1941 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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suitable index, indexed according to the name of the trustee and containing a notation of the trustee's chief place of business as given in the statement. The fee for such filing shall be one dollar.

Subd. 4. **Filing.**—Presentation for filing of the statement described in subdivision 1, and payment of the filing fee, shall constitute filing under this act, in favor of the entruster, as to any documents or goods falling within the description in the statement which are within one year from the date of such filing, or have been, within 30 days previous to such filing, the subject-matter of a trust receipt transaction between the entruster and the trustee.

Subd. 5. **May file affidavit.**—At any time before expiration of the validity of the filing, as specified in subdivision 4, a like statement, or an affidavit by the entruster alone, setting out the information required by subdivision 1, may be filed in like manner as the original filing. Any filing of such further statement or affidavit shall be valid in like manner and for like period as an original filing, and shall also continue the rank of the entruster's existing security interest as against all junior interests. It shall be the duty of the filing officer to mark, file and index the further statement or affidavit in like manner as the original. (Act Apr. 13, 1943, c. 433, §13.)
[515.13]

8375-14. Entrusters security interest.—As against purchasers and creditors, the entruster's security interest may extend to any obligation for which the goods, documents or instruments were security before the trust receipt transaction, and to any new value given or agreed to be given as a part of such transaction; but not, otherwise, to secure past indebtedness of the trustee; nor shall the obligation secured under any trust receipt transaction extend to obligations of the trustee to be subsequently created. (Act Apr. 13, 1943, c. 433, §14.)
[515.14]

8375-15. Application of act.—This act shall not apply to single transactions of legal or equitable pledge, not constituting a course of business, whether such transactions be unaccompanied by delivery of possession, or involve constructive delivery, or delivery and redelivery, actual or constructive, so far as such transactions involve only an entruster who is an individual natural person, and a trustee entrusted as a fiduciary with handling investments or finances of the entruster; nor shall it apply to transactions of bailment or consignment in which the title of the bailor or consignor is not retained to secure an indebtedness to him of the bailee or consignee. (Act Apr. 13, 1943, c. 433, §15.)
[515.15]

8375-16. Entruster not to come under two acts.—As to any transaction falling within the provisions both of this act and of any other act requiring filing or recording, the entruster shall not be required to comply with both, but by complying with the provisions of either at his election may have the protection given by the act complied with; except that buyers in the ordinary course of trade as described in subdivision 2 of Section 9, and lienors as described in Section 11, shall be protected as therein provided, although the compliance of the entruster be with the filing or recording requirements of another act. (Act Apr. 13, 1943, c. 433, §16.)
[515.16]

8375-17. Rules of law and equity to apply.—In any case not provided for in this act the rules of law and equity, including the law merchant, shall continue to apply to trust receipt transactions and purported pledge transactions not accompanied by delivery of possession. (Act Apr. 13, 1943, c. 433, §17.)
[515.17]

8375-18. Interpretation and construction of act.—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it. (Act Apr. 13, 1943, c. 433, §18.)

8375-19. May be cited as Uniform Trust Receipts act.—This act may be cited as the Uniform Trust Receipts Act. (Act Apr. 13, 1943, c. 433, §19.)
[515.18]

CHAPTER 67A

Sale of Goods

PART I

FORMATION OF THE CONTRACT

8376. Contracts to sell and sales.

Adopted by Arkansas and Colorado, 1941.

Interstate character of a sale, made on a contract for purchase of goods which are to be shipped from another state, is not affected by fact that goods are consigned to shipper or his agent to whom order is given and are to be delivered by such agent, nor by employment of another agent or agency for delivery of goods purchased or by fact that goods ordered by several purchasers are shipped in bulk to agent and are delivered by agent to respective purchasers after breaking bulk. City of Waseca v. B., 206M154, 288NW229. See Dun. Dig. 4894.

