GENERAL STATUTES

OF THE

STATE OF MINNESOTA

IN FORCE

JANUARY 1, 1889.

COMPLETE IN TWO VOLUMES.

VOLUME 1, the General Statutes of 1878, prepared by GEORGE B. YOUNG, edited and published under the authority of chapter 67 of the Laws of 1878, and chapter 67 of the Laws of 1879.

VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

ST. PAUL:
WEST PUBLISHING CO.
1888.

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.

Contemporaneous lease and guaranty, expressing consideration, see Highland v. Dresser, 35 Minn. 345, 29 N. W. Rep. 55.

A complaint upon a promise to pay the debt of another need not allege that it was in writing. Walsh v. Kattenburgh, 8 Minn. 127, (Gil. 99.)

See Abbott v. Nash, 35 Minn. 451, 29 N. W. Rep. 65; Hoile v. Bailey, (Wis.) 17 N. W. Rep. 322; Weisel v. Spencer, (Wis.) 18 N. W. Rep. 165; Kelley v. Schupp, Id. 725; Windell v. Hudson, (Ind.) 2 N. E. Rep. 303; Teeters v. Lamborn, (Ohio,) 1 N. E. Rep. 513; McCraith v. National Bank, (N. Y.) 10 N. E. Rep. 862; Wolke v. Fleming, (Ind.) 2 N. E. Rep. 325.

§ 7. Contracts for sale of goods.

An agreement to purchase, at five dollars a ton, the flax straw to be raised from forty-five bushels of flax seed, it appearing that the amount raised was from twenty to fifty tons, is an agreement for the sale of goods, etc., for the price of more than fifty dollars, and, unless there is part payment, acceptance of a part of the goods, or a note or memorandum in writing, signed by the party to be charged, is void. Brown v. Sanborn, 21 Minn. 402.

A verbal contract to furnish material and prepare and fit the same for putting up four houses, of a particular kind and dimensions, at one price for the whole, is not a contract for the sale of personal property within the meaning of the statute, and is valid. Phipps v. McFarlane, 3 Minn. 109, (Gil. 61.)

Contract for the manufacture of an article involving special skill, see Meincke v. Falk, (Wis.) 13 N. W Rep. 545.

THE MEMORANDUM. It is enough if the memorandum be subscribed by the party against whom it is sought to be enforced. Morin v. Martz, 13 Minn. 191, (Gil. 180;) Wemple v. Knopf, 15 Minn. 440, (Gil. 355.)

A written admission of the agreement will take it out of the statute, though addressed to a stranger. Warfield v. Wisconsin Cranberry Co., (Iowa,) 19 N. W. Rep. 224.

Contract contained in letters, the price being referred to only in an unsigned postscript, see Doughty v. Manhattan Brass Co., (N. Y.) 4 N. E. Rep. 747.

RECEIPT AND ACCEPTANCE. A subsequent delivery and acceptance of the goods relieves the agreement of the statute. Jackson v. Tupper, (N. Y.) 5 N. E. Rep. 65; McCarthy v. Nash, 14 Minn. 127, (Gil. 95.)

Delivery to a carrier selected by the vendor will not satisfy the statute. Simmons Hardware Co. v. Mullen, 33 Minn. 195, 22 N. W. Rep. 294. See Bullock v. Tschergi, 13 Fed. Rep. 345.

An oral order by the purchaser that the goods be shipped by a certain carrier does not give the carrier authority to accept the goods. Smith v. Brennan, (Mich.) 28 N. W. Rep. 892.

Receiving goods on trial, see Somers v. McLaughlin, (Wis.) 15 N. W. Rep. 442.

PAYMENT OF PURCHASE MONEY. A payment upon a prior oral contract is insufficient of itself to make the agreement valid. There must be enough in addition to show a reaffirmance of the terms of the agreement, and, this being shown, a cause of action arises, not on the prior oral contract, but on the new contract made at the time of the payment. Jackson v. Tupper, (N. Y.) 5 N. E. Rep. 65.

The actual surrender of a promissory note of the vendor by the vendee, as part payment, will take the sale out of the statute. Sharp v. Carroll, (Wis.) 27 N. W. Rep. 832.

§ 9. Existing trusts—Unwritten grants void.

This section does not apply to the *making* of assignments in trust for creditors. Conrad v. Marcotte, 23 Minn. 55. An assignment of personal property for the benefit of creditors need not, prior to *c.* 44, Laws 1876, have been in writing. Id.

§ 10. Conveyances, etc., of land.

A contract by a pre-emptor about to pre-empt land, by which he agrees to give another an interest in the land, is utterly void, and incapable of becoming the foundation for any rights. Evans v Folsom, 5 Minn. 422, (Gil. 342.)

A verbal agreement to form a copartnership for the purchase of land is void under the statute of frauds. Raub v. Smith, (Mich.) 28 N. W. Rep. 676. *Contra*, Richards v. Grinnell, (Iowa,) 18 N. W. Rep. 668. And see Pennybacker v. Leary, (Iowa,) 21 N. W. Rep. 575; Snyder v Wolford, 33 Minn. 175, 22 N. W. Rep. 254; Babcock v. Read, (N. Y.) 1 N. E. Rep. 141.

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

An oral lease for a term of three years, with a right in the lessor to terminate it at any time upon four months' notice, is void as being for a term "exceeding one year." But if the lessee goes into possession under it, it regulates the terms of the tenancy as respects rents. Evans v. Winona Lumber Co., 30 Minn. 515, 16 N. W. Rep. 404.

