

Statutes
1878

THE
GENERAL STATUTES
OF THE
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY
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EDITED AND PUBLISHED UNDER THE AUTHORITY OF CHAPTER 67 OF THE LAWS
OF 1878, AND CHAPTER 67 OF THE LAWS OF 1879.

FOURTH EDITION.

WITH SUPPLEMENTS,
CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF
THE LEGISLATIVE SESSION OF 1883.

SAINT PAUL:
WEST PUBLISHING COMPANY.
1883.

prima facie evidence of the title of such railroad companies to the lands there-in described. (1875, c. 97, § 3.)

*§ 42. Act applies to all land grants. This act shall apply to all lands that have heretofore been conveyed to the different railroad companies of this state, or that may hereafter be conveyed to them, for the purpose of aiding in the construction of their different lines of road. (*Id.* § 4.)

*§ 43. Deeds under blank powers of attorney. That any power of attorney for the conveyance of real estate, heretofore executed in blank, or with the name of the grantee of the power omitted therefrom at the time of such execution, and delivered to some person with intention to have the same take effect, shall, if afterward filled out with the name of some person to execute such power, be deemed to be and be as valid and effectual, for all purposes, as if such name had been inserted therein before the execution thereof; and when any deed of real estate has heretofore been or shall hereafter be executed under or by virtue of any such power, the person or persons so executing such power of attorney, and all persons claiming by, through or under him or them, shall be forever barred and estopped from alleging in any pleading, or proving upon trial in any cause or proceeding, the fact that such power was so executed in blank. (1877, c. 101, § 1.)

22 M. 417.

CHAPTER XLI.

FRAUDS.

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TITLE 1.

CONVEYANCES OF LANDS FRAUDULENT AS AGAINST PURCHASERS.

§ 1. Conveyances made to defraud purchasers to be void. Every conveyance of any estate or interest in lands, or the rents and profits of lands, and every charge upon

lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers, for a valuable consideration, of the same lands, rents, or profits, as against any such purchasers, shall be void.

2 M. 226 (264); 2 M. 251 (291); 3 M. 282 (389).

§ 2. **Exception in favor of innocent grantee.** No such conveyance or charge shall be deemed fraudulent, in favor of a subsequent purchaser, who had actual or legal notice thereof at the time of his purchase, unless it appears that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

§ 3. **Conveyances with powers of revocation, when void.** Every conveyance or charge of or upon any estate or interest in lands, containing any provision for the revocation, determination or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void, as against subsequent purchasers from such grantor, for a valuable consideration, of any estate or interest so liable to be revoked or determined, although the same is not expressly revoked, determined, or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

§ 4. **Conveyance under power of revocation.** When a power to revoke a conveyance of any lands or the rents and profits thereof, and to reconvey the same, is given to any person other than the grantor in such conveyance, and such person thereafter conveys the same land, rents or profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid, in the same manner and to the same extent as if the power of revocation was recited therein, and the intent to revoke the former conveyance expressly declared.

§ 5. **Premature conveyance under power of revocation.** If a conveyance to a purchaser, under either of the two preceding sections, is made before the person making the same is entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation actually vests in such person, in the same manner and to the same extent as if then made.

TITLE 2.

STATUTE OF FRAUDS.

§ 6. **No action maintainable on agreement, when.** No action shall be maintained, in either of the following cases, upon any agreement, unless such agreement, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party charged therewith:

First. Every agreement that by its terms is not to be performed within one year from the making thereof;

22 M. 449.

Second. Every special promise to answer for the debt, default or doings of another;

1 M. 234 (301); 5 M. 368 (455); 14 M. 194, 265; 16 M. 68; 20 M. 40; 22 M. 283; 23 M. 6, 542.

Third. Every agreement, promise or undertaking, made upon consideration of marriage, except mutual promise to marry.