In action for breach of contract by one who traded in a car against dealer who agreed to sell new car on conditional sales contract, wherein contract was made on basis of $200.00 balance owing finance company on old car instead of $438.00, evidence held to sustain finding of unilateral mistake on part of dealer which was well known to the plaintiff, warranting reformation. Rigby v. N., 208M88, 292NW751. See Dun. Dig. 8329.

Where one person takes an order for goods under circumstances creating a present contract to sell according to which payment and delivery are concurrent conditions, right to payment is assignable. Dworsky v. Unger Furniture Co., 212M244, 3NW(2d)393. See Dun. Dig. 569, 8509c.

Where plaintiff entered into contract for a term of three years to purchase from defendant and resell certain petroleum products and after contract had been in force a few months it was modified so that thereafter plaintiff was entitled to certain concessions which would lower price of goods purchased from defendant and such concessions were made and enjoyed by plaintiff but not in as large an amount as was promised, modification was not enforceable in absence of showing of consideration for new promise on part of defendant, and though so far as concessions were actually made by defendant and enjoyed by plaintiff they are controlling, they do not prove element of consideration necessary to make new and modified agreement enforceable as a contract so far as it remains unexecuted. Johnson v. Northern Oil Co., 212M249, 4NW(2d)82. See Dun. Dig. 8509i.

Common understanding of the word "sale" is that of the contractual relationship between the buyer and seller. There must be a meeting of the minds. There must be an offer and an acceptance expressed or implied. Until an offer is accepted, the negotiations remain open, and there is no obligation upon either party. There must be a clear accession on both sides to one and the same set of terms. State v. Flach, 213M353, 6NW(2d)805. See Dun. Dig. 8499.

FORMALITIES OF THE CONTRACT

8379. Statute of frauds.

1. In general.

Despite fact that conditional sales contract may have been within statute of frauds and therefore required to be in writing, time for performance could be extended by an oral agreement entered into at a time subsequent to reduction of contract to writing. Hafiz v. M., 206M76, 287 NW677. See Dun. Dig. 8855.

Custom or previous conduct of parties could estop buyer from withdrawing in the absence of acceptance of some of goods, part payment or earnest money, or a written memorandum of the agreement. Coastwise Petroleum Co. v. Standard Oil Co., 179Md337, 19Atl(2d)180.

Oral agreements enforced by estoppel. Albachten v. Bradley, 212M359, 3NW(2d)783. See Dun. Dig. 8870.

4. The memorandum.
Where holder of preferred stock requested corporation orally to redeem, a letter written by the corporation acknowledging the request and agreeing to purchase the stock on a specified future date on presentation, not stating any price and not being signed by stockholder was not such a writing as statute requires. Peterson v. New England Furniture & Carpet Co., 210M449, 299NW 208. See Dun. Dig. 8873.

5. Contracts held within the statute.
A sale or purchase of preferred shares of stock of a corporation comes within statute. Peterson v. New England Furniture & Carpet Co., 210M449, 299NW208. See Dun. Dig. 8870.

6. Contracts held not within the statute.
Employer wishing to sell stock to employees, transferred a block of stock to an investment banker, and latter made sale to plaintiff employee, verbally agreeing with employee to repurchase the stock in case employment was terminated, held that repurchase agreement was the undertaking of the banker, and not of the employer, and the sale and agreement to repurchase was a single transaction, the partial performance of which took it out of the statute of frauds. Hassey v. A., 28NE (2d)164, 306IllApp37.

CONDITIONS AND WARRANTIES

8387. Definition of express warranty.

Evidence held not to show any failure of title within guaranty in bill of sale of an oil station. Eckberg v. T., 207M433, 292NW19. See Dun. Dig. 8556.

An instruction that warranties, like other contracts, are either express or implied, and if they are express they are reduced to writing, and where there is an express warranty as to the quality and so forth it is in writing, overlooked definition of express warranty in this section. Reliance Engineers Co. v. Flaherty, 211M233, 300 NW603. See Dun. Dig. 8546.

