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OF THE

STATE OF MINNESOTA

IN FORCE

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CHAPTER 40.

DEEDS, MORTGAGES, AND OTHER CONVEYANCES.*

§ 1. Conveyances.

A deed signed and sealed by two, only one of whom is described in it as grantor, is the deed of that one only. Merrill v. Nelson, 18 Minn. 366, (Gil. 335.)

The execution, delivery, and recording of a deed operate to pass the grantor's seizin without any other act or ceremony whatever; so that, if the grantor has seizin, the grantee becomes seized without an actual entry. Smith v. Dennett, 15 Minn. 87, (Gil. 65.)

Under the Revised Statutes of 1851 an unrecorded deed of real estate took precedence of an attachment levied after its execution. The attaching creditor was not a *bona fide* purchaser within the meaning of that statute. See Laws 1858, *c.* 52. Greenleaf v. Edes, 2 Minn. 264, (Gil. 226.)

A conveyance by one who is an "occupant," under the act of congress of May 23, 1844, in relation to town-sites, is within the recording acts, and, when recorded, takes precedence of a prior unrecorded conveyance of the same land. Davis v. Murphy, 3 Minn. 119, (Gil. 69.)

An agent, authorized to sell real estate by an instrument insufficient for want of a seal, to give him authority to convey, may bind his principal by an executory contract to convey. Minor v. Willoughby, 3 Minn. 225, (Gil. 154.)

A real-estate mortgage cannot be created by a deposit of title deeds, even though such deposit be accompanied by a writing stating its object. Gardner v. McClure, 6 Minn. 250, (Gil. 167.)

See Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212.)

§ 2. Conveyances by husband and wife—Corporations.

A husband and wife may convey any real estate by their duly-authorized agent or attorney, and may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she was not married, nor shall the minority of the wife in any manner effect the validity of such deed. The wife of any insane person, where the insanity has been continuous for the period of one year, may convey by her separate deed any real estate owned by her, in like manner and with the same effect as if she were unmarried: *provided*, that, in all cases where such insane person shall have been put under guardianship by any court of competent authority in this state, the order appointing the guardian, or a duly-certified copy thereof, shall be recorded in the office of the register of deeds of the county in which the real estate to be conveyed shall be situated; and the guardian, to give effect to the conveyance, shall signify his approval thereof by uniting with wife in the execution of the deed. Every corporation authorized to hold real estate may convey the same by an agent appointed by vote for the purpose.† (*As amended* 1869, *c.* 57 § 1; 1887, *c.* 47.)

Under the former statute, a married woman's deed, unacknowledged by her, as therein required, was void. Dodge v. Hollinshead, 6 Minn. 25, (Gil. 1.)

A conveyance under section 2, *c.* 46, Rev. St., by a husband and wife, of the wife's real estate, she being an infant, is of no greater effect than a conveyance by her alone, she being sole, would be. Dixon v. Merritt, 21 Minn. 196.

Where a husband signs and seals his wife's deed of conveyance of her separate real estate, though he is not named in it, it is a sufficient consent within section 105, *c.* 71, Rev. St. Merrill v. Nelson, 18 Minn. 366, (Gil. 335.)

A married woman's deed of her separate real estate need not be acknowledged by her separately and apart from her husband. Id.

*As to recording assignments or benefit of creditors, and orders and decrees in insolvent proceedings, see *post*, *c.* 41, *§§ 23a, 23b.

For the right of aliens and corporations to hold lands, see *c.* 75, *§ 41a, etc., *post*.

See curative acts, *post*, *c.* 123.

†See curative acts, *post*, *c.* 123.

The last sentence of this section does not exclude other modes of corporate conveyance, as through its regular officers. Morris v. Keil, 20 Minn. 531, (Gil. 474.)

§ 4. Quitclaim deeds.

A quitclaim deed passes only such estate as the grantor can lawfully convey. Everest v. Ferris, 16 Minn. 26, (Gil. 14.)

A quitclaim deed, recorded, does not affect the interest or estate passed by a prior unrecorded deed by the same grantor to another grantee. Marshall v. Roberts, 18 Minn. 405, (Gil. 365.)