A lease of four rooms, at a gross monthly rent, dated February 5, 1883, the tenants to have immediate possession of two of them, and of the other two on May 1, 1883, and

the term to continue till May 1, 1884, is a lease for a term exceeding one year, and authority of an agent for the lessor to execute it must be in writing. Judd v. Arnold, 31 Minn. 430, 18 N. W. Rep. 151.

As applied to a lease, a surrender is the yielding up of an estate for life or years to him that has the immediate reversion or remainder, wherein the particular estate becomes extinct by a mutual agreement between the parties. It may be effected by express words evincing such agreement, or may be implied from conduct of the parties going to show that they have both agreed to consider the surrender as made. The agreement may be, and sometimes is, implied upon the principle of estoppel. Dayton v. Craik, 26 Minn. 133, 1 N. W. Rep. 813. A surrender by operation of law takes place where the owner of a particular estate has been a party to some act, the validity of which he is by law afterwards estopped from disputing, and which would not be valid if his particular estate had continued to exist. Smith v. Pendergast, 26 Minn. 318, 3 N. W. Rep. 978.

A conveyance by one is such a part performance as will take an agreement for the exchange of lands out of the statute of frauds. McClure v. Otrich, (Ill.) 8 N. E. Rep. 784. See, further, as to part performance, Robinson v. Thrailkill, (Ind.) 10 N. E. Rep. 647; Wallace v. Long, (Ind.) 5 N. E. Rep. 666; Brown v. Hoag, 35 Minn. 373, 29 N. W. Rep. 135.

The statute applied, Tatge v. Tatge, 34 Minn. 272, 25 N. W. Rep. 596, 26 N. W. Rep. 121. Cited, Johnson v. Krassin, 25 Minn. 117; Sanford v. Johnson, 24 Minn. 173; Sherwood v. St. Paul, etc., Ry. Co., 21 Minn. 130.

See, also, Arnold v. Wainwright, 6 Minn. 358, (Gil. 241;) Wentworth v. Wentworth, 2 Minn. 277, (Gil. 238;) Hastings v. Weber, (Mass.) 7 N. E. Rep. 846; Elliot v. Barrett, (Mass.) 10 N. E. Rep. 820.

§ 11. Limitation of § 10.

Parol evidence may be received to show that land, the title to which is in the name of one partner, is held by him in trust for the firm of which he is a member, and that it is in fact the property of the partnership. Sherwood v. St. Paul, etc., Ry. Co., 21 Minn. 128.

§ 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 lawful agent thereunto authorized, in writing; and no such contract, when made by such agent, shall be entitled to record unless the authority of such agent be also recorded. (*As amended* 1887, *c.* 26.)

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

A contract for the assignment of a lease of real estate for a term of years is within the statute of frauds. Benton v. Schulte, 31 Minn. 312, 17 N. W. Rep. 621.

The authority of an agent to make a contract for the sale of real estate need not be in writing. Dickerman v. Ashton, 21 Minn. 538. 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.)

As to a parol agreement for a one-year lease, to begin in the future, see Whiting v. Ohlert, (Mich.) 18 N. W. Rep. 219.

Section cited, Johnson v. Krassin, 25 Minn. 118; Allis v. Goldsmith, 22 Minn. 127; Brown v. Sanborn, 21 Minn. 402; Sanborn v. Nockin, 20 Minn. 186, (Gil. 165.)

§ 13. Oral contracts—Specific performance.

Taking possession of and improving land under a parol contract for its purchase is such part performance as takes the case out of the statute. Gill v. Newell, 13 Minn. 462, (Gil. 430.) The making of substantial improvements, pursuant to an oral agreement to convey the real estate improved, by a vendee in possession prior to and at the time of the agreement, is such a part performance as takes the agreement out of the statute of frauds. Pfiffner v. Stillwater, etc., R. Co., 23 Minn. 343.

Where there is a lease of land, and possession under it, and the lessor agrees orally to convey upon certain terms agreed on to the lessee, at any time within five days after the expiration of the term, and the lessee, after the term expires, continues in possession, and notifies the lessor that she will purchase the property at the terms agreed on, and requests a deed, such possession is a part performance that takes the case out of the statute of frauds. Place v. Johnson, 20 Minn. 219, (Gil. 198.)

To constitute a contract, valid within the statute of frauds, to convey real estate, an

offer in writing to sell must be accepted in writing. A readiness by the purchaser to pay, and depositing the price with the purchaser's agent, and notifying the seller, is not a part performance to take an agreement to convey real estate out of the statute. Lanz v. McLaughlin, 14 Minn. 72, (Gil. 55.)

TITLE 3.

CONVEYANCES FRAUDULENT AS AGAINST CREDITORS.

See May v. Walker, 35 Minn. 194, 196, 28 N. W. Rep. 252; Adamson v. Cheney, 35 Minn. 474, 475, 29 N. W. Rep. 71.

§ 14. Conveyances, etc., in trust for grantor.

This section is not applicable to a case where the conveyance is primarily for the benefit of the grantee, and the reservation is merely partial, and incidental to the general purpose. Camp v. Thompson, 25 Minn. 175; Butler v. White, Id. 432.

An assignment which dictates to the creditors the terms upon which they may receive benefits under it is void. Banning v. Sibley, 3 Minn. 389, (Gil. 282.)

Section applied, Truitt v. Caldwell, 3 Minn. 364, (Gil. 257;) Chophard v. Bayard, 4 Minn. 533, (Gil. 418;) Brown v. Matthaus, 14 Minn. 205, (Gil. 149.) And see Hicks v. Stone, 13 Minn. 434, (Gil. 398, 403.)

§ 15. Sale of chattels—Delivery—Change of possession.