Vendor who sold mascara with warranty on container and on attached card that product was harmless, assumed responsibility for such warranty and was liable for breach thereof where injuries resulted to customer's eye from use of such product. Beckett v. F., 28NE(2d) (Ill)804.

A mere representation, unaccompanied by any of the promissory features necessary under the old law, is a warranty under the Uniform Sales Act. Valley Refrigeration Co. v. Lange Co., 242Wis466, 8NW(2d)294. See Dun. Dig. 8546.

Liability of manufacturer to sub-purchaser for breach of express warranty. 25MinnLawRev83.

8389. Implied warranty in sale by description.

Where goods were purchased with forged check and then resold to innocent vendee, original owner could recover goods or their value from vendee. Cowan v. Thompson, 152SW(2d)(Tenn)1036.

8390. Implied warranties of quality.

Definitions by Iowa Supreme Court of "merchantable quality" and "particular purpose" as used in Iowa Uniform Sales Law held controlling in federal court action in determining existence of implied warranties. Giant Mfg. Co. v. Y., (CCA8), 111F(2d)360.

Where contract of sale of a used tractor was that buyer should take the tractor "as it is," any question of warranty must be ruled out, but there can be a cause of action for fraud. Goldfine v. J., 208M449, 294NW459. See Dun. Dig. 8572, 8612.

Seller was not bound by implied warranty of fitness for purpose where contract, prepared by purchaser, indicated that purchaser did not rely upon seller's skill or judgment, but rather upon definite specifications, requirements, and provisions set forth in contract. De Witt v. Itasca-Mantrap Co-op. Electrical Ass'n, 215M551, 10NW (2d)715. See Dun. Dig. 8576.

Implied warranties are not in effect where a contract expressly negatives warranties of any kind. O. S. Stapley Co. v. N., 110Pac(2d)(Ariz)547.

Parties to a written contract of sale may exclude and negative implied warranties arising and otherwise available, but a provision in a conditional sales contract to effect that no implied warranty shall limit or qualify "the terms of this contract" neither negatives nor waives implied warranties except as to specific terms of contract and is not a bar to an action for damages for breach of implied warranties. Deere & Webber Co. v. Moch, 71ND649, 3NW(2d)471.

Uniform Sales Act applies to 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. 8572.

Evidence concerning an implied warranty is not in violation of parol evidence rule because the warranty is created by law and not by parties' agreement, and an implied warranty could only be negatived by inconsistent express warranty or condition in the written contract of sale. Valley Refrigeration Co. v. Lange Co., 242Wis466, 8NW(2d)294. See Dun. Dig. 3387, 8572, 8582.

Where contract itself contains a disclaimer of any warranties other than those specifically set forth in the writing or a statement that the writing contains the entire contract between the parties, oral warranties based on representations made during the negotiations may not, in the absence of fraud, be admitted, and even implied warranties are excluded. Id. See Dun. Dig. 8570, 8582.

(1).
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. Juvland v. Wood Bros. Thresher Co., 212M310, 3NW(2d)772. See Dun. Dig. 8626.

On issue of defendant's waiver of provision for three-day notice of claimed breach of implied warranty of fitness for the purpose, instruction requiring actual notice to defendant of some defect in machine as an element of waiver held erroneous as unduly restricting scope of warranty. Id. See Dun. Dig. 8582a.

In action based upon breach of an implied warranty of fitness of a corn picker for the purpose, instruction that "the question is whether or not this machine operated as such machines do and should as they are constructed, or were constructed at that time" was erroneous. Id. See Dun. Dig. 8576.

Article purchased does not have to be perfect or the best of its kind, but it must be reasonably suited or fitted to purpose for which it is sold. Id. See Dun. Dig. 8576.

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. 8582a.