A quitclaim deed, purporting to remise, release, and convey all the grantor's interest in and to the premises, and containing the following: "Intending hereby to convey only my title to said land acquired by the purchase of the same for taxes for the year 1864, and previous years,"—is sufficient to constitute "color of title in fee." The recital in the deed that the title conveyed is only a tax title, will not, of itself, charge the grantee with actual notice of the infirmities in such title, although appearing of record. Wheeler v. Merriman, 30 Minn. 372, 15 N. W. Rep. 665.

Plaintiff executed to the defendant a deed, void for uncertainty in the description, but which was intended to convey certain lands in Stillwater to be used for county buildings, the defendant to hold them so long as they should be used for the seat of justice; but, if the county-seat should be removed from Stillwater, the lands to revert to plaintiff. Afterwards plaintiff quitclaimed the lands, by a proper description, together with all reversion or remainder of plaintiff therein, to defendant. Held, that the second deed, it admitting the receipt of a valuable consideration, is not to be regarded as merely confirmatory of the first, but as intended to vest the absolute fee-simple in defendant, and no resulting trust could arise on it in favor of plaintiff. McKusick v. Commissioners of Washington County, 16 Minn. 151, (Gil. 135.)

See, also, Hope v. Stone, 10 Minn. 141, (Gil. 114.)

§ 6. Covenants not implied.

Representations of freedom from incumbrances, made without fraud, during the negotiations for the sale of real property, are merged in the deed of conveyance by which the sale is consummated. Fritz v. McGill, 31 Minn. 536, 18 N. W. Rep. 753.

It is not necessary, in order to constitute the vendee's assignment of a contract of sale a mortgage for money advanced, that he should promise to repay the amount advanced, or that the personal remedy be preserved. The mortgagee may rely wholly upon the security. Niggeler v. Maurin, 34 Minn. 118, 24 N. W. Rep. 369. The absence of a personal covenant or promise to repay is a material circumstance in determining whether a mortgage or conditional sale is intended, but is not controlling on the question. Id.

A purchaser with notice is bound by the grantor's agreement to pay one-half the cost of a party-wall, upon using it, notwithstanding there is no covenant respecting the party-wall in his deed. Warner v. Rogers, 23 Minn. 35, 38.

§ 7. Deeds—Attestation and acknowledgment.*

A lease for a term not exceeding three years need not be attested by witnesses. Chandler v. Kent, 8 Minn. 524, (Gil. 467.)

A mortgage of real estate, with but one witness, is ineffectual to pass any interest in the land. Thompson v. Morgan, 6 Minn. 292, (Gil. 199;) Meighen v. Strong, 6 Minn. 177, (Gil. 111.) A statute curing defects in the execution of deeds and mortgages can not operate against rights acquired from the grantor or mortgagor after the deed or mortgage, and prior to the statute. Id.

In recording a mortgage, the register of deeds omitted the name of one of the witnesses, so that by the record the mortgage appeared to have but one. Held, that the record was not notice to a subsequent grantee or mortgagee. Parret v. Shaubhut, 5 Minn. 323, (Gil. 258.)

A power of attorney to convey land in this state, executed in Massachusetts, and acknowledged there before a justice of the peace, but with no certificate of the proper officer that it was executed according to the laws of that state, is not entitled to record here, and the record of it is not evidence. Lowry v. Harris, 12 Minn. 255, (Gil. 166.)

The acknowledgment is not essential to the validity of a deed as between the parties. Bever v. North, (Ind.) 8 N. E. Rep. 576; Robinson v. Robinson, (Ill.) 5 N. E. Rep. 118.

§ 9. Acknowledgments in other states.

In reference to certificates of acknowledgment and authentication to deeds it is the policy of the law to uphold them, whenever substance is found; and not to suffer conveyances or proof of them to be defeated by technical or unsubstantial objections. In construing them resort may be had to the deed or instrument to which they are appended. Wells v. Atkinson, 24 Minn. 161.

*See curative acts, *infra*, c. 123.

§ 20. Certificate to entitle deed to record.

A certified copy of the record of a deed in another state is not entitled to be recorded here. Lund v. Rice, 9 Minn. 230, (Gil. 215.)

§ 21. Conveyances to be recorded.

A party will not be permitted to make use of the registry act as an instrument of fraud. Gill v. Russell, 23 Minn. 362.