§ 7. **Contracts for sale of goods void, when.** Every contract for the sale of any goods, chattels or things in action, for the price of fifty dollars or more, shall be void, unless,

First. A note or memorandum of such contract is made, in writing, and subscribed by the parties to be charged therewith; or,

Second. Unless the buyer accepts and receives part of such goods, or the evidences, or some of them, of such things in action; or,

Third. Unless the buyer, at the time, pays some part of the purchase-money.

3 M. 61 (109); 13 M. 191; 14 M. 127; 15 M. 440; 21 M. 402.

§ 8. **Auctioneer's memorandum to be deemed note of contract.** Whenever goods are sold at public auction, and the auctioneer, at the time of sale, enters into a sale-book a memorandum specifying the nature and price of the property sold, the terms of the sale, name of the purchaser, and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

§ 9. **Grants of existing trusts, void, unless in writing.** Every grant or assignment of any existing trust in goods or things in action, unless the same is in writing, subscribed by the party making the same, or by his agent lawfully authorized, shall be void.

23 M. 55.

§ 10. **Conveyance, etc., of land to be in writing.** No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the parties creating, granting, assigning, surrendering or declaring the same, or by their lawful agent thereunto authorized by writing.

2 M. 238 (277); 4 M. 93 (141); 6 M. 167 (250); 6 M. 241 (358.)

§ 11. **Limitation of preceding section.** The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament; nor to prevent any trust from arising or being extinguished by implication or operation of law.

§ 12. **Leases for more than one year—contracts for sale.** Every contract for the leasing for a longer period than one year, or for the sale, of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party by whom the lease or sale is to be made, or by his authorized agent.

8 M. 467 (524); 10 M. 163 (207); 14 M. 72; 16 M. 172; 20 M. 173; 21 M. 409, 538.

§ 13. **Specific performance of oral agreements.** Nothing in this chapter contained shall be construed to abridge the power of courts of equity to compel the specific performance of agreements, in cases of part-performance of such agreements.

13 M. 462; 14 M. 72; 20 M. 219; 23 M. 343.

TITLE 3.

CONVEYANCES RELATIVE TO LANDS, GOODS AND CHATTELS, FRAUDULENT AS AGAINST CREDITORS.

§ 14. **Conveyances, etc., in trust for grantor, etc., to be void.** All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

3 M. 257 (364); 4 M. 418 (533); 14 M. 205.

§ 15. **Sale of chattels without delivery, etc., presumed fraudulent.** Every sale made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same is accompanied by an immediate delivery, and followed by an actual and continued change of possession, of the things sold and assigned, shall be presumed to be fraudulent and void as against the creditors of the vendor or assignor, or subsequent purchasers in good faith, unless those claiming under such sale or assignment make it appear that the same was made in good faith, and without any intent to hinder, delay or defraud such creditors or purchasers.

§ 16. **Term "creditors" defined.** The term "creditors," as used in the preceding section, includes all persons who are creditors of the vendor or assignor at any time while such goods and chattels remain in his possession, or under his control.

§ 17. **Limitations of two last sections.** Nothing contained in the two preceding sections shall apply to contracts of bottomry or respondentia, or assignments or hypothecations of vessels or goods at sea or in foreign ports, or without this state: *provided*, the assignee or mortgagee takes possession of such vessel or goods as soon as possible after the arrival thereof within this state.

§ 18. **Conveyances, etc., with intent to defraud creditors, to be void.** Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or of any rents or profits issuing therefrom, and every charge upon lands, or upon the rents or profits thereof, made with the intent to hinder, delay or defraud creditors or other persons of their lawful actions, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, actions commenced, order or judgment suffered, with the like intent, as against the persons so hindered, delayed, or defrauded, shall be void.

3 M. 271 (377); 3 M. 282 (389); 12 M. 61; 19 M. 17; 22 M. 214, 247; 23 M. 242.

§ 19. **Heirs, etc., of creditors and purchasers—their rights.** Every conveyance, charge, instrument or proceeding, declared to be void, by the provisions of this and the two preceding titles, as against creditors or purchasers, shall be equally void against the heirs, successors, personal representatives or assignees of such creditors or purchasers.