In an action to recover damages for breach of an implied warranty of fitness for the purpose, insurance coverage of plaintiff, under which he has been partially paid for his loss, will not relieve the defendant of liability for his wrong. Id. See Dun. Dig. 8624.

In action against seller of oil heating unit for damages from explosions and smoke damage in house, evidence held to sustain finding of jury that damage was caused by defective heating unit, and not by faulty installation. Id. See Dun. Dig. 8627.

(2).
The implied warranty of merchantable quality. 27Minn LawRev117.

(3).
Contract for sale of old engine to be dismantled and installed on buyer's premises, to be there tested and buyer to give receipt for delivery at end of three day test, held to negative implied warranty of quality. Chiquita Min. Co. v. F., 104Pac(2d)(Nev)191.

(4).
The rule announced in subdivision (4) of this section is modified by the first subdivision declaring that where an article is sold for particular purpose and the buyer relies on the seller's judgment there is an implied warranty, though the article has a distinctive trade name. Ralston Purina Co. v. N., (CCA8), 111F(2d)631.

PART II

TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

8393. Property in specific goods passes when parties so intend.

E. Albrecht & Son v. L., (DC-Minn), 27FSupp65. Rev'd on other grounds, (CCA8), 114F(2d)202.

Change of ownership to carrier of coal in interstate shipments so as to terminate the interstate character of the shipment as affecting liability under Federal Employers' Liability Act for injuries to employee, held dependent upon contract for transference of title embracing an unqualified acceptance of an offer as required by the Uniform Sales Act. Reading Co. v. L., (CCA3), 114F (2d)416, aff'g (DC-Pa), 28FSupp292. Cert. den., 61SCR 175.

Under a written memorandum relating to an entire flock of turkeys confirming sale of "about" 100 head of number 1 hen turkeys at a certain price per pound, and "about" 600 head number 1 tom turkeys at a certain rate per pound, number 2's to be 3c less in each case, and removal to be made on a certain date, title passed to buyer at once and buyer must stand loss of turkeys in a storm occurring before date limited for removal. Radloff v. Bragmus, 214M130, 7NW(2d)491. See Dun. Dig. 8511, 8515b.

In a contract of sale, if delivery is made by carrier, place of shipment is ordinarily deemed the place of delivery, unless a contrary intent appears. Olsen v. McMaken & Pentzien, 139Neb506, 297NW830.

The intention referred to in this section is one of fact, and such intent is manifest where the price is paid and the seller has executed a bill of sale to the buyer. Sandford v. N., 13Atl(2d)(NH)723.

Where nonresident alien individual engaged in exporting rugs from Turkey to United States for sale here through resident commission merchant, sales took place in this country. Chimchirian v. C., 42BTA1437. Aff'd 75 USAppDC258, 125F(2d)746.

8394. Rules for ascertaining intention.

E. Albrecht & Son v. L., (DC-Minn), 27FSupp65. Rev'd on other grounds, (CCA8), 114F(2d)202.

Rule 1 is a restatement of rule at common law that title may pass between parties to a sale although possession is retained by seller but rule is not applicable when rights of seller's creditors are involved and does not change rule that if seller remains in possession of goods, sale is fraudulent as to creditors of seller without notice of the sale. Enterprise Foundry Co., (DC-Ill), 37FSupp 745.

Under a written memorandum relating to an entire flock of turkeys confirming sale of "about" 100 head of number 1 hen turkeys at a certain price per pound, and "about" 600 head number 1 tom turkeys at a certain rate per pound, number 2's to be 3c less in each case, and removal to be made on a certain date, title passed to buyer at once and buyer must stand loss of turkeys in a storm occurring before date limited for removal. Radloff v. Bragmus, 214M130, 7NW(2d)491. See Dun. Dig. 8511, 8515b.

The presumption that where a shipper has delivered goods to the carrier for transportation to the buyer he has unconditionally appropriated the goods to the contract does not apply where there is no evidence of a contract of sale. American Garment Co. v. Taylor, 308Mass 527, 33NE(2d)296.

