

# GENERAL STATUTES

OF

# MINNESOTA

1913

PUBLISHED UNDER THE AUTHORITY OF THE  
LEGISLATURE BY VIRTUE OF AN ACT  
APPROVED APRIL 20, 1911  
(LAWS 1911, CH. 299)

COMPILED AND EDITED BY  
FRANCIS B. TIFFANY

ST. PAUL  
WEST PUBLISHING CO.  
1913

30+445; 39-530, 41+105, 2 L. R. A. 409; 41-537, 43+477; 43-342, 46+336; 44-390, 46+773; 48-213, 50+1035). Burden on claimant to show compliance with all the requirements of the statute (58-536, 60+671).

Former statute modified by this section (101-417, 112+623, 118 Am. St. Rep. 631).  
Cited (193 Fed. 265).

**6995. Filing—Duration of lien—**To preserve said lien, the person furnishing seed as aforesaid, within thirty days after the execution of such note or contract, shall file the same, or a copy thereof, with the clerk of the town or municipality in which the land upon which the crop is to be grown is situated. Thereupon the lien shall continue for the term of one year from the date of filing, upon the crop growing or grown from such seed, to the amount and according to the terms of the agreement, against the owner and all creditors and purchasers. It shall not be affected by any exemption law, and shall take precedence of all other liens and be notice of its existence to all persons. (3480)

Place of filing (58-536, 60+671). Priority of lien over chattel mortgage (57-84, 58+827).

**6996. Lienor may take possession—**The owner of such note or agreement and lien, at any time after condition broken, may take possession of the crop so grown, or so much thereof as he may be entitled to under the terms of his agreement, including the necessary expense of taking and sale, and such taking shall discharge the lien as to the remainder of the crop. (3481)

Injunction (32-193, 20+85). Action for conversion by third party (39-530, 41+105, 2 L. R. A. 409).

**6997. Chattel mortgage provision, how applicable—**All provisions of this chapter relating to chattel mortgages, not inconsistent with those relating to conditional sales and seed grain contracts, shall be applicable thereto, but neither shall require witnessing or acknowledgment. (3482)

See §§ 6985-6993.  
32-193, 196, 20+85.

## CHAPTER 68

### FRAUDS

#### STATUTE OF FRAUDS

**6998. No action 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:

1. Every agreement that by its terms is not to be performed within one year from the making thereof.
2. Every special promise to answer for the debt, default, or doings of another.
3. Every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry.
4. Every agreement, promise or undertaking to pay a debt which has been discharged by bankruptcy or insolvency proceedings. (3483)

#### CONTRACTS NOT TO BE PERFORMED WITHIN ONE YEAR

**1. Not void but simply non-enforceable—**A contract within the statute is not void but simply non-enforceable, that is, no action can be directly based thereon (36-473, 31+938; 42-6, 43+484; 81-316, 84+116; 85-257, 88+846; 87-172, 91+483. See 51-333, 53+642).

**2. Performance by one party within year—**The statute does not apply to a contract which is fully performed by one of the parties at the time, or which may be performed by one of them within a year (78-299, 80+1051). Statute has no application where contract could be performed within year, or runs for indefinite time (98-52, 107+824). Where, although time was not limited within which contract should be completed, it appeared from its face that it was not to be executed within one year, it was within statute (103-471, 115+406).

**3. Possibility not probability of performance the test—**The statute is applicable only to contracts which cannot by their terms be performed within a year. Contracts which by their terms can possibly be performed within a year are not within the statute although the

parties did not contemplate such performance (22-449; 30-464, 16+363; 83-523, 86+760, 85 Am. St. Rep. 473).

**4. When year begins to run**—34-510, 26+906; 48-319, 51+216, 31 Am. St. Rep. 653.

**5. Effect of part performance**—While no action can be maintained on an oral agreement for services not to be performed within one year, such agreement controls the rights and remedies of the parties with respect to what has been done, and fixes the value of the services rendered under it, when the person rendering such services is discharged after part performance, without fault on his part, or is unable to fully perform on account of sickness; and an action will lie in such cases for the value of such services as fixed by the contract (36-473, 31+938; 81-316, 84+116; 85-257, 88+846). But where a person who has partly performed under such a contract refuses without legal excuse to fully perform and the other party is willing to go on with the contract, and is not in default, no recovery can be had for such part performance (42-6, 43+484). It seems that in an action to recover for a part performance it is not necessary to allege the value of the services (81-316, 84+116). The principle on which the equitable doctrine of part performance rests is that the agreement has been so far executed by one party with the consent or tacit encouragement of the other, and in reliance on his fulfillment of it, that for the latter to repudiate it and shelter himself under the statute would amount to a fraud on the former (66-388, 69+139). A part performance held not to take a case out of the statute (66-388, 69+139; 67-100, 69+637; 87-172, 91+483).