One who in good faith purchases personal property, and takes posssesion, may afterwards lend or rent it to the vendor. Deere v. Needles, (Iowa,) 21 N. W. Rep. 203.

Authority to an employe of the vendor to take possession of the goods sold is not a compliance with the statute requiring an immediate delivery and actual change of possession. Seavey v. Walker, (Ind.) 9 N. E. Rep. 347.

The questions of good or bad faith and fraudulent intent are questions of fact for a jury. Molm v. Barton, 27 Minn. 530, 8 N. W. Rep. 765.

As to a chattel mortgage providing that the mortgagor may remain in possession, and continue the business of selling the stock mortgaged, see Fisher v. Syfers, (Ind.) 10 N. E. Rep. 306. See, also, Potts v. Hart, (N. Y.) 1 N. E. Rep. 605; Chicago Lumber Co. v. Fisher, (Neb.) 25 N. W. Rep. 340; Barmon v. Bowler, 34 Minn. 416, 26 N. W. Rep. 237; Meyer v. Evans, (Iowa,) 23 N. W. Rep. 386; Anderson v. Patterson, (Wis.) 25 N. W. Rep. 541; Daggett, Bassett & Hills Co. v. McClintock, (Mich.) 22 N. W. Rep. 105; Livingstone v. Brown, 18 Minn. 308, (Gil. 278.)

§ 18. Conveyances, etc., with intent to defraud creditors.

An assignment, by a debtor, of his property, purporting to be for the benefit of his creditors, and fair on its face, if in fact executed by the assignor with the intent and for the purpose of thereby effecting a compromise with his creditors, is void, even though the assignee have no notice of such intent. Bennett v. Ellison, 23 Minn. 242.

A conveyance of real estate by a debtor, for the purpose of putting it beyond the reach of his creditors, and upon the understanding with the grantee that the latter should hold it in trust for him, is void as to creditors of the grantor, although it was also conveyed upon the understanding that the grantee should hold it as security for a debt actually due from the grantor to him, and such debt does not in any way affect the rights of the creditors. Thompson v. Bickford, 19 Minn. 17, (Gil. 1.) If such fraudulent grantee has received the rents and profits of the real estate, or has sold it to a *bona fide* purchaser, and received the proceeds, he is liable therefor to the grantor's creditors, without any deduction for the debt due from the grantor to him, or for any taxes or liens on the property paid by him; and if he has invested the same in specific stocks or securities, the creditors may have such stocks or securities sold to satisfy their demands. Id. Such grantee gets no title as against such creditors by a deed from the purchaser at the foreclosure of a mortgage existing on the real estate at the time of the fraudulent conveyance, and afterwards foreclosed, which deed was given as upon redemption, nor by assignment of the certificate of foreclosure sale. Id.

A conveyance of a homestead with intent to defraud creditors is void as to them, if their judgment would be a lien on it. Piper v. Johnston, 12 Minn. 60, (Gil. 27.) But in such case the conveyance is valid as to the grantor, so that he cannot afterwards claim a homestead in the premises. Id. If, by the fraudulent conveyances, the title is vested in the debtor's wife, he cannot, upon her death, claim as tenant by the curtesy, as against the creditors intended to be defrauded. Id.

Where the intent of an assignor, in executing an assignment for the benefit of creditors, was to prevent a forced sale of the property, and in order that his business might be continued, and the goods sold at retail, the assignment is void. Gere v. Murray, 6 Minn. 305, (Gil. 213.) The assignee in such an assignment is not a purchaser for value, and his innocence of any fraudulent intent will not cure the fraud of the assignor. Id.

A conveyance in trust, purporting to be for the benefit of creditors, and authorizing the trustee to sell on credit, is void as to creditors. Greenleaf v. Edes, 2 Minn. 264, (Gil. 226.) A provision, in a trust deed for the benefit of creditors, that the trustee may sell on credit, vitiates the whole deed; and the trust, as to other parts, cannot be sustained, upon the rule "*ut res magis valeat quam pereat.*" Id. The intent of the debtor to hinder or delay his creditors must always be implied, where such is the necessary effect of any provision in the instrument of assignment, or of the exercise of any authority or power which the instrument confers. Id.

A mortgage given for a larger sum than the legitimate indebtedness it is intended to cover is *prima facie* fraudulent. Taylor v. Wendling, (Iowa,) 24 N. W. Rep. 40. But see Hoey v. Pierron, (Wis.) 30 N. W Rep. 692.

The payment of a fair consideration affords strong evidence of good faith. Nugent v. Jacobs, (N. Y.) 8 N. E. Rep. 367. But the fact of payment of a valuable consideration is not inconsistent with a fraudulent intent. Billings v. Sawyer, (N. Y.) 4 N. E. Rep. 531.

As to a chattel mortgage executed the day before the mortgagor made an assignment for benefit of creditors, see In re Guyer, (Iowa,) 29 N. W. Rep. 826.

Conveyance to wife, to whom the grantor was indebted, see Hoes v. Boyer, (Ind.) 9 N. E. Rep. 427.

As to conveyances between parent and child, see Higgins v. White, (Ill.) 8 N. E. Rep. 808; Chase v. Horton, (Mass.) 9 N. E. Rep. 31.

A sale, fraudulent as against creditors, is voidable, but not absolutely void. It may be affirmed or avoided by such creditors, at their election, but they cannot do both. Hathaway v. Brown, 22 Minn. 214.

A judgment creditor, who institutes against his debtor proceedings supplementary to execution, and, in those proceedings, receives money found due the debtor as the purchase price of land conveyed by him, is thereby estopped from claiming, as against the grantee, that the conveyance was in fraud of the grantor's creditors. Lemay v. Bibeau, 2 Minn. 291, (Gil. 251.)