Where goods are delivered to buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with contract, and what constitutes reasonable opportunity depends upon facts in each case, and generally when articles are sent to a buyer at a distant point such opportunity does not ordinarily exist at point of loading. Olsen v. McMaken & Pentzien, 139Neb506, 297NW830.

Rule 3(1).

Where defendant contracted to deliver 30,000 tons of crushed rock, more or less, on a WPA project, and ordered one-third of crushed rock from plaintiff, and later plaintiff requested privilege of shipping a second and third cargo by ship under an agreement that defendant could not be billed for either second or third cargo before 75 per cent of former cargoes were taken by WPA and that defendant could not use any of the stone for sale on any other project, transaction fell midway between an absolute and conditioinal sale and constituted a sale with privilege of return, and not a bailment, and defendant must stand loss and damage resulting from cave-in of pier where stone was unloaded. Thunder Bay Quarries Co. v. Pollard, 301Mich388, 3NW(2d)316.

8397. Risk of loss.

(a).

Where defendant contracted to deliver 30,000 tons of crushed rock, more or less, on a WPA project, and ordered one-third of crushed rock from plaintiff, and later plaintiff requested privilege of shipping a second and third cargo by ship under an agreement that defendant could not be billed for either second or third cargo before 75 per cent of former cargoes were taken by WPA and that defendant could not use any of the stone for sale on any other project, transaction fell midway between an absolute and conditional sale and constituted a sale wiith privilege of return, and not a bailment, and defendant must stand loss and damage resulting from cave-in of pier where stone was unloaded. Thunder Bay Quarries Co. v. Pollard, 301Mich388, 3NW(2d)316.

TRANSFER OF TITLE

8398. Sale by a person not the owner.

Where an owner of property who transfers it is induced to do so by the fraud, duress, or undue influence of the transferee, transferee holds property upon a constructive trust for the transferor, and that trust includes proceeds of the property. Blumberg v. Taggart, 213M39, 5NW(2d)388. See Dun. Dig. 8511.

Where a constructive trust of embezzled funds comes into being for protection of an injured party, it is not cut off by any transfer of the property or of other property substituted for it until such property reaches the hands of a bona fide purchaser for value. Blumberg v. Taggart, 213M39, 5NW(2d)388. See Dun. Dig. 8594a.

8399. Sale by one having a voidable title.

A constructive trust which arises from obtaining of title to chattels by fraud is cut off by a 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. 8596.

8400. Sale by seller in possession of goods already sold.

Fraudulent conveyances of chattels—chattel mortgages —sales—conditional sales. 24MinnLawRev832.

PART III

PERFORMANCE OF THE CONTRACT

8415. Seller must deliver and buyer accept goods.

½. In general.

Where a contract for the purchase of building materials called for its delivery at a certain place, the contract was executory until delivery was made. McPhillips Mfg. Co. v. Curry, 2So(2d)(Ala)600.

Unambiguous written conditional sales contract for the sale of an automobile could not be rescinded by the vendee on account of the failure of vendor to furnish a certificate of title, where the car had been delivered and accepted. Smith v. Rust, 310 IllApp 47, 33NE(2d)723.

Where purchaser of a new truck agreed to trade in an old one, but under the agreement, things remained to be done to put the old one in a deliverable state, duty and expense of making delivery remained with purchaser. Miles v. Pound Motor Co., 10Wash(2d)492, 117 Pac(2d)179.

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

One who supplies an instrumentality which is dangerous if defective must respond to those injured if he negligently furnishes one that is unsafe or capable of becoming so within a short period of normal use. Peterson v. M., 207M387, 291NW705. See Dun. Dig. 6995.

A retail dealer of automobiles who undertakes to repair and recondition them owes a duty to public and purchaser to use reasonable care in making of tests for purpose of detecting defects. McLeod v. H., 208M473, 294 NW479. See Dun. Dig. 8576.

