

1934 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1934)  
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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CITER- DIGEST CO.  
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of shares of stock dealt in on exchange between certain dates, offered to excuse delay in delivery of stock. *Drake-Jones Co. v. D.*, 246NW664. See Dun. Dig. 1124c, 1126.

Stockbroker must execute customer's order in conformity with instructions. *Drake-Jones Co. v. D.*, 246NW664. See Dun. Dig. 1124c, 1126.

Where customer ordered stock from broker to be issued in his name at once, broker could not recover for losses where customer repudiated transaction on tender

30 days after purchase of stock not in his name. *Drake-Jones Co. v. D.*, 246NW664. See Dun. Dig. 1124c, 1126.

### 3. Compensation.

Stock brokers on Minneapolis-St. Paul stock exchange were entitled to commissions at the rate prescribed by its rules. *McCormick v. H.*, 184M374, 238NW633.

In action to recover money advanced in purchase of stock "rights" and commission for services, evidence held to show that such "rights" were to be delivered at the office of the plaintiffs and that plaintiffs were entitled to recover. *McCormick v. H.*, 184M374, 238NW633.

## CHAPTER 68

### Frauds

#### STATUTE OF FRAUDS

##### 8456. No action on agreement, when.

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

##### ½. In general.

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

##### 8. Promises to answer for another.

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

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

##### 10. —Contracts held within the statute.

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

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

Promise to pay existing debt of another, which promise arises out a new transaction between parties to it and for which there is fresh consideration, is original undertaking and not within statute of frauds. *Marckel Co. v. R.*, 186M125, 242NW471. See Dun. Dig. 8865.

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

##### 11½. Promise to pay debt discharged in bankruptcy.

Promise to pay debt discharged by bankruptcy. 172M390, 215NW784.

##### 8459. Conveyance, etc., of land.

##### 1. Conveyances, etc., generally.

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

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

##### 2. Leases.

178M330, 227NW46; note under §8640.

Taking possession of and operating a farm under an oral lease void under the statute of frauds creates a tenancy at will, which may be terminated only by statutory notice. *Hagen v. B.*, 182M136, 233M822. See Dun. Dig. 8440.

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

Paper held sufficient compliance to show modification of lease by surrender of right of cancellation without cause. *Oakland Motor Car Co. v. K.*, 186M455, 243NW673. See Dun. Dig. 8877, 8881.

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

Lessor held not estopped to deny termination of lease by lessee after fire. *Hoppman v. P.*, 248NW281. See Dun. Dig. 8877.

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

##### 1. In general.

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

Not construed as prescribing a rule of evidence, but rather as precluding the substantive right to sue upon an oral contract. 173M330, 227NW46.

##### 3. Authority of agent.

Agent who had exclusive management of property under an agreement to pay all expenses and a fixed monthly income to the owner, and retain the difference,

had authority to lease an apartment for more than a year and take in payment of the rent a conveyance of an equity in a house and lot. 172M40, 214NW759.

##### 5. Contracts not within statute.

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

##### 7. Pleading.

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

##### 8461. Specific performance.

Evidence sustains the finding of the trial court that the plaintiff partially performed an oral contract made in 1921 for the purchase of real property so as to justify a decree of specific performance. 181M458, 233NW20. See Dun. Dig. 8885.

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

#### CONVEYANCES FRAUDULENT AS TO CREDITORS

##### 8467. Of chattels without delivery.

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

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

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

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

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

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

##### 8470. Question of fact—Voluntary conveyances.

##### 1. Question of fact.

179M7, 228NW177.

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

#### FRAUDULENT CONVEYANCES

##### 8475. Definition of terms.

175M47, 220NW400.

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

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

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

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

##### 8477. Fair consideration.

174M423, 219NW550; note under §8481.

Transfer to directors of bank to secure payment of a debt of grantor, the managing officer of the bank, to the bank, was given upon a fair consideration and was not void, though it rendered grantor insolvent. 172M149, 214NW787.

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

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

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

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

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

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

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

#### 8478. Conveyance by insolvent.

172M149, 214NW787; note under §8477.

173M576, 218NW108; note under §8475.

174M423, 219NW550; note under §8481.

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

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

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

Evidence held not to show agreement for repayment of advances made by wife to husband. 171M284, 213NW911.

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

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

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

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

Evidence held not to require finding that transfer of land rendered grantor insolvent. National Surety Co. v. W., 184M21, 242NW546. See Dun. Dig. 3846.

#### 8479. Conveyances by persons in business.

4½. Subd. 3. Statement showing that materials were furnished by subcontractor to owner, though actually furnished to principal contractor, held sufficient. 199NW475, 47SD494.

#### 8481. Conveyance made with intent to defraud.

##### ½. In general.

Brill v. W., (CCA8), 65F(2d)420; note under §8478. Evidence held to show that makers of note to bank were not estopped as against creditors to deny that note was given for valid consideration. Grant Co. State Bk. v. S., 178M556, 228NW150.

##### 6. Subsequent creditors.

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

In action to set aside conveyance as fraudulent evidence held to establish that claim upon which judgment rested arose prior to transfer. Larson v. T., 185M370, 241NW45. See Dun. Dig. 3928a.

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

##### 31. Chattel mortgages.

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

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

##### 35. Action to set aside.

In action to set aside fraudulent conveyances, grantee cannot set up defenses which were available to the grantor in the original action. Weber v. A., 176M120, 222NW646.

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

Causes of action set forth in complaint in intervention in action to set aside conveyances as fraudulent held not well pleaded. Larson v. T., 185M370, 241NW45. See Dun. Dig. 3925.

Court was not justified in vacating mortgage foreclosure proceedings in action to set aside transfer of mortgage as fraudulent as to creditors. Larson v. T., 185M370, 241NW45. See Dun. Dig. 3930.

##### 38. Burden of proof.

175M157, 220NW560. Transfer of real estate in full value for payment of a debt was not fraudulent in absence of showing of actual interest to hinder, delay or defraud plaintiff. 174M423, 219NW550.

##### 39. Degree of proof required.

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

##### 40. Evidence.

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

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

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

Evidence held to support finding that transfer of real estate was fraudulent as to creditors and that crops did not belong to grantee. Joop v. S., 247NW526. See Dun. Dig. 3910.

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

Rights of holder of prior and paramount mortgage, and a purchaser at foreclosure sale. 171M197, 213NW892.

#### 8484. Creditors whose claims have not matured.

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

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

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

## CHAPTER 69

### Liens for Labor and Material

#### FOR IMPROVEMENT OF REAL ESTATE

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

##### ½. In general.

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

The surety on a bond to protect the owner of land against mechanic's liens cannot complain of a change

in the title taking place after liability on the bond had attached by the filing of a lien. Hartford A. & I. Co. v. F., (CCA8), 59F(2d)950. See Dun. Dig. 9094, 9107.

The surety on a bond to protect land from mechanics' liens is not discharged by a transfer of the land where the principals on the bond are not released. Hartford A. & I. Co. v. F., (CCA8), 59F(2d)950. See Dun. Dig. 9094.

That obligee in a surety bond to protect against mechanics' liens compelled a lienor to elect between his lien and the taking of a lease on a part of the building in satisfaction of the lien, held not to discharge the