A creditor, who receives a benefit under an assignment for the benefit of creditors, or becomes a party to it voluntarily, with a full knowledge of its provisions or of the circumstances rendering it fraudulent as to creditors, is thereby estopped from afterwards impeaching it. Scott v. Edes, 3 Minn. 377, (Gil. 271.) Though the creditor be in fact ignorant of the fraudulent character of the assignment, if he have the means of knowledge, or have notice of facts which should have put him upon inquiry, he is equally estopped. So held where the assignment was in law fraudulent on its face, and the creditor might have seen it had he desired. Id. A creditor who, without notice of the fraud in the assignment, accepts a benefit under it, cannot afterwards impeach it without returning the benefit received. Id.

A creditor does not ratify a fraudulent assignment by a debtor, of his property, by commencing garnishee proceedings against the assignee to reach the property. Banning v. Sibley, 3 Minn. 389, (Gil. 282.)

A judgment creditor may levy on and sell real estate of the debtor, notwithstanding the debtor has conveyed it with intent to hinder, delay, or defraud creditors. Campbell v. Jones, 25 Minn. 155, 159. When the creditor has sold the land, and the alleged fraudulent grantee brings an action against the purchaser to determine his title, the validity of the conveyance may be tried without bringing in the grantor. Id.

See, also, Benton v. Snyder, 22 Minn. 247; Sanford v. Johnson, 24 Minn. 172, 173; Matthews v. Torinus, 22 Minn. 132, 136; Furman v. Tenny, 28 Minn. 77, 9 N. W. Rep. 172.

§ 20. Fraudulent intent a question of fact—Consideration.

The question of fraudulent intent in the transfer is one of fact, and the decision of the referee on such question, where there is evidence to support the same, will not be disturbed. Vose v. Stickney, 19 Minn. 367, (Gil. 312.)

If the fraudulent intent appears from the conveyance, or from the facts admitted by the pleadings, the instrument is void, and there is no necessity for a jury to try the question of intent. Burt v. McKinstry, 4 Minn. 204, (Gil. 146.)

Every question of fraudulent intent, arising under the statute, must be submitted to the jury, unless the instrument carries upon its face the evidence of the intent, in which case, it being indisputable, the jury could find only one way, and the court might declare the fraud to exist without the form of a verdict. Filley v. Register, 4 Minn. 391, (Gil. 296.)

Where a conveyance is claimed to have been made with intent to defraud creditors, and the grantee is charged to have been a party to the fraudulent intent, it is proper to allow the grantee to state, when sworn as a witness, whether he knew anything about the grantor's affairs at the time the conveyance was made. Id.

As to voluntary conveyances by insolvent, see Faurote v. Carr, (Ind.) 9 N. E. Rep. 350; Taylor v. Duesterberg, Id. 907. And see note to § 18, *supra*.

Section applied, Vose v. Stickney, 19 Minn. 367, (Gil. 312;) Truitt v. Caldwell, 3 Minn. 364, (Gil. 257;) Molm v. Barton, 27 Minn. 530, 533, 8 N. W. Rep. 765. See, also, Hathaway v. Brown, 18 Minn. 414, (Gil. 373.)

§ 21. Bona fide purchasers.

A purchaser who has paid nothing on his purchase from a fraudulent vendee, is not a *bona fide* purchaser for value so as to be protected. Hicks v. Stone, 13 Minn. 434, (Gil. 398.)

See note to § 18, *supra*.

§ 22. "Conveyance" defined.

See Sanford v. Johnson, 24 Minn. 172, 173.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

See, as to the act of 1876, Lesher v. Getman, 28 Minn. 93, 9 N. W. Rep. 585; In re Mann, 32 Minn. 60, 64, 19 N. W. Rep. 347.

§ 23. Assignees—Qualifications—Assignment—Validity.

Prior to the passage of Laws 1876, *c.* 44, an assignment of personal property, in trust for the benefit of creditors, accompanied with such delivery to the assignee as the nature of the property admitted, was not required to be in writing. Conrad v. Marcotte, 23 Minn. 55.

This statute was intended to apply only to assignments made within this state. It does not change the unwritten law relative to the validity of foreign assignments. In re Paige, etc., Lumber Co., 31 Minn. 136, 16 N. W. Rep. 700.

An assignment made under the insolvent law of 1881 (Laws 1881, *c.* 148) is not void because the assignee named therein is not a freeholder of this state. Simon v. Mann, 33 Minn. 412, 23 N. W. Rep. 856.

The rule of law, that a fraudulent intent on the part of the assignor will vitiate an assignment, is not changed by this statute. It simply regulates the mode of executing such conveyances, and the manner of executing the trusts created thereby, leaving the question of their validity to be determined by the existing rules of law, except so far as expressly provided by the statute itself. Lesher v. Getman, 28 Minn. 93, 9 N. W. Rep. 585.

The *subscription* of a partnership assignment by one of the partners only, in the firm name, is sufficient. Williams v. Frost, 27 Minn. 259, 6 N. W. Rep. 793.

An assignment had indorsed on it a notary's certificate of its acknowledgment, signed by the notary, but with no notarial seal attached to it. Following this certificate, and on the same page, was the same notary's certificate of the assignee's acknowledgment of the execution of his acceptance of the trust. Attached to this certificate was the notary's seal. Held, the first certificate, for want of a seal, is a nullity and the assignment void. De Graw v. King, 28 Minn. 118, 9 N. W. Rep. 636.