One who shares in gratuitous use of a chattel by consent of a bailee or donee stands in no better position than bailee or donee with respect to his rights against bailor or donor for injuries suffered from defects. Ruth v. H., 209M248, 296NW136. See Dun. Dig. 6995.

In actions to recover damages for injuries caused by eating impure food products allegedly purchased at bakery, ownership of bakery held for jury. Shindelus v. Sevcik, 211M432, 1NW(2d)399. See Dun. Dig. 3782.

Insurance coverage of the plaintiff has no effect on the liability of a defendant for a tort. Donohue v. Acme Heating Sheet Metal & Roofing Co., 214M424, 8NW (2d)618. See Dun. Dig. 2570b.

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. Id. See Dun. Dig. 8618.

One not the owner but holding himself out as the owner of a bakery may be held liable for damages for injuries caused from eating impure food products purchased at such bakery. Cermak v. Sevcik, 215M203, 9NW(2d)508. See Dun. Dig. 3782.

In action to recover damages for injuries caused from eating impure food products purchased at a bakery, evidence warranted finding that defendant held himself out as the owner of the bakery and that plaintiff and his wife relied upon such apparent ownership in making purchases. Id.

In an action to recover damages for injuries caused from eating impure food products purchased at bakery, evidence held to sustain finding that defendant, and not his son, was owner of the bakery. Id.

In determining whether owner of restaurant sued in federal court for injuries to patron from unwholesome ham was entitled under the federal third party practice rule to have the packer who canned the ham made a third party defendant, fact that state law bars contribution to person who had been guilty of an intentional wrong or who is presumed to have known that he was doing an illegal act, does not warrant the court in indulging in such presumption, where defendant's position is that if the ham was unwholesome the packer was solely to blame since any violation of the state pure food statutes by the restaurant owner is technical only and not an intentional wrong if his position be sustained, and fact that the cause of action asserted by the defendant against the packer rests on a theory different from plaintiff's cause of action against defendant is immaterial. Jeub v. B/G Foods, Inc., (DC-Minn), 2FRD238. See Dun. Dig. 1924, 3782, 7328, 7329.

8416. Delivery and payment are concurrent conditions.

Contract between seller of goods and assignee of account, requiring seller to endorse over to assignee any checks made payable to seller by buyers constituted seller agent of assignee for purpose of accepting payments on assigned account, so that payments to seller discharged indebtedness of a buyer even though he had notice of assignment. Dworsky v. Unger Furniture Co., 212M244, 3NW(2d)393. See Dun. Dig. 8509c.

Under a written memorandum relating to an entire flock of turkeys confirming sale of "about" 100 head of number 1 hen turkeys at a certain price per pound, and "about" 600 head number 1 tom turkeys at a certain rate per pound, number 2's to be 3c less in each case, and removal to be made on a certain date, title passed to buyer at once and buyer must stand loss of turkeys in a storm occurring before date limited for removal. Radloff v. Bragmus, 214M130, 7NW(2d)491. See Dun. Dig. 8511, 8515b.

8418. Delivery of wrong quantity.

Where there are shortages in deliveries of oil as shown by invoices and action is brought as for an account stated, buyer should be permitted to introduce proof of notice to plaintiff of shortages and fraud or mistake. Leonard Refineries v. G., 209M248, 295NW(Mich)215.

8422. What constitutes acceptance.
Where purchaser of rhubarb accepted a shipment, paid the express and a part of the purchase price and stored it, all without making complaint until the sellers filed complaint under 7 Mason's USCA 499, et. seq., for unpaid portion of purchase price, defense that shipment was substandard was invalid and seller could recover. Bell v. Main, (DC-Pa), 49FSupp689. See Dun. Dig. 8537.

8423. Acceptance does not bar action for damages.
Buyer waived counterclaim for delay in delivery by making no objection and promises to pay on price through period of two years after delivery. Interstate Eng. Co. v. D., (AppDC)112F(2d)214.