§ 20. **Fraudulent intent, a question of fact—consideration.** The question of fraudulent intent, in all cases arising under the provisions of this title, shall be deemed a question of fact, and not of law; and no conveyance or charge shall be adjudged fraudulent as against creditors, solely on the ground that it was not founded on a valuable consideration.

6 M. 213 (305); 19 M. 367.

§ 21. **Purchaser without notice protected.** The provisions of this title shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it appears that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

6 M. 213 (305.)

§ 22. **Term "conveyance" defined.** The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, except a last will testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

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*§ 23. **Qualifications of assignees—requisite of assignment—filing.** Every conveyance or assignment made by a debtor or debtors of the whole or any part of their estate, real or personal, in trust, to an assignee or assignees, for the benefit of creditors, shall be void, unless the assignee or assignees therein named are residents and freeholders of this state, and unless such conveyance or assignment be in writing, subscribed by such debtor or debtors, and duly acknowledged before an officer authorized by law to take acknowledgment of deeds, and the certificate of such acknowledgment be endorsed thereon; and until such conveyance or assignment be filed in the office of the clerk of the district court in and for the county wherein such debtor or debtors reside, or wherein the business in reference to which the same is made, has been principally carried on. (1876, c. 44, § 1.)

22 M. 247; 23 M. 55, 242.

*§ 24. **Schedule of creditors, debts, assets, etc., to be filed by assignor.** Every debtor or debtors, so making an assignment, shall, at the date thereof, or within ten days thereafter, make and file with the clerk of the court aforesaid a just and true statement or inventory, under his oath or affirmation, containing—

First—A full and true account of all the creditors of such debtor or debtors.

*An act to protect the creditors of assignors and to regulate the duties of assignees. Approved March 4, 1876, (Laws 1876, c. 44.)

Second—The place of residence of each creditor, if known to such debtor or debtors; and if not known, the fact to be so stated.

Third—The sum owing to each creditor, and the nature of such debt or demand, whether arising upon written security, account or otherwise.

Fourth—The true cause and consideration of all such indebtedness, in each case, and the place where such indebtedness arose.

Fifth—A statement of any existing judgment, mortgage, collateral or other security for the payment of any such debt.

Sixth—A full, true and complete inventory of such debtor or debtors' estate, both real and personal, in law or in equity, and the incumbrances existing thereon, and of all vouchers and securities relating thereto, and the value of such estate and each item thereof, to the best knowledge, information and belief of such debtor or debtors. (1876, c. 44, § 2.)

*§ 25. **Bond of assignee—filing and approval—additional bonds.** Before any such assignee or assignees shall have power or authority to sell, dispose of, or convert to the purposes of the trust, any part of such estate, and not later than five days after the filing of the inventory, as provided for in section two of this act, he or they shall execute, and file with the clerk of the court where such assignment is filed, a good and sufficient bond to the state of Minnesota, to be approved by the judge of such district court, with two or more sureties, freeholders and residents of the state of Minnesota, in an amount at least double the value of the estate assigned, as shown by such inventory, if made, or by the affidavit of the debtors, or one of them, if the bond be given before the inventory be made, conditioned on the faithful and just performance of all the duties of such assignee or assignees. And the judge may at any time thereafter, if he shall deem such bond insufficient in amount, or that the sureties are insufficient, require the assignee or assignees to give new or additional bonds, in his discretion. (*Id.* § 3, as amended 1877, c. 67, § 1.)

*§ 26. **Notice of assignment to be given by assignee.** Upon taking possession of any estate so assigned, the assignee or assignees shall forthwith give notice of such assignment, by publication in one or more newspapers printed and published in the county where the same is made, if any; and if none, then in some newspaper printed and published in some adjoining county, if any; and if none, then in some newspaper printed and published at the city of St. Paul; and shall also forthwith send notice of such assignment by mail to each creditor named in the statement or inventory of the assignor, or of whom he or they shall have or receive information. (*Id.* § 4.)