**6. Contracts held within the statute**—A parol-lease of real estate for the term of one year to commence in futuro (43-166, 45+13, 7 L. R. A. 671; 51-333, 53+642; 66-388, 69+139; 87-172, 91+483; 90-521, 97+373; see 34-510, 26+906); a contract for the conduct of a business agency for one year (22-449); a contract for personal services (36-473, 31+938; 81-316, 84+116; 85-257, 88+846); a contract for the foreclosure of a mortgage and the execution of a deed after the expiration of the redemption period (67-100, 69+637).

**7. Contracts held not within the statute**—A contract for the conduct of a business agency for one year but terminable at any time by either party (22-449); a contract for personal services entered into by a promoter of a corporation and subsequently adopted by the corporation (48-319, 51+216, 31 Am. St. Rep. 653); a contract of insurance (30-464, 16+363); a contract under which one of the parties was to perform within a year (78-299, 80+1051).

#### PROMISES TO ANSWER FOR ANOTHER

**8. General principles**—There must be a liability, actual or prospective, of a third person for whom the promisor undertakes to answer (14-194, 144; 34-410, 26+319). A promise to a debtor to pay his debt to another is not within the statute (14-265, 196, 100 Am. Dec. 218; 23-6; 28-521, 11+76; 64-144, 66+143). Form is not controlling, and when a contract though in form a guaranty is made not to answer for another but for the direct benefit of the promisor, as for example, to enable him to transfer a debt or contract or to satisfy a debt or obligation of his own, it is not within the statute (22-283; 24-513; 29-102, 12+151; 48-207, 50+1033; 98-497, 108+1; 106-430, 119+214, 482). The general rule is that if the whole credit is not given to the person who comes in to answer for another, his undertaking is collateral and within the statute (34-410, 26+319; 37-23, 32+858, 5 Am. St. Rep. 814; 57-234, 59+304; 87-250, 91+1116). A contract within the statute is not void, but merely non-enforceable, that is, no action can be directly based thereon (16-68, 56).

**9. The memorandum**—The consideration must be expressed (14-340, 260, 100 Am. Dec. 227; 23-542); but the expression "for value received" is sufficient (34-307, 25+606, 57 Am. Rep. 55; 64-218, 66+965). The consideration need not be expressly stated; it is sufficient if it appears from the whole document with reasonable certainty (20-40, 33; 60-515, 63+105). See 65-104, 67+802, 60 Am. St. Rep. 430). Where a contract of guaranty is entered into contemporaneously with the principal contract, and is either incorporated in the latter, or so distinctly refers to it as to show that both agreements are parts of an entire transaction, the statute does not require a consideration to be expressed in the guaranty distinct from that expressed in the principal contract (20-40, 33; 35-345, 29+55; 64-218, 66+965). A mere signature on the back of a note is not sufficient (14-340, 260, 100 Am. Dec. 227; 23-542). A negotiable promissory note imports consideration, and when made as collateral security, sufficiently expresses the consideration (61-513, 63+1110). The true consideration need not be stated and a seal is a sufficient substitute for the expression of the consideration (34-307, 25+606, 57 Am. Rep. 55). Where one not a party to a negotiable note, after it has been delivered to and while it is in the hands of the payee, indorses it in blank on a valid consideration, for the purpose of assuming the liability of a guarantor, such act authorizes the payee to write over the signature the contract of guaranty in full and if he does so the statute is satisfied (62-220, 64+555, 29 L. R. A. 612, 54 Am. St. Rep. 634).