Buyer of whiskey from a distillery who did not notify the seller within reasonable time after accepting the goods that they were unsatisfactory could not recover for breach of warranty that the goods were fit for the purpose for which they were bought. Esbeco Distilling Corp. v. Owings Mills Distillery, (DC-Md) 43 F. Supp. 380. See Dun. Dig. 8560.

Steel manufacturer, who was engaged in buying heavy scrap melting steel for use in his own blast furnaces, and who accepted two carloads of scrap steel which did not measure up to the grade of heavy melting steel, and who notified the seller within a reasonable time thereafter that the quality of the steel was deficient, stating that it would have to deduct from the purchase price, was not bound by its acceptance and use of the steel to pay the amount agreed on in the contract. Henderson v. Glosser, (DC-Pa), 46FSupp460, Henderson v. Jones & Laughlin Steel Corp., (DC-Pa), 46FSupp518. See Dun. Dig. 8536.

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.

Substantial part performance of an executory contract of sale of demonstrator automobile by turning in old car at agreed price of $175 and paying $100 in cash before discovery by purchaser of deceit practiced upon him by vendor took case out of rule applicable to contracts wholly or substantially executory, and purchaser could affirm and complete contract without barring action in tort for deceit. Kohanik v. Beckman, 212M11, 2NW(2d) 125. See Dun. Dig. 8612.

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.

Clause in contract which required purchaser of material to inspect it at delivery point and provided that purchaser "may reject" defective material before incorporation into electric distribution system, provided "exclusive" remedy for defective material furnished and required purchaser to reject material before incorporation into system. De Witt v. Itasca-Mantrap Co-op. Electrical Ass'n, 215M551, 10NW(2d)715. See Dun. Dig. 8582a.

Surety bond executed by seller in contract of sale, executed simultaneously or shortly after contract of sale, was not an amendment of the contract of sale, relinquishing right of seller to have goods rejected before installation in electrical system granted under the contract. Id.

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. Id. See Dun. Dig. 8582a, 8612.

Where contract for sale of old engine to be dismantled by seller and installed on buyer's premises, and if satisfactory after three day test buyer should give seller receipt acknowledging delivery, a receipt given after the test constituted acceptance. Chiquita Min. Co. v. F., 104 Pac(2d)(Nev)191.

A purchaser is deemed to have accepted goods, when, after lapse of a reasonable time, he retains them without intimating that he has rejected them, but acceptance of goods does not discharge seller from liability in damages or other remedy for breach of contract, unless buyer fails to give notice to seller of breach within a reasonable time after he knows or ought to know of it, and purchaser has neither a right of action for breach of a promise or warranty nor defense for purchase price, unless required notice has been given. Jan Ree Frocks, Inc. v. Pred, 2NW(2d)(SD)696.

Failure of buyer of mixed concrete to notify seller, upon acceptance, that he had not received full measurement promised did not waive such a defense, in an action for the purchase price. Knoxville Sangravel Material Co. v. Dunn, 151SW(2d)(Tenn)174.

PART IV
RIGHTS OF UNPAID SELLER AGAINST THE GOODS
UNPAID SELLER'S LIEN

8428. When right of lien may be exercised.
Fraudulent conveyances of chattels—chattel mortgages—sales—conditional sales. 24MinnLawRev832.

PART V
ACTIONS FOR BREACH OF THE CONTRACT
REMEDIES OF THE SELLER

8437. Action for the price.
In action by assignee of seller against buyer to recover purchase price, paid by buyer to seller direct, whether buyer had notice of assignment before making payment to assignor held for jury. Dworsky v. Unger Furniture Co., 212M244, 3NW(2d)393. See Dun. Dig. 561, 8509c.

Right to recover purchase price exists independent of Uniform Sales Act, and mere fact that act may require certain methods of procedure in order to recover does not affect its basic nature. O. S. Stapley Co. v. N., 110 Pac(2d)(Ariz)547.