*§ 27. **Assignee represents creditors—may avoid fraudulent conveyances, etc.** That in all cases of general assignments for the benefit of creditors, the assignee or assignees shall be considered as representing the rights and interests of the creditors of the debtor or debtors making the assignment, as against all transfers and conveyances of property which would be held to be fraudulent or void as to creditors; and shall have all the rights which such creditors would have to avoid such fraudulent conveyances and transfers. (1877, c. 142, § 1.)

*§ 28. **Proof of claims—order of payment—preferred claims—secured claims.** No claim or demand, except for debts owing to the United States or the state of Minnesota, or for taxes or assessments against the debtor or debtors, shall be paid in whole or in part, unless the same be first verified by the oath or affirmation of one of the creditors making such claim or demand, or in case of a corporation creditor, by some officer thereof. And after the payment, by the assignee or assignees, of the costs, charges and expenses of making and executing the assignment and executing the trust, all debts of the debtor or debtors shall be paid in the order and precedence following, that is to say:

First.—All debts owing to the United States, and all debts owing to the

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state of Minnesota, and all taxes and assessments levied and unpaid, shall be paid in full before the payment of any other debts.

Second.—All debts owing for the wages of servants, laborers, mechanics and clerks, for labor and services performed for the debtor or debtors, within three months next preceding the date of the assignment, shall next be paid in full, to the exclusion of all other indebtedness, if there shall be sufficient wherewith to pay the same in full; if not, they shall be paid *pro rata*, so far as they can be paid; but to entitle a creditor for wages to payment under this subdivision, the proof or verification of the claim must show the character of the labor or services, and that the same was performed within the time above mentioned.

Third.—All other debts of the debtor, properly claimed and verified, shall be paid in full, if there shall be sufficient left in the hands of the assignee or assignees wherewith to pay the same in full; if not, the moneys in the hands of the assignee or assignees applicable thereto shall be paid upon the same *pro rata*, so far as it will extend: *provided*, that no debts for which the creditor holds a mortgage, pledge or other security, shall be so paid until the creditor shall have first exhausted his security, or shall surrender and release the security, to the assignee or assignees. (1876, c. 44, § 5, as amended 1877, c. 67, § 2.)

*§ 29. Powers of district judge over proceedings—removal of assignee—discharge of assignee. All proceedings under this act shall be subject to the order and supervision of the judge of the district court aforesaid; and such judge may from time to time, in his discretion, on [the] petition of one or more of the creditors, by order, citation, attachment or otherwise, require any assignee or assignees to render accounts and file reports of his or their proceedings, and of the condition of such trust estate; and may order or decree distribution thereof. And such judge may, in his discretion, for cause shown, remove any assignee or assignees, and appoint another or others instead, who shall give such bonds as the judge may, in view of the conditions and value of the estate, may direct; and such order of removal and appointment shall in terms transfer to such new assignee or assignees all the trust estate, and shall operate as a full transfer and conveyance to such new assignee or assignees of all the trust estate, real, personal and mixed, and may be recorded in the deed records in the office of the register of deeds of any county wherein any real estate affected by the assignment may be situated. And such judge may by order, which may be enforced as upon proceedings for contempt, compel the assignee or assignees so removed to deliver all property, money, choses in action, book-accounts and vouchers, to the assignee or assignees so appointed, and to make, execute and deliver to such new assignee or assignees such deeds, assignments and transfers as such judge may deem proper, and to render a full account and report of all matters connected with such trust estate. Whenever any assignee so removed shall have fully accounted for and turned over to the assignee or assignees appointed by the judge all the trust estate, and made full report of all his doings, and complied with all orders of the judge touching such estate, and, also, whenever an assignee has fully completed his trust, he may, by the order of the judge, be fully discharged from all further duties, liabilities and responsibilities connected with the trust. In either case he shall give notice by publication in some newspaper of the county, if there be one printed and published therein, if not, in a newspaper printed at the capital of the state, once in each week for at least three weeks, that he will apply to such judge for such discharge, at a time and place to be stated in such notice, which time shall be not more than three weeks after the last publication of the notice. If, upon the hearing, the judge shall be satisfied that the assignee is entitled to be discharged, he shall make an order accordingly; or if, in the opinion of the judge, anything remains to be done by such assignee, he may require the per-