**10. Contracts held within the statute**—A promise of A to pay B, for transporting goods, on delivery to C, if C did not pay (1-301, 234, 66 Am. Dec. 543); a promise to pay the rent of another in these words, "If you will let mother stay I will be responsible for the rent, and see that it is all right" (5-455, 368. See 35-345, 29+55); a promise guaranteeing the payment of a note (14-340, 260, 100 Am. Dec. 227; 23-542; 62-220, 64+555, 29 L. R. A. 612, 54 Am. St. Rep. 634; 79-309, 82+583; 82-220, 84+742); a promise of A to pay B for goods sold to C by B if C did not pay (16-68, 56; 34-410, 26+319); a promise guaranteeing the performance of the terms of a lease (35-345, 29+55); a promise of A, an insurance agent, that he would see that B paid to C insurance money, in accordance with a contract between B and C (52-304, 54+95); a note given as collateral security for the payment of another note (61-513, 63+1110); a promise by a father to pay a physician for services rendered an adult child (82-320, 84+1016).

**11. Promises held not within the statute**—A promise to a debtor to pay his debt to another (14-265, 196, 100 Am. Dec. 218; 23-6; 28-521, 11+76; 64-144, 66+143); a promise made by A to B that if B would release a lien on certain logs of C he would pay B's claim against C, A being a purchaser of the logs from C (8-127, 99); a promise of A to B that if B would waive a lien which he had on land of C to secure a debt of C to B, and pay the costs of a levy, A would pay B's claim against C (15-185, 142); a promise of A to pay B a claim of B against C secured by a chattel mortgage (14-194, 144); a promise of A to pay B for goods sold to C (32-237, 20+145); a promise by railroad contractors to boarding-house keepers that they would "see them paid" for the board of laborers employed by the contractors (34-32, 24+289); a promise of A to assume B's contract with C for building materials (35-451, 29+65); a promise in these words, "You give all the goods to H and R that they want, and charge directly to them, and every first of the month you bring in the bill, and I will pay it" (37-23, 32+858, 5 Am. St. Rep. 814); a promise of A, a widow of B, to pay C the amount of a claim of C against B, if C would not present the claim against the estate of B (55-315, 56+1064); a promise in these words to pay for goods sold to another, "I will see you paid" (57-234, 59+304); a promise of A to indemnify B against loss by becoming responsible for C's faithful performance of his duty to D (64-144, 66+143; 76-220, 78+1114); a promise of A to be responsible for any loss resulting from a race meeting arranged by B (69-156, 71+1028); a promise of A to pay B for the board of laborers engaged for a third party on their contract with A (80-274, 83+170); a promise of A and B to pay C, an attorney, for defending D on a criminal charge (87-250, 91+1116); a promise guaranteeing the debt of another, assigned at the same time by the guarantor, the purpose being to thereby pay or satisfy a claim of the guarantee against the guarantor (48-207, 50+1033); a promise guaranteeing the collection of a note (22-283; 24-513); a promise guaranteeing the performance of a third party's contract on a consideration moving to the guarantor (29-102, 12+151); a promise in the form of a note given to satisfy a debt due the payee from another (32-427, 21+416). Where one requests another to join him as surety on bond and promises to save him harmless (113-111, 129+142).

#### AGREEMENT UPON CONSIDERATION OF MARRIAGE

A part performance held to take the case out of the statute (39-197, 39+146). The consideration held sufficiently expressed (65-104, 67+802, 60 Am. St. Rep. 430).

#### PROMISE DISCHARGED BY BANKRUPTCY

Prior to Revised Laws it was held that action to enforce obligation barred by discharge in bankruptcy, based upon obligor's subsequent promise, must fail, unless there be positive and unequivocal proof both as to identification of the debt and as to distinct, unconditional, and present promise to pay (98-248, 108+808).

**6999. Contracts for sale of goods, when void**—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:

1. A note or memorandum of such contract is made and subscribed by the parties to be charged therewith; or,
2. The buyer accepts and receives part of such goods, or the evidences, or some of them, of such things in action; or,
3. The buyer, at the time, pays some part of the purchase money. (3484).

**1. In general**—An oral contract within the statute is void and not merely non-enforceable (71-167, 72+727; 88-168, 92+540; 92-208, 99+798). The statute indicates a difference between a contract in writing and a note or memorandum in writing of an oral contract (88-168, 92+540). A forced or strained construction is not to be placed on the statute (81-316, 84+116). The rule that the defence of the statute is personal to the parties to the contract held not applicable to a sheriff levying an execution on the chattels (71-167, 72+727).

