7.

513.28 RIGHTS OF CREDITORS WHOSE CLAIMS HAVE MATURED

The evidence supports a finding by the trial court that L, plaintiff's brother, in consideration of substituting a tenancy in common for an existing joint tenancy of the brothers in a certain property, contracted to make a will devising to plaintiff the income from L's share of the property for life and that L never performed his part of the contract. The evidence supports a finding by the trial court that the promise to make such a will was made with the intent not to fulfill that promise and that defendant, with the purpose of defrauding plaintiff of L's share in the property in controversy, participated throughout the transaction which induced plaintiff to substitute a tenancy in common for a joint tenancy. The court was justified in decreeing a rescission of all instruments executed in furtherance of the scheme to defraud. *Hafften v Kirsch*, 227 M 523, 36 NW(2d) 35.

The grantee of the homestead property acquired title to the property exempt from the claims of the grantor's creditors since the grantor could sell and convey the homestead without subjecting it to any judgment or debt from which it was exempt in the grantor's hands. The owner's authority to sell or convey the homestead without subjecting it to any judgment or debt to which it was exempt in the owner's hands was unlimited and hence such authority could not be defeated by a prior judgment creditor of the grantor to record the debt within lifetime, or within any certain time. An agreement to compromise a baseless claim lacks consideration. *Sisco v Paulson*, 232 M 250, 45 NW(2d) 385.

A note and a mortgage, inferior to a loan of the Home Owner's Loan Corporation, when given in addition to bonds of the corporation, are not ipso facto void, if executed with the knowledge and consent of the corporation, but same are void when executed secretly or fraudulently exacted. *Ressen v N.W. National Bank & Trust Co.*, M, 56 NW(2d) 663.

An action to set aside a contract to sell land on the ground that one of the contracting parties has perpetrated a fraud, is transitory in that the contract is the subject matter of the action, but an action by one who is not a party to the contract, to set aside the conveyance so that the land fraudulently conveyed may be reached by plaintiff as a creditor and applied upon a judgment, involves the determination of an estate or interest in land and is local. *Marion v Miller*, M, 58 NW(2d) 185.

513.30 CASES NOT PROVIDED FOR IN SECTIONS 513.20 TO 513.32

Validity of transferrer's creditor's judicial lien obtained on property within four months of bankruptcy and while the bankrupt was insolvent. 35 MLR 486.

513.32 Unnecessary.