The jurisdiction over assignments for the benefit of creditors granted by this chapter is vested in the district court, to be exercised by the judges thereof. Clark v. Stanton, 24 Minn. 232.

Section cited, Bannon v. Bowler, 34 Minn. 416, 26 N. W. Rep. 237; In re Mann, 32 Minn. 64, 19 N. W Rep. 347; Donohue v. Ladd, 31 Minn. 246, 17 N. W. Rep. 381; Kingman v. Barton, 24 Minn. 295; Langdon v. Thompson, 25 Minn. 509; Mann v. Flower, Id. 500; Leuthold v. Young, 32 Minn. 122, 19 N. W. Rep. 652.

*§ 23*a*. Assignments—Recording.

No deed of assignment for the benefit of creditors, whether under the general assignment law or the insolvent law of this state, and no order or decree of assignment under said insolvent law, by any court, shall be valid or of any force or effect whatsoever as a conveyance of any land or of any estate or interest therein in this state until a copy of such deed, order, or decree, certified by the clerk or his deputy of the court wherein the original deed, order, or decree is filed, shall be filed for record in the office of the register of deeds of the county wherein such land is situated. (1887, *c.* 206, § 1.*)

*§ 23*b*. Same—Act not retrospective.

Provided, that this act shall not apply to cases where deeds of assignments for the benefit of creditors have heretofore been made. (*Id.* § 2.)

*"An act to provide for the recording, in the office of registers of deeds, of certified copies of deeds or decrees of assignment for the benefit of creditors, affecting real estate." Approved February 28, 1887.

*§ 24. Inventory.

The omission of the assignor to file an inventory within the time specified does not defeat the proceedings initiated, nor avoid the trust created by the filing of the assignment, nor affect the title of the assignee. Distinguishing Kingman v. Barton, 24 Minn. 295; Swart v. Thomas, 26 Minn. 141, 1 N. W. Rep. 830.

*§ 25. Assignee's bond—Filing—Approval.

The requirement that an assignee for creditors file his bond within five days after filing the inventory, is imperative, and on failure to so file such bond his interest in the property assigned is determined. *Kingman v. Barton*, 24 Minn. 295.

Until the filing of his bond, as required by this section, the interest of an assignee in the property is inchoate or conditional merely, depending for its absolute vesting on the filing of the bond, prescribed, within the time limited. Until that time the court does not acquire jurisdiction over him. Id.

If the bond is seasonably executed, and delivered to the judge for approval, the rights of the assignee will not be affected by the fact that the judge retains the bond until after the expiration of the time within which it should be filed. Johnson v. Bray, 35 Minn. 248, 28 N. W. Rep. 504.

See Prosser v. Hartley, 35 Minn. 340, 29 N. W. Rep. 156.

*§ 27. Assignee—Avoiding fraudulent conveyances.

The right to impeach or set aside a mortgage, which is fraudulent and void as against the creditors of the mortgagor, does not pass to an assignee of the mortgagor, by a voluntary general assignment in trust for the benefit of creditors, subsequently executed, and unaffected by any statute in force at the time. Flower v. Cornish, 25 Minn. 473.

See Merrill v. Ressler, 33 N. W. Rep. 117; Hunter v. Cleveland Co-Operative Stove Co., 31 Minn. 509, 18 N. W. Rep. 645.

*§ 28. Claims—Proof—Preferred.

Under the act of 1881, rent accruing after the assignment is not provable. In re Bristol, 33 N. W. Rep. 852.

As to the effect of the act of a secured creditor in inadvertently making proof of his claim, which he afterwards abandons, see Nichols v. Smith, (Mass.) 9 N. E. Rep. 810.

As to who are laborers, servants, or employes, see Lang v. Lang, (Wis.) 25 N. W. Rep. 650.

*§ 29. District judge—Powers—Assignee—Removal—Discharge.

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 af 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 performance 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. And whenever said trust-estate shall have been, or shall be, taken out of the hands of said assignee, by means of any legal proceedings or actions in any court or courts, and whenever said assignment shall have been declared void as to creditors, or by reason of said proceedings, or from any cause, the further administration of said trust is or has been rendered impracticable, unadvisable, or nugatory, said assignee shall, upon proper showing thereof, and upon such notice as shall be required by the court, be in like manner discharged, and the sureties on his official bond released. (1876, c. 44, § 6, *as amended* 1877, c. 67, § 3; 1885, c. 82.)

The district court may remove an assignee for any misconduct in the administration of his trust that shows such removal necessary to insure a faithful performance of the trust, and speedy close of the same by final decree of settlement and distribution. Clark v. Stanton, 24 Minn. 232.

The jurisdiction of the district court ends with the final decree distributing the trust-estate, or directing a reassignment of the residue pursuant to the assignment, and does not extend to a determination of the respective interests of the assignors in such residue. Id.

See Swart v. Thomas, 26 Minn. 141, 1 N. W Rep. 830.

*§ 30. Assignee's bond—Action.

Action by receiver, see Prosser v. Hartley, 35 Minn. 340, 29 N. W. Rep. 156.

*§ 31. Indorsement and record of assignment.

See Perkins v. Zarracher, 32 Minn. 71, 19 N. W. Rep. 385.

*§ 32. Dividends.

As to the liability of the assignee for omitting to pay dividends upon accounts properly filed, but misplaced, see In re Robbins, 36 Minn. 66, 30 N. W. Rep. 304.

*§ 33. Previous assignments—Duties of assignees.

This statute is a remedial statute, and to be liberally construed. Clark v. Stanton, 24 Minn. 232.

One of two or more assignors for the benefit of creditors is a person interested in the estate, within the meaning of this section, and may file the petition therein authorized for default of assignee in filing his report. Id.