**2. Acceptance and receipt of part of goods**—A bare receipt of part of the goods does not satisfy the statute. There must not only be a receipt, there must be some act, declaration or course of conduct on the part of the buyer indicating a present intention to receive the goods in performance of the agreement and to appropriate them unconditionally as his own (28-352, 10+18; 30-343, 15+413, 44 Am. Rep. 199; 39-145, 39+302; 40-141, 41+465, 12 Am. St. Rep. 722; 49-1, 51+619; 53-546, 55+742; 59-295, 61+141; 66-449, 69+215; 71-167, 72+727; 75-269, 77+965. See 67-224, 69+894; 79-369, 82+672). A mere delivery by the seller to a common carrier, chosen either by himself or the purchaser, does not satisfy the statute (33-195, 22+294; 40-141, 41+465, 12 Am. St. Rep. 722; 71-167, 72+727). The delivery may be subsequent to the agreement (14-127, 95; 24-322; 43-154, 44+1085). A constructive delivery may be sufficient (59-295, 61+141. See 54-509, 56+175). The acceptance must be in pursuance of the contract. The acceptance of a part stands for the acceptance of the whole, so as to perfect the contract as an entirety, subject to the fulfilment by the seller of the other conditions of the contract as to delivery, quality, etc. (39-145, 39+302). Where, though contract of sale was not signed by seller, it was signed by the purchaser and the goods accepted, contract held not void (108-193, 121+904).

**3. Part payment**—A part payment in goods or other property satisfies the statute (85-355, 88+997). The mere tender of earnest money is not sufficient; it must be accepted by the seller as part payment on the contract (66-449, 69+215). Payment of consideration held to take case out of the statute (50-85, 52+272).

**4. The memorandum**—The memorandum need not consist of a single paper but may be made up of letters and telegrams if their connection is obvious without resort to oral evi-

dence (53-91, 55+125). It must state the price (40-1, 40+841). The description of the goods is sufficient if they can be identified by reference to the stock of the vendor (44-309, 46+444). Customary mercantile abbreviations and signs may be used (69-257, 72+72, 65 Am. St. Rep. 568). It is sufficient if signed only by the party sought to be charged (13-191, 180; 15-440, 355, 2 Am. Rep. 147; 42-494, 44+794; 88-168, 92+540). Oral evidence is not admissible to supply omissions (21-402; 88-168, 92+540), but it is admissible to identify the property (44-309, 46+444). The memorandum does not necessarily constitute the contract between the parties (88-168, 92+540). Parol evidence is not admissible to modify the terms of the memorandum (21-402; 40-196, 41+1029; 42-494, 44+794; 52-31, 53+1017). A memorandum held sufficient (88-168, 92+540).

**5. Contracts held within the statute**—A contract for a sale of goods embracing an agreement as to other matters (40-1, 40+841); a contract contemplating, when fully carried out, the sale of specific personal property but involving preliminary work and labor (21-402; 39-145, 39+302); a contract for the sale of wild grass (90-299, 96+705, 101 Am. St. Rep. 411); and possibly, a contract among stockholders for the issuance of bonus stock (67-224, 69+894).

**6. Contracts held not within the statute**—A contract for the manufacture of an article of special and peculiar design not suited to the general trade (64-450, 67+357, 32 L. R. A. 593); a contract to furnish material and, after performing labor thereon, to attach it to real estate (64-450, 67+357, 32 L. R. A. 593; 3-109, 61, 74 Am. Dec. 743); a contract to pay for personal services in chattels (81-316, 84+116); a contract transferring accounts (67-41, 69+477; 85-29, 88+254, 412); an executed contract (87-11, 91+33). Contract for clothing, to be made according to stipulated sizes, material, and styles, and to be delivered within specified time, was not within statute (98-442, 108+474). Where a memorandum purported to be for sale of goods already manufactured, and was void because not signed, parol evidence was competent to prove that contract was for goods to be manufactured specially for the buyer according to certain sizes, designs and quality (102-406, 113+1014. See 112-112, 127+436).