formance thereof before making such order. Such order shall have the effect of discharging the assignee and his sureties from all further responsibility in respect to the trust: and such order shall not be refused on account of any failure on the part of the assignee to comply with the formal provisions of law where no loss or damage to any one shall have occurred through such failure. Whenever the trust estate shall have been taken out of the hands of the assignee by proceedings in bankruptcy in the federal court, the assignee may in like manner be discharged, upon showing that he has fully accounted with the assignee in bankruptcy, and turned over to him the whole of the trust estate. (1876, c. 44, § 6. as amended 1877, c. 67, § 3.)

*§ 30. **Action by creditor on bond of assignee.** Whenever any such assignee or assignees shall omit or refuse to perform any decree or order made by any such judge pursuant to this act, or shall fail to do and perform any of his or their duties as such assignee or assignees, any creditor or creditors of such debtor or debtors may, upon leave of the court first had and obtained, proceed to prosecute the bond of such assignee or assignees, and apply the proceeds thereof in satisfaction of the debt or debts of such debtor or debtors. (*Id.* § 7.)

*§ 31. **Duty of clerk of court.** The clerk of the court wherein any such assignment, inventory or bond shall be filed, shall forthwith endorse thereon the day, hour and minute at which the same is filed, and make a record of such filing, and the day, hour and minute thereof, in a suitable book to be by him kept for that purpose. (*Id.* § 8.)

*§ 32. **Payment of dividends—list of creditors to be filed.** At least twenty days before any such assignee or assignees shall make payment of any dividend, or distribution of any such estate, he or they shall file with the clerk of the district court aforesaid a just and true statement, under his or their oath or affirmation, of all creditors who shall have filed with such assignee or assignees their claims or demands properly verified, with the amount and nature of their claims respectively; and as often thereafter as any creditor shall in like manner present his claim or demand, the assignee or assignees shall also file a similar statement thereof with said clerk, and shall pay nothing on any said claim until the expiration of twenty days after filing said statement with the clerk. (*Id.* § 9.)

*§ 33. **Assignments heretofore made—duties of assignee.** That in all cases of assignment heretofore made, which have not been closed by final settlement, it shall be the duty of any assignee or assignees having any such trust estate in his or their hands, or under their control, to report to the judge of the district court where such assignee or assignees may reside, the situation and amount of such trust estate, and the creditors having claims against the same, with the amounts due to each, as far as the same have come to his or their knowledge, within thirty days after the taking effect of this act; and in case of any neglect to file such report, any creditor or person interested in such estate may, on filing a petition to that effect with the clerk of said court, obtain a citation to such assignee or assignees, to be served as in case of an original notice, requiring such assignee or assignees to appear before said judge, to show cause why such a report should not be filed; and on such hearing, the judge shall order such report, and shall require such assignee or assignees to give bond, with sureties, for the faithful performance of the trust, and shall fully investigate the proceedings of such assignee or assignees in the premises, and may summon such assignee or assignees, and make all such orders in the matter as may be proper and necessary to insure a faithful performance of the trust, and a speedy close of the same by a final distribution and settlement of the estate, as in case above provided. (*Id.* § 10.)

*§ 31 to 43, incl. See 1881 Sup't, p. 57 to 80, incl.

And *§ 37. See 1883 Sup't, p. 70.