This section is a mere continuation of Laws 1858, *c.* 52, § 1, with the words "hereafter made" omitted, and hence stands from that date as if those words had never been in it. But with these words omitted the statute is not in terms retrospective; nor is it at all necessary, in order to give it effect, to construe it as having retrospective operation. Gaston v. Merriam, 33 Minn. 271, 22 N. W. Rep. 614.

The provision giving docketed judgments priority over unrecorded conveyances does not relate to conveyances made before its passage. Dunwell v. Bidwell, 8 Minn. 34, (Gil. 18.)

This section does not include mechanics' liens, but if the language were to be extended by construction so as to include them, and give them the same effect as judgments or attachment liens, yet, by the terms of the statute, such liens can only take preference where the debtor's title actually appears of record. Oliver v. Davy, 34 Minn. 294, 25 N. W. Rep. 629.

A "release" of mortgaged premises is an instrument by which the title to real estate might be affected in law or equity, and a conveyance within the meaning of sections 21 and 26. Palmer v. Bates, 22 Minn. 532.

To the validity of a foreclosure under the power, by an assignee, it is not necessary that the authority of the agent who executed the assignment should be recorded. Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212.)

Deed granting a permanent right of way must be recorded to operate against subsequent *bona fide* purchasers for value. Prescott v. Beyer, 34 Minn. 493, 26 N. W. Rep. 732.

It is only the purchaser of the same real estate, or any portion thereof, who, by his priority of record, cuts out the title of a prior purchaser; for, when the second purchaser obtains by his quitclaim deed only what his grantor had (his grantor's right, title, and interest) at the time when such deed was made, he is not a purchaser of the same real estate, or any part thereof, which his grantor had previously conveyed away, and therefore no longer has. Marshall v. Roberts, 18 Minn. 405, (Gil. 367.)

But, under the amendment of 1875, a recorded quitclaim deed stands on the same footing as other conveyances, and a *bona fide* grantee therein is entitled to the same preference over prior unrecorded deeds. Strong v. Lynn, 37 N. W. Rep. 448.

A husband may, when not prejudicial to creditors, convey real estate directly to his wife, for the purpose of making a settlement upon her, or a provision for her maintenance and support; and, where a conveyance is by an ordinary deed, the presumption is that it was made for such purpose, even where it conveys all the husband's estate. The record of such deed has the same force, as notice, as the record of any other deed. Wilder v. Brooks, 10 Minn. 50, (Gil. 32.)

As to the rights of a purchaser under an unrecorded deed from the ancestor as against a grantee of the heir, see Dodge v. Briggs, 27 Fed. Rep. 160.

As to the rights of a *bona fide* assignee of a second mortgage from one having notice of a prior unrecorded mortgage, see Morse v. Curtis, (Mass.) 2 N. E. Rep. 929.

A judgment takes precedence of an unrecorded mortgage, under § 54, *c.* 35, Comp. St., and this section only as to such titles as appear of record, and not as to such as do not appear of record as rights "by the curtesy." Golcher v. Brisbin, 20 Minn. 453, (Gil. 407.)

Where a judgment creditor, at the time of the entry of his judgment, has notice, actual or constructive, of the rights of a vendee in possession, under an unrecorded contract for the sale of real estate, the lien of the judgment is subordinate to the equitable title of the vendee. Baker v. Thompson, 36 Minn. 314, 31 N. W. Rep. 51.

An unrecorded conveyance is void against a judgment only when the judgment is against the person in whose name the title to the land appears of record (prior to the recording of such conveyance) in the county in which the land is situated. Coles v. Berryhill, 33 N. W. Rep. 213.

A judgment, docketed against one who had been seized of real estate, and in whom the title still appears of record, becomes a lien upon the property, notwithstanding a prior unrecorded conveyance of it by the debtor, the judgment creditor having no notice of such conveyance. Dutton v. McReynolds, 31 Minn. 66, 16 N. W. Rep. 468.

Where one gives notice to the world of his estate in land by a proper record of a conveyance to himself, a possession by him, which is justified by the record title, is presumptively referable to it, and is not notice of any other and unrecorded title which he may have subsequently acquired. Id.

An attaching or judgment creditor being placed on the same footing as a purchaser, a prior unrecorded assignment or transfer, by the obligor, in a bond for the conveyance of land, of his interest in the bond, or the land therein described, will be void as against

a judgment duly docketed in the county where the land is situate, the judgment creditor having no notice of such unrecorded assignment or transfer at the time of docketing his judgment. Welles v. Baldwin, 28 Minn. 408, 10 N. W. Rep. 427.