**7000. Auctioneer's memorandum**—Whenever goods are sold at public auction, and the auctioneer, at the time of sale, enters in a salesbook 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 § 6999. (3485)

**7001. Grants of trusts, when void**—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 lawfully authorized agent, shall be void. (3486)

This refers to the transfer and not to the creation of trusts (23-55).

**7002. Conveyance, etc., of land**—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. But this section shall not affect in any manner the power of a testator in the disposition of his real estate by will; nor prevent any trust from arising or being extinguished by implication or operation of law. (3487)

**1. Conveyances, etc., generally**—A mortgage cannot be created by a deposit of title deeds (6-250, 167). Oral evidence is not admissible to prove the grantee in a deed (48-462, 51+473). A mechanic's lien is not an "interest" in land within the meaning of the statute (53-70, 54+1055). A contract for the foreclosure of a mortgage and a conveyance of the land after the expiration of the redemption period held within the statute (67-100, 69+637). The deposit of a deed in escrow on oral conditions as to its delivery is sufficient to avoid the statute (87-168, 91+467). An oral contract to take a conveyance of land and hold it as security for an indebtedness is not within the statute (96-27, 104+561; 96-230, 104+966). Contract canceling assignment of interest in land to secure a debt is not surrender of interest in lands within statute (110-481, 126+65). Agreement to accept proceeds of assigned contract to cut timber and credit on notes not purchase of interest in land (113-493, 129+1045). Verbal authority to accept by telegram offer of purchase held not to obviate lack of written authority in agent. Contract so entered into by agent is enforceable only when substantial part performance (108-132, 121+630, 133 Am. St. Rep. 421). To take parol gift of land out of statute, donee must not only enter into possession, but also make improvements thereon, or perform such other acts with reference thereto as would make it inequitable not to enforce the gift (98-348, 108+295). Cited (101-152, 112+65).

**2. Leases**—Tenancies from year to year are not within the statute (47-1, 49+327). Where a written lease provides for an extension upon oral notice an extension so made is not within the statute (73-108, 75+1039). The acceptance of a lease need not be in writing, nor the authority of an agent to accept a lease, nor a ratification by a principal of an unau-

thorized acceptance by an agent (52-333, 54-188). The authority of an agent to execute a lease must be in writing (31-430, 18+151; 78-268, 80+974. See 91-409, 98+323). A ratification of an unauthorized execution of a lease by an agent must be in writing, but the lessor may, by his acts, estop himself from denying the authority of the agent (31-430, 18+151; 24-172). An oral lease void under the statute cannot be referred to for the purpose of determining the length of the term (51-333, 53+642). If possession is taken under an oral lease within the statute the lease regulates the terms of the tenancy as respects rent (30-515, 16+404; 57-18, 58+685; 81-316, 84+116; 95-417, 104+305. See 50-116, 52+384; 74-333, 77+231; 78-268, 80+974). A lease within the statute cannot be surrendered except by act or operation of law or by deed or conveyance in writing. Where there arises a condition of facts, voluntarily assumed, incompatible with the relation of landlord and tenant between parties who have occupied that relation, there is a surrender of the lease by operation of law (8-107, 82; 26-318, 3+978; 56-93, 57+329; 57-381, 59+310; 63-13, 65+87. See 26-133, 1+813; 78-268, 80+974). An oral lease for more than one year terminable at any time on four months' notice is within the statute (30-515, 16+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 until May 1, 1884, is within the statute (31-430, 18+151). Agreement pursuant to which elevator was constructed on railway land held lease, and within statute (98-170, 107+1049, 8 Ann. Cas. 960). Writings, construed together in light of surrounding circumstances, held to supply the requirements as to signature and description (101-381, 112+419). Lease for more than one year cannot be canceled and surrendered by parol. But when landlord verbally agrees to cancel and surrender, and tenant performs by vacating and surrendering possession, landlord is estopped from asserting right to enforce covenants of lease, if he acquiesces and resumes possession (109-81, 122+1119).