The investigation into the conduct of an assignee herein authorized is a summary proceeding, conducted under the control and in the discretion of the court, to obtain the information requisite to enable it to act advisedly in the exercise of its supervisory jurisdiction, and any fact tending to give such information may be inquired into, and creditors be admitted as parties and allowed to participate in such investigation at any stage of the proceedings. Id.

*§ 34. Assignments—Attachments, etc.—Dissolution.

Whenever the property of any debtor is attached or levied upon by any officer, by virtue of any writ or process issued out of a court of this state, in favor of any creditor, or garnishment made against any debtor, such debtor may, within ten days after the levying of such attachment, process, or garnishment shall have been made, make an assignment of all his property and estate, not exempt by law, for the equal benefit of all his creditors, in proportion to their respective valid claims, who shall file releases of their debts and claims against such creditors, as hereinafter provided, which assignment shall be made in accordance with and be governed by the laws of the state of Minnesota relating to assignments made by debtors, except as herein provided, and, upon the making of such assignment, all attachments, levy, or garnishment so made, shall be dissolved, upon the appointment and qualification of an assignee or receiver; and thereupon the officers shall deliver the property attached or levied upon to such assignee or receiver, unless the assignee shall, within five days after such assignment, file in the office of the clerk of the court, where such attachment was issued or judgment was rendered, a notice of his intention to retain such attachment, levy, or garnishment, in which case any such attachment, levy, or garnishment shall inure to the benefit of all the said creditors, and may be enforced by the assignee by his substitution in the action as such in the same manner as the plaintiff might have enforced the same had such assignment not been made: *provided, however*, that this section shall not apply to cases where an execution has been issued upon a judgment in an action where the complaint has been filed in the office of the clerk of the court, in the county wherein the defendant resides, twenty days prior to the entry of the judgment. (1881, *c.* 148, § 1;* *as amended* 1885, *c.* 73.)

The only authorized voluntary assignment is of all the debtor's property not exempt from execution. May v. Walker, 35 Minn. 194, 28 N. W. Rep. 252. A voluntary assignment by a partnership of partnership property exclusively is upon its face partial, and not general. Id. A creditor, who will have nothing to do with an invalid assignment, may lay hold of the property or its proceeds in the hands of the assignee by garnishment or otherwise. As to him it is not *in custodia legis*. Id.

Garnishment is not superseded or dissolved by a subsequent assignment, at common law, or under Gen. St. 1878, *c.* 41, nor by an assignment under the act of 1881, filed more than 10 days after the garnishment proceedings are instituted. Fairbanks v. Whitney, 36 Minn. 305, 30 N. W. Rep. 812.

The insolvent proceedings themselves work a dissolution of prior attachments, and an order of the court vacating them is not necessary. Johnson v. Bray, 35 Minn. 248, 28 N. W. Rep. 504.

See In re Walker, 33 N. W. Rep. 852, 34 N. W. Rep. 591; and note to § 23, *supra*.

*§ 35. Insolvent debtors—Giving preferences, etc.—Appointment of receiver.

When any debtor, being insolvent, shall confess judgment, or do any act or make any conveyance whereby any one of his creditors shall obtain a preference over any other of his creditors, or shall omit to do any act which he might lawfully do to prevent any one of his creditors from obtaining preference over his other creditors, contrary to the intent of this act, or if he shall not, within ten days after any levy by attachment, execution, or garnishment made against him, make an assignment of all his property as provided in section one of this act, or within such time in good faith institute proceedings to vacate the attachment and execution or garnishment, or secure a release of such levy and defend against the said garnishment at the first opportunity, then, or within sixty days thereafter, any two or more of his creditors holding and owning debts or claims of not less than two hundred dollars in the aggregate amount,

*"An act to prevent debtors from giving preference to creditors, and to secure the equal distribution of the property of the debtors among their creditors, and for the release of debts against debtors." Approved March 7, 1881. Took effect from and after July 1, 1881.

may make a petition to the district court, or a judge thereof, setting forth therein such matters and facts as may be pertinent, which petition may be heard in any county, in the discretion of the judge; and after notice given, in pursuance of the order of the court, and in such manner as the court may direct, to the debtor and creditors sought to be preferred, of the time and place of hearing, the court, in term time, or a judge, in vacation, shall proceed summarily upon such petition to hear the parties and receive such evidence as may be proper; and if it shall appear to the court or judge that the debtor is insolvent, or has been giving, or is about to give, a preference to any of his creditors over other of his creditors, or any of them, or has refused or neglected to make an assignment of his property, as herein provided, the court or judge shall appoint a receiver, who shall take possession of all the debtor's property, evidences of property, or indebtedness, books, papers, debts, choses in action, and estates of every kind of the debtor, including property attached or levied upon or garnished, in the manner and subject to the limitations herein provided, and of all property conveyed in violation of the provisions of this act, and have charge and control of the same, and of all debts or property garnished, except property exempt by law, and shall, within four months of the time of his appointment, unless the court or judge otherwise directs and allows further time, convert the same to money, and shall marshal and distribute the same among the several creditors, in proportion to their several claims, who shall file releases of all claims against the insolvent debtor, in consideration of the benefit of the provisions of this act, as hereinafter provided, whether their claims are due or to become due, and who shall come in and prove their respective claims within such time and in such manner as the court or judge shall direct; and the court or judge shall order the debtor to file a schedule of his debts, and to whom they are due or payable, and of his property, including all notes, accounts, and bills, payable to him, and the proof thereof; and the payment of dividends in all proceedings shall be had under the provisions of the laws of this state relating to receivers, and the court or judge may order and direct such debtor to do whatever is necessary and proper to carry this act into effect. (1881, *c.* 148, § 2.)