In an action to reform and foreclose a defectively executed mortgage, a notice of *lis pendens*, duly filed prior to the record of a deed from the mortgagors to a grantee, against whom a judgment had been recovered, will save to the plaintiffs their prior lien as against such judgment, because such judgment, by the terms of this section, only takes precedence where the judgment debtor's title is of record. Lebanon Savings Bank v. Hollenbick, 29 Minn. 322, 13 N. W. Rep. 145.

Where a paid-up mortgage, containing a power of sale duly recorded therewith, is allowed to remain undischarged of record, and to be regularly foreclosed by advertisement under the statute, without objection, a purchaser at the sale, without notice, and for value, upon duly recording his certificate of purchase, duly executed and acknowledged, together with the affidavits of publication and sale provided by statute, will acquire a valid title to the property upon the expiration of the year without redemption, as against the mortgagor and his assigns. Merchant v. Woods, 27 Minn. 396, 7 N. W. Rep. 826.

Possession under an unrecorded deed as notice, see Higgins v. White, (Ill.) 8 N. E. Rep. 808; Atwood v. Bearss, (Mich.) 10 N. W. Rep. 112; Banner v. Ward, 21 Fed. Rep. 820; United States v. Sliney, Id. 894.

Recitals in a deed as notice. Singer v. Scheible, (Ind.) 10 N. E. Rep. 616; Central Trust Co. v. Railroad Co., 29 Fed. Rep. 546.

Rumors as notice, see Lakin v. Mining Co., 25 Fed. Rep. 337.

Under this statute, a record, in 1869, in Meeker county, of lands in Kandiyohi county, is good. Smith v. Anderson, 33 Minn. 25, 21 N. W. Rep. 841.

See Bank of Farmington v. Ellis, cited in note to c. 39, § 1, *supra*. See, also, Shaubhut v. Hilton, 7 Minn. 506, (Gil. 412;) Russell v. Lowth, 21 Minn. 167; Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212;) Simmons v. Fuller, 17 Minn. 485, (Gil. 462;) Windom v. Schappel, 38 N. W. Rep. 757.

§ 23. Deed—Defeasance.

A bond for the reconveyance of land made at the same time, and bearing the same date as an absolute deed thereof, is, if so intended, an instrument of defeasance within the meaning of this section, and, if duly recorded, protects the right of defeasance, which it is intended to secure, against all persons, without any notice to them except such as is given by the record. Butman v. James, 34 Minn. 547, 27 N. W. Rep. 66.

A. executed to B. a deed of real estate absolute in terms, but intended only as a mortgage, and B. executed to A. an instrument of defeasance, by which B. agreed to quitclaim to A. upon being paid the debt which the deed was given to secure. This instrument was not acknowledged, but was placed on the record. Held, that the instrument was not entitled to be recorded, and that, the defeasance not being legally recorded, the deed from A. to B. could not be affected or defeated by it, as against a grantee, without actual notice of the defeasance of B.'s right, title, interest, claim, and demand in the land, and that such grantee took the title which B. appeared to have by the deed from A., notwithstanding such instrument of defeasance. Cogan v. Cook, 22 Minn. 138.

See Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212;) Meighen v. King, 31 Minn. 115, 16 N. W. Rep. 702.

§ 24. Assignment of mortgage—Record.

Independently of this statute, a debtor paying his debt (not evidenced by an immature negotiable instrument) to his creditor, at any time before knowledge or notice of an assignment by the latter, in effect discharges the debt, and a prior assignment gives no right of further recovery; but such payment, after notice of assignment, is no defense to an action by the assignee. Other parts of the recording law give to the record of certain instruments the effect of constructive notice of their execution. The effect of the statute is simply to provide that the record of the assignment of a mortgage shall not have that effect. It leaves unchanged the law as to the effect of payments. In case the debt is evidenced by a negotiable instrument, not yet mature, a payment to the payee will not prejudice the right of recovery by a *bona fide* holder at maturity. Such has always been the law, and the statute does not affect it. Blumenthal v. Jassoy, 29 Minn. 179, 12 N. W. Rep. 517.