**3. Trusts**—A trust in real estate cannot be created by an oral declaration. A power in trust cannot be ingrafted on an absolute deed by parol (2-277, 238, 72 Am. Dec. 97; 5-422, 342; 25-117; 33-329, 23+530; 34-272, 25+596, 26+121; 44-159, 46+295; 53-123, 54+1063; 54-56, 55+825, 40 Am. St. Rep. 299; 63-5, 65+91; 92-506, 100+380; 93-499, 101+970; 95-220, 103+882, 5 Ann. Cas. 253). Trusts by operation of law are expressly excluded from the statute (6-358, 241, 80 Am. Dec. 448; 21-127; 25-117). Evidence held not to show trust resting in parol in violation of G. S. 1894 § 4213. Verbal promise by grantee to hold legal title to land in trust for benefit of grantor and to reconvey on demand, where no bad faith except that which arises from refusal to carry out promise, is void. Where party obtains legal title from another by fraud, or by taking advantage of confidential or fiduciary relations, or in any other unconscientious manner, equity will impress a constructive trust (108-76, 121+214, 133 Am. St. Rep. 412).

**4. Partnership to deal in real estate**—An agreement creating a partnership to deal in real estate—even a single piece of real estate—is not within the statute (33-175, 22+254, 53 Am. Rep. 22; 33-389, 23+547; 41-374, 43+84; 53-443, 55+601, 39 Am. St. Rep. 617).

**7003. Leases—Contracts for sale of lands**—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 an agent, shall be entitled to record unless the authority of such agent be also recorded. (3488)

**1. In general**—An oral contract within the statute is void and not merely non-enforceable (16-172, 151; 46-321, 48+1129; 71-114, 73+522). An action for damages cannot be predicated on it (56-222, 57+480). The statute applies to both legal and equitable interests (71-114, 73+522). A contract for the sale of land cannot rest partly in writing and partly in parol. A modification of such a contract must be in writing (40-196, 41+1029). An offer or proposal in writing to sell lands must be accepted in writing and such acceptance must be unqualified so that there is a clear accession on both sides to one and the same set of terms (14-72, 55; 20-178, 163; 31-418, 18+145; 36-361, 31+690; 65-304, 67+999; 90-414, 97+126; 91-409, 98+323; 94-209, 102+373). Performance of a contract within the statute may be waived orally (74-224, 77+34). An oral variation of a written contract within the statute, though made in respect of a particular which might, if standing alone, be good by parol, cannot be available as part of the contract, so long as the whole contract remains executory (21-402; 40-196, 41+1029; 52-31, 53+1017; 74-224, 77+34; 78-379, 81+204, 543). The statute does not abrogate the doctrine of estoppel in pais (50-417, 52+908). Either party may invoke the statute (5-247, 193). An oral contract to convey land will not prevent a recovery by the owner in the absence of part performance (46-321, 48+1129). Where parts of an entire contract within the statute have been performed other parts of the same contract not within the statute may be proved and enforced (61-214, 63+624).

**2. The memorandum**—The memorandum must describe the land to be conveyed with reasonable certainty (2-213, 174; 10-207, 168; 20-178, 163; 30-389, 15+674; 32-263, 20+193; 34-312, 25+638; 38-322, 37+451; 39-372, 40+266; 40-155, 41+411, 548; 40-180, 41+936; 40-433, 42+292; 42-267, 44+118; 51-105, 52+1080; 83-87, 85+942); but parol evidence is admissible to show the circumstances of the parties for the purpose of applying or identifying the description (2-213, 174; 30-389, 15+674; 34-312, 25+638; 38-322, 37+451; 40-433, 42+292; 42-267, 44+118; 51-105, 52+1080; 83-87, 85+942). It may be made up of several writings if their connection is apparent without resort to parol evidence (20-178, 163; 30-389, 15+674;

40-433, 42+292; 83-87, 85+942; 94-209, 102+373; 95-234, 103+1031); it must state the names of the vendor and vendee (39-272, 39+495; 39-275, 39+496), and the price (38-338, 37+791; 39-272, 39+495); it must contain all the material terms of the contract (38-338, 37+791; 39-272, 39+495; 40-433, 42+292; 83-87, 85+942); it must be signed by the vendor but not necessarily by the vendee (80-317, 83+192, overruling 46-402, 49+199; 95-164, 103+889); and it must be delivered (16-172, 151). Parol evidence is inadmissible to supply omissions (39-272, 39+495; 40-433, 42+292). A memorandum held sufficient as respects parties, terms of payment and description of land (34-312, 25+638). A sheriff's certificate on execution sale is a sufficient memorandum (11-220, 142, 88 Am. Dec. 81). A printed signature held not a sufficient signing to constitute an acceptance (94-209, 102+373).