"Insolvent" defined. Daniels v. Palmer, 35 Minn. 347, 29 N. W. Rep. 162. See, also, Daniels v. Bank, 35 Minn. 351, 29 N. W. Rep. 165. What constitutes "reasonable cause to believe" debtor insolvent, see Daniels v. Bank, *supra.*

See, as to preferences by non-resident insolvents, In re Peck, (Minn.) 38 N. W. Rep. 104.

Sufficiency of petition. In re Green's Estate, (Minn.) 38 N. W. Rep. 111.

In proceedings under this section the court cannot, in the order appointing a receiver, vacate prior attachments or garnishments. In re Iron & Brass Works v. Cole, 33 N. W. Rep. 219.

The receiver may maintain an action to avoid a disposition of property whereby a creditor is preferred without first obtaining leave. Moore v Hayes, 35 Minn. 205, 28 N. W. Rep. 238. But as to maintaining replevin in such case, see Id.; Maxfield v. Wilkins, 38 N. W. Rep. 701.

See Bliss v. Doty, 36 Minn. 168, 30 N. W. Rep. 465; Abbott v. Shepard, (Mass.) 6 N. E. Rep. 826.

*§ 36. Preferences—Penalty—Injunction—Ne exeat.

No assignment hereafter made for the benefit of such creditors shall give to any one creditor any preference over the claims of another creditor, except in cases expressly provided by law. If any insolvent debtor shall confess or suffer judgment to be procured in any court with intent that any one of his creditors shall obtain a preference over any other of his creditors, such insolvent debtor shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding five hundred dollars, and in default of payment shall be imprisoned in the county jail for a period not exceeding six months. The court may at any time, upon the filing of affidavits or other evidence satisfactory to the court, grant an order restraining such debtor from collecting any bills, notes, accounts, or other property, or from disposing of, or in any manner interfering

with, the property of said estate, or may, by writ of *ne exeat* or by order, restrain said debtor from leaving the state until the further order of the court, or may require him at any time to appear and make full disclosure as to any disposition of property, or in relation to any other matter pertaining to said estate. (*Id.* § 3.)

*§ 37. Conveyance, etc., in anticipation of insolvency.

Conveyances and payments made, and securities given, by any insolvent debtor, or a debtor in contemplation of insolvency, within four months of making an assignment, as provided in section one of this act, with a view of giving a preference to any creditor upon a pre-existing debt, or to any persons under liability for such debtor, over another, shall be void as to all creditors or persons receiving the same, who shall have reasonable cause to believe that such debtor was insolvent; and all such conveyances made and securities given at any time, unaccompanied with a delivery or change of possession of the property to the grantee, unless the instrument containing the grant or conveyance shall have been duly filed or docketed before the commencement of four months, shall be void as a preference as to any creditor; and the assignee may, by action or other proper proceedings, have all such conveyances, payments, and preferences annulled and adjudged void, and recover the property so conveyed, or the value thereof, and recover the payment so made, and convert all proceeds into money, as provided in this act: *provided*, that the provisions of this act shall not apply to any payment or satisfaction, in whole or in part, of a past due debt made in the usual course of business, without any intent on the part of the creditor to evade the provisions of this act. (*Id.* § 4, *as amended*, 1881, *Ex. Sess.*, c. 23, § 1.)

This section is applicable to involuntary proceedings under § 2, (*§ 35.) Bliss v. Doty, 36 Minn. 168, 30 N. W. Rep. 466.

*§ 38. Actions—Venue—Dismissal—New parties.

All actions or proceedings brought under the provisions of this chapter shall be commenced in the county where the debtor, debtors, or any one of them, resides, if a resident of this state; and if not a resident of this state, such action or proceeding may be brought in any county which the plaintiff shall designate in his complaint, or where such debtors, or any of them, has property, subject to attachment or levy. The court or judge may, at any time during the pendency of the petition under the second section of this act, allow new parties to come in and be joined in such petition; and such petition shall not be dismissed until after the expiration of twenty days from the time of notice by mail to each creditor, or by personal service upon each of such creditors. (1881, c. 148, § 5.)

*§ 39. Attachments, etc.—Costs.

Costs in cases upon which attachments or levies are made, which are dissolved under the provisions of this act, and a reasonable fee, not exceeding twenty-five dollars, in the discretion of the court, to an attorney for creditors petitioning under the act, shall be preferred and be paid first by the receiver appointed hereunder. (*Id.* § 6.)

*§ 40. Actions—Parties—Application of laws.

All actions and proceedings, to be commenced under the provisions of this act, may be commenced and prosecuted in the name of the assignee or receiver, appointed as herein provided, and all laws of the state of a general nature, applicable to receivers and assignments, and not in conflict with the provisions of this act, shall apply to assignees and receivers appointed hereunder, as the case may require. (*Id.* § 7.)

An assignee may avoid transfers and chattel mortgages when the creditors could have avoided them. Merrill v. Ressler, 33 N. W. Rep. 117.

*§ 41. Disallowance of claim—Notice—Appeal.

Any creditor, whose claim is disallowed in whole or in part, by any assignee or receiver appointed or selected under this act, or under the provisions of the assignment laws of this state regarding the assignment of debtors, may appeal from such disallowance to the district court, and there have such claims tried as other civil actions. The assignee shall, within ten days after his disallowance of any claim, in whole or in part, give written notice to such creditor of such disallowance, which notice may be served personally or by mail, as in other cases, on such creditor, his agent, or attorney, and thereupon such creditor may appeal from such disallowance within ten days after the service upon him of such notice of disallowance made by the assignee, and which notice may be served on such assignee personally or by mail, as aforesaid; and in case such service is by mail, the time within which such notice of appeal is to be given shall be within twenty days from the time of such notice of disallowance. (1881, *c.* 148, § 8.)