It seems that a mortgagor may always pay his mortgage debt to the mortgagee, whether the mortgage has been assigned or not, if he pays in good faith, and without knowledge of the assignment; and also that an assignee, to be fully protected against such payments, must do more than simply place his assignments on record. He must bring home to the mortgagor actual notice of such recording. This provision of statute is general in its application to mortgages, making no exception in regard to such as are collateral to negotiable paper. Johnson v. Carpenter, 7 Minn. 181, (Gil. 125.)

Where an assignment was indorsed on a mortgage, describing it as "the within-described mortgage," and was afterwards recorded on a subsequent page of the same book as the mortgage, held, sufficient recording of the assignment for the assignee to foreclose under the power. Carli v. Taylor, 15 Minn. 171, (Gil. 131.)

§ 25. "Purchaser" defined.

See Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212, 223.)

§ 26. "Conveyance" defined.

A bond for title is not a "conveyance." Kingsley v. Gilman, 15 Minn. 59, (Gil. 40.) Compare Dahl v. Pross, 6 Minn. 89, (Gil. 38.)

A "release," as an instrument by which the title to real estate might be affected in law or equity, is under this section "a conveyance," within the meaning of § 21, which declares that every conveyance of real estate, not recorded in the office of the proper register of deeds, shall be void as against any purchaser in good faith, and for a valuable consideration, of the same real estate whose conveyance is first duly recorded. Palmer v. Bates, 22 Minn. 532.

A lease for a term not exceeding three years need not be attested by witnesses. Chandler v. Kent, 8 Minn. 524, (Gil. 467.)

A party-wall agreement, by which one acquires a right of support on an adjoining lot, is a conveyance, within the meaning of this section. Warner v. Rogers, 23 Minn. 34.

See Davis v. Murphy, cited in note to *c.* 40, § 1, *supra;* Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212, 223;) Gregg v. Owens, 33 N. W. Rep. 216, 217.

§ 28. Record—Notice.

The record of a mortgage describing the property as "one undivided half of lots 3, 4, 5, and 6, in block numbered 21, in Rice & Irvine's addition to St. Paul, being the same premises described in a deed from Alpheus G. Fuller to Holmes Amidon, dated October 15, 1852, and recorded in the office of the register of deeds for Ramsey county, Book E of Deeds, page 10, there being a steam saw-mill on the premises," the description in the deed referred to being lots 6 and 7, in block 21, and lots 3, 4, 5, and 6, in block 44, same addition, is not notice to subsequent purchasers that the mortgage was intended to convey the undivided half of the lots described in the deed. Simmons v. Fuller, 17 Minn. 485, (Gil. 462.)

In an action for relief on the ground of fraud, constructive notice alone of the facts constituting it, such as the record of a deed in the register's office, is insufficient to set in motion the statute of limitations. Berkey v. Judd, 22 Minn. 288.

A recorded mortgage, though dated a year later than its recording, is constructive notice to a second mortgagee. Jacobs v. Dennison, (Mass.) 5 N. E. Rep. 526.

The record of an instrument executed by one out of possession, and having no record title or apparent interest in the premises, is not of itself notice to one claiming through the apparent owner. Traphagen v. Irwin, (Neb.) 24 N. W. Rep. 684.

Though the record of an instrument not entitled to be recorded is not constructive notice, yet, if a purchaser actually sees the instrument on record, he will be deemed to have actual notice of its contents. Walters v. Hartwig, (Ind.) 6 N. E. Rep. 5. See Girardin v. Lampe, (Wis.) 16 N. W. Rep. 614.

Unauthorized record as notice, see Brigham v. Brown, (Mich.) 6 N. W. Rep. 97.

Fraudulent record as notice, see Corer v. Alderman, (Mich.) 9 N. W. Rep. 844.

§ 30. Unorganized counties—Transcribing records.

A transcript, by the register of deeds of Blue Earth county, from the records of Ramsey county, of a town plat recorded there while such territory was attached to Ramsey county for judicial purposes, is admissible in evidence with the same effect as the original record would have been. Village of Mankato v. Meagher, 17 Minn. 265, (Gil. 243.)

§ 31. Scroll or device used as seal.

See Brown v. Jordhal, 32 Minn. 135, 19 N. W. Rep. 650; Williams v. Starr, 5 Wis. 534.

§ 32. Recording instruments—Requisites.