**3. Authority of agent**—The authority of an agent to contract for the sale of land must be in writing (69-328, 72+697; 71-114, 73+522; 84-187, 87+612; 91-409, 98+323; 93-247, 101+161; 112-190, 127+629). Prior to 1887 c. 26 the rule was otherwise (21-409; 21-538; 50-373, 52+963; 69-328, 72+697; 94-456, 103+335). The authority of an agent to accept an offer must be in writing (91-409, 98+323). Oral contract may be ratified (112-190, 127+629). The ratification of an unauthorized contract of an agent must be in writing (84-187, 87+612. See 43-246, 45+231; 69-328, 72+697). Where an agent authorized to contract to sell conveys under a defective power the deed will be treated as a good contract to sell (3-225, 154; 50-373, 52+963; 69-328, 72+697). There is a distinction between a power to sell and a power to convey (43-246, 45+231).

**4. Contracts held within statute**—A contract for the sale of wild grass growing on the vendor's land (90-299, 96+705, 101 Am. St. Rep. 411); a contract for the sale of standing timber (90-414, 97+126. See 58-149, 59+988); a contract by a settler on government land for a third party to enter the land and pay for it and convey to the settler when repaid (2-277, 238, 72 Am. Dec. 97); a contract by one about to pre-empt land to convey after pre-emption (5-422, 342); a contract to convey land in payment for chattels (52-31, 53+1017); a contract for the conveyance of property to be acquired by foreclosure proceedings (67-100, 69+637; 71-114, 73+522; 73-311, 76+54); a contract for the exchange of lands (91-409, 98+323); a contract for the assignment of a lease (31-312, 17+621); a contract for a lease (31-392, 18+101). Agreement by husband to enter into contract in future for sale of land owned by wife is within statute (106-380, 118+1026). Cited (108-132, 121+630, 132 Am. St. Rep. 421).

**5. Contracts held not within the statute**—A written lease for one year with a provision for its renewal for two years at the option of the lessee, the option to renew being exercised by remaining in possession and paying rent (89-348, 94+1084); an executed contract (9-252, 237, 86 Am. Dec. 100).

**6. Recovery of money paid**—Money paid on an oral contract within the statute may be recovered if the vendor refuses or is unable to convey (12-326, 216; 19-372, 317; 25-117; 44-551, 47+161; 84-195, 87+608). If only a part of the purchase price is paid it cannot be recovered without tendering the balance and demanding a deed if the vendor is not in default (27-328, 7+266; 36-473, 31+938; 38-18, 35+668, 8 Am. St. Rep. 640. See 42-538, 44+1031); otherwise if the vendor has refused to perform or has disabled himself (12-326, 216; 19-372, 317; 49-198, 51+819). Where the delivery of the deed and the payment of the balance of the purchase money are to be concurrent acts the vendor can put the vendee in default only by tendering a deed and demanding the balance (12-326, 216; 37-68, 33+43).

**7004. Specific performance**—Nothing in this chapter contained shall abridge the power of courts of equity to compel the specific performance of agreements in cases of part performance thereof. (3489)