*§ 42. Assignee or receiver—Vacancy—Removal.

In case of the death of any assignee or receiver, the court may appoint another to fill the vacancy, and the court may, for any proper cause, remove such assignee or receiver, and appoint another in his stead, ~~and the court shall order such removal upon the vote of two-thirds in number~~ and amount of the creditors. (*Id.* § 9.)

*§ 43. Release—Fraudulent concealment.

No creditor of any insolvent debtor shall receive any benefit under the provisions of this act, or any payment of any share of the proceeds of the debtor's estate, unless he shall have first filed with the clerk of the district court, in consideration of the benefits of the provisions of this act, a release to the debtor of all claims other than such as may be paid under the provisions of this act, for the benefit of such debtor; and thereupon the court or judge may direct that judgment be entered discharging such debtor from all claims or debts held by creditors who shall have filed such releases: *provided, however*, that when any creditor of such insolvent debtor, who has made such assignment of his property, or of whose property a receiver has been appointed, as provided in this act, alleges, by complaint made to the judge before the time for the distribution of the insolvent's assets among his creditors, as herein provided, that such insolvent debtor has fraudulently concealed, or fraudulently incumbered or disposed of, any of his property with the intent to cheat and defraud his creditors, such judge may allow the insolvent debtor to appear before him, at a time and place to be designated by such judge, and, after giving such complaining creditor notice of the time and place of hearing, in such manner as the judge may direct, the judge may proceed upon such complaint summarily, without the allegations therein being controverted or denied, and may hear such legal evidence as he may deem pertinent, relating to such fraudulent concealment, incumbrance, or disposal of said debtor's property as alleged in said creditor's complaint; and, after said hearing, said judge may, in his discretion, order or direct that all of said debtor's property and assets, not exempt by law, be distributed among his creditors, as hereinbefore provided, upon their filing such releases, or without their filing releases as aforesaid, and creditors may be examined in like manner in respect to the validity of their debts. (*Id.* § 10.)

The discharge is effected by the order of the court, and not by the release filed by the creditors. Bank v. Wilder, 35 Minn. 94, 27 N. W. Rep. 201. The including in such release of an express reservation of all rights of the creditor against other debtors will not affect the legal operation of the judgment to be entered, and does not invalidate the release. Id.

As to proceedings under the proviso, see In re Gazett, 35 Minn. 532, 29 N. W. Rep. 347.

See Adamson v. Cheney, 35 Minn. 474, 29 N. W. Rep. 71.

***§ 44. Appointment of assignee—Notice.**

Such assignee or receiver shall, within ten days after his appointment, publish a notice in a daily newspaper published at the capital of this state, and also in a daily or weekly newspaper in the county where the debtor, debtors, or any of them, reside, if any is there published, and by sending notices through the mail to such creditors whose residences are known to the assignee or receiver of his appointment, and all creditors claiming to obtain the benefits of this act shall file with such assignee or receiver their claims, within twenty days after such publication. (*Id.* § 11.)

See Adamson v. Cheney, 35 Minn. 474, 29 N. W. Rep. 71.

***§ 45. Preferred debts.**

After the payment of costs, as herein provided, debts due the United States, the state of Minnesota, all taxes or assessments levied and unpaid, expenses of the assignment and executing the trust, the assignee or receiver shall pay in full, if sufficient then remains for that purpose, the claims duly proven of all servants, clerks, or laborers, for personal services or wages owing from said debtor, for services performed for the three months preceding said assignment, not exceeding fifty dollars in each case, and the balance of said estate shall then be equally distributed among the general creditors thereof, under the direction of the court. (*Id.* § 12.)

***§ 46. Attachment, etc., from justices' courts.**

Whenever, at the time of the appointment of a receiver, under sections one or two of this act, the property, or any part thereof, of said insolvent debtor is under attachment, levy, or garnishment, by virtue of any writ or process issued by any justice of the peace of this state, said attachment, levy, or garnishment shall be dissolved in the same manner as when said attachment, levy, or garnishment is by virtue of any writ or process issued by any court of record of this state, and the plaintiff therein, and the officer making the same, shall thereafter have the same rights, and no greater rights, by virtue thereof, and the attachment, levy, or garnishment shall thereafter be proceeded with in the same manner as though the same had been made by virtue of a writ or process issued out of a court of record of this state: *provided, however*, that section one shall not apply to any case when an execution has been issued upon a judgment in an action wherein the complaint has been filed with the justice of the peace twenty days prior to the date of the levy upon said execution. (*Added to c.* 148, *Laws* 1881, *supra;* 1885, *c.* 70.)

This act is not retrospective so as to affect levies made prior to its passage under attachments issued out of justice's court. Parkinson v. Brandenburg, 35 Minn. 294, 28 N. W. Rep. 919. Where a statute provides that it shall take effect "from and after its passage," it does not take effect on the day of its passage. Id.

CHAPTER 42.

OFFICIAL TRUSTS.

§ 1. Corporate authorities—Judge—Conveyance.

A county or other municipal corporation, capable of acquiring and holding real estate, if in the actual occupancy of any part of a town-site, is capable of becoming a beneficiary under the provisions of the act of congress of May 23, 1844, commonly known as the "Town-Site Act." County of Blue Earth v. St. Paul, etc., R. Co., 28 Minn. 503, 11 N. W. Rep. 73.