See Parret v. Shaubhut, 5 Minn. 323, (Gil. 258;) Dahl v. Pross, 6 Minn. 89, (Gil. 38;) Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212, 223.)

§ 34. Incumbrances—Grantor to reveal.

This section does not apply to a conveyance which passes no title or interest in the real estate. McNaughton v. Carleton College, 28 Minn. 285, 9 N. W. Rep. 805.

See Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212, 223.)

§ 35. Covenant against incumbrances—Liability.

This section has reference solely to incumbrances *appearing* of record to exist, *but not existing in fact*, as in the case of a recorded mortgage which has been fully paid, but not discharged of record, the object of the statute being to give a right of action in such cases against the grantor in favor of the grantee, his assigns, etc., "for all dam-

ages in removing the same," as a cloud upon the title. Hawthorne v. City Bank of Minneapolis, 34 Minn. 382, 26 N. W. Rep. 4.

See Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212, 223.)

§ 36, *§ 37. Discharge of mortgages of record.

See Merchant v. Woods, 27 Minn. 396, 398, 7 N. W. Rep. 826.

*§§ 39–42. Railroad lands—Lists—Record—Application of act.

See Winona, etc., R. Co. v. Randall, 29 Minn. 283, 13 N. W. Rep. 127.

CHAPTER 41.

FRAUDS.

TITLE 2.

STATUTE OF FRAUDS.

§ 6. Agreements not in writing.

AGREEMENTS NOT TO BE PERFORMED WITHIN ONE YEAR. A parol agreement that, by its terms, is not to be performed within one year from the making thereof, is within the statute of frauds, and void. Otherwise, if its obligations can be performed within that period. Cowles v. Warner, 22 Minn. 449.

A finding of fact that *on or about* the first of April premises were leased for one year from the first of April does not present the objection that the leasing was an agreement not to be performed within one year from the making thereof. Mackey v. Potter, 34 Minn. 510, 26 N. W. Rep. 906.

Part performance of an agreement that cannot be performed within a year does not relieve it of the statute of frauds. Wolke v. Fleming, (Ind.) 2 N. E. Rep. 325.

AGREEMENTS TO ANSWER FOR THE DEBTS, ETC., OF ANOTHER. A promise to a debtor to pay his debt to another is not within the statute. Goetz v. Foos, 14 Minn. 265, (Gil. 196;) following Yale v. Edgerton, 14 Minn. 194, (Gil. 144.)

An agreement to answer for the debt or default of another, founded on a new and original consideration between the parties thereto, is not within the statute of frauds, and such consideration need not be expressed in writing. Nichols v. Allen, 22 Minn. 283. See, also, Same v. Same, 23 Minn. 542.

A written guaranty of the collection of a note made by a third party is not void, as within the statute of frauds, because the consideration thereof is not therein expressed, where such consideration arises solely out of a valid discharge by the guarantee of an obligation in his favor against the guarantor, wholly distinct and independent of the note. Sheldon v. Butler, 24 Minn. 513.

A verbal promise to pay the debt of another, on the strength of which the credit is given, is a sufficient consideration for the promisor's subsequent indorsement of a promissory note given for the debt. Rogers v. Stevenson, 16 Minn. 68, (Gil. 56.)

Where a debtor transfers his property to another, who, in consideration thereof, promises to pay the debts of the former, the promise is not within the statute of frauds. Sullivan v. Murphy, 23 Minn. 6.

A verbal promise to pay for goods to be supplied to another, if the buyer does not, is within the statute. Dufolt v. Gorman, 1 Minn. 301, (Gil. 234.)

A verbal promise to a landlord that if he will allow a tenant to stay on the premises, he (the promisor) will be responsible for the rent, and see that all is right, is within the statute, and void. Walker v. McDonald, 5 Minn. 455, (Gil. 368.)

Sufficiency of memorandum, see Jones v. Railroad Co., (Mass.) 7 N. E. Rep. 839.

In a contract of guaranty it is not necessary to state the consideration in express terms, provided the memorandum is so framed that such consideration can be certainly inferred by a person of ordinary capacity. Wilson Sewing-Machine Co. v. Schnell, 20 Minn. 40, (Gil. 33.)

The words "for value received" are a sufficient expression of the consideration, within the statute of frauds. Osborne v. Baker, 34 Minn. 307, 25 N. W. Rep. 606.