8438. Action for damages for nonacceptance of the goods.
Where a contract to purchase a new car, on which a used one was traded in, contained a provision that in case contract was cancelled prior to delivery of new car vendor was to be paid his reasonable charges for repairing old car, vendor was entitled to recover such charges where vendee repudiated contract and repossessed repaired used car. Pioneer Garage v. Hallquist, 211 M106, 300NW403. See Dun. Dig. 8628.

REMEDIES OF THE BUYER

8441. Action for failure to deliver goods.
Where mackinaws contracted for by federal government were rejected because of faulty stitchings and later accepted after government was satisfied that cause of defects had been remedied, delay in delivery was not due to arbitrary rejections, and government was entitled to liquidated damages provided for by the contract on account of such delay. Northbilt Mfg. Co. v. U. S., (DC-Minn) 43 F. Supp. 676. See Dun. Dig. 8613.

In action by one trading an old car for breach of contract to sell a new car, wherein it appeared that there was a unilateral mistake on the part of the defendant as to encumbrance on old car and knowledge thereof on part of plaintiff, defendant would be entitled to reformation, but plaintiff's right to be put in status quo should be protected, the old car having been resold by defendant. Rigby v. N., 208M88, 292NW751. See Dun. Dig. 8334a.

Provision in automobile sale contract that if seller is unable to deliver new vehicle within 30 days after specified delivery date, "purchaser may cancel order and seller's liability in that event is limited to the return of deposit", amounted to a stipulation of liquidated damages equal to allowance made for old car which was turned in to and sold by dealer. Stanton v. M., 209M458, 296NW 521. See Dun. Dig. 8615.

In action against dealer for breach of contract of sale of automobile, evidence held to sustain finding that plaintiff was to have a credit of $250 for old car turned in and sold and that dealer in addition assumed indebtedness to finance company on old car. Id.

In action to recover for goods paid for but not received, it appearing that goods were delivered by alleged agent to a third person, a verdict against both principal and agent was not perverse under instructions not excepted to. Katzmarek v. Weber Brokerage Co., 214M580, 8NW(2d)822. See Dun. Dig. 8616.

8443. Remedies for breach of warranty.
1. In general.
This section is applicable to both express and implied warranties. Manley v. N., (DC-Pa), 32FSupp775.

Rescission must accompany the return or offer to return the goods. Id.

An unsuccessful attempt to rescind by action, because of unreasonable delay, is not such an election of remedy as to bar other remedies. Heibel v. U., 206M288, 288NW 393. See Dun. Dig. 8618.

Provision in written guarantee on sale of used car that promises and understandings must be in writing, and exclusion of tires specifically, eliminated cause of action for breach of warranty in action for damages to car resulting from tire blowout. McLeod v. H., 208M473, 294 NW479. See Dun. Dig. 8570.

Where contract of the parties expressly provides a remedy by which the buyer will assert any claim for breach of warranty, the remedy so provided is exclusive and the buyer must resort to it before he may assent a different remedy. Berry Asphalt Co. v. Apex Oil Products Co., 215M198, 9NW(2d)437. See Dun. Dig. 8620.

In seller's action for unpaid purchase price of carloads of oil, buyer is not precluded from asserting a counterclaim for breach of warranty by its letter to seller saying substantially that if the buyer "should run into any trouble on this oil darkening its color in our storage, we will expect" the seller "to stand behind us" for any replacement expenses, on the ground that the letter provided an exclusive remedy for breach of warranty. Id. See Dun. Dig. 8564.

Liability of manufacturer to sub-purchase for breach of express warranty. 25MinnLawRev83.

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, 292NW 210. See Dun. Dig. 8608.

Seller of a machinne may waive provision in contract of sale for three-day notice of breach of warranty. Juvland 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. 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., 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. Juvland 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