The doctrine of part performance rests on the ground of fraud. The underlying principle is that where one of the contracting parties has been induced or allowed to alter his situation on the faith of an oral agreement within the statute, to such an extent that it would be a fraud on the part of the other party to set up its invalidity, equity will make the case an exception to the statute (5-422, 342; 23-343; 30-528, 16+421; 32-482, 21+726; 35-373, 29+135; 39-197, 39+146; 63-230, 65+444; 81-428, 84+221; 95-315, 104+135). That is, equity will not permit the statute, which is designed to prevent fraud, to be used as an instrument of fraud (35-373, 29+135; 39-197, 39+146; 75-350, 78+4, 43 L. R. A. 427, 74 Am. St. Rep. 490). Merely paying the purchase price (14-72, 55; 30-528, 16+421; 32-482, 21+726), or taking possession (20-219, 198. See 46-321, 48+1129), or doing acts preparatory or ancillary to a performance (14-72, 55), is insufficient. Taking possession and making substantial improvements is sufficient (12-326, 216; 13-462, 430; 23-343; 34-517, 26+725; 38-245, 36+640; 54-130, 55+831; 63-230, 65+444; 94-209, 102+373), if it is done with the consent, express or implied, of the vendor and in pursuance of the contract (37-259, 34+32; 54-130, 55+831; 63-230, 65+444). If a party sets up part performance to take a parol agreement out of the statute he must show acts unequivocally referring to and resulting from that agreement, such as the party would not have done unless on account of that very agreement, and with direct view to its performance. The acts must have been done with the specific intent of carrying out the contract and this intent cannot be shown by the oral agreement (2-277, 238, 72 Am. Dec. 97; 7-408, 322; 20-219, 198; 29-95, 12+149, 43 Am. Rep. 192; 35-373, 29+135; 54-130, 55+831; 71-1, 73+515). The acts must have been done in reliance upon and in pursuance of the oral agreement, and be related to and connected with it, but they need not have been stipulated in the agreement. Any act which a party to the contract might have asserted and relied on as part performance may be asserted and relied on by those claiming under him (35-373, 29+135). If the possession is not a new fact, but is a continuation of a former similar condition, the intent to hold possession with a view to carrying out the agreement must be proved by some further act which clearly shows that the possession cannot be accounted for except by the oral contract of purchase. Possession by a son raises no pre-

sumption that it was taken pursuant to a contract for purchase of the land (71-1, 73+515). Where one is in possession as a tenant with a verbal agreement for purchasing mere continuance in possession is not part performance (20-219, 198). Specific performance will not be granted where the plaintiff has an adequate remedy at law (5-178, 139; 29-95, 12+149, 43 Am. Rep. 192; 30-528, 16+421; 35-373, 29+135; 39-197, 39+146), as, for example, where the part performance consists merely in the payment of the purchase price (14-72, 55; 30-528, 16+421; 32-482, 21+726), or in services rendered, if their value can be ascertained with reasonable accuracy (30-528, 16+421; 39-197, 39+146; 75-350, 78+4, 43 L. R. A. 427, 74 Am. St. Rep. 490). The right to have a contract specifically enforced is an equitable interest in land (34-517, 26+725), and it can only be enforced in an equitable action (31-392, 18+101; 87-172, 91+483). Specific performance may be enforced in favor of a licensee on the ground of part performance (29-95, 12+149, 43 Am. Rep. 192). An express trust in favor of a grantor cannot be ingrafted on a conveyance absolute in its terms under the doctrine of part performance (53-123, 54+1063). The terms of the contract must be definite (83-206, 86+11), and the conduct of the plaintiff fair and equitable (5-422, 342). Acts held to take case out of statute (12-326, 216; 13-462, 430; 17-342, 320; 20-219, 198; 23-343; 25-516; 34-517, 26+725; 35-373, 29+135; 37-259, 34+32; 38-245, 36+640; 39-197, 39+146; 54-130, 55+831; 63-21, 65+95; 63-230, 65+444; 75-350, 78+4, 43 L. R. A. 427, 74 Am. St. Rep. 490; 76-434, 79+541; 81-428, 84+221; 94-209, 102+373; 94-414, 103+214; 95-315, 104+135; 96-27, 104+561; 95-230, 104+966). Acts held not to take case out of statute (2-277, 238, 72 Am. Dec. 97; 5-422, 342; 7-408, 322; 14-72, 55; 29-95, 12+149, 43 Am. Rep. 492; 30-528, 16+421; 32-482, 21+726; 46-321, 48+1129; 67-100, 69+637; 71-1, 73+515; 83-206, 86+11).

**7005. Logs—Extension of time of payment for labor—**Every agreement extending the time of payment for manual labor, performed or to be performed in cutting, hauling, banking, or driving logs, beyond the time of the completion of such labor, shall be void, unless such agreement, expressing the consideration, be in writing subscribed by the party to be charged therewith, and unless, at the time of making such agreement or completing such labor, the person for whom it is to be or has been performed deliver to such laborer his negotiable promissory note for payment of the agreed compensation, with interest. Every lien allowed by law on account of such labor shall pass by the transfer of such note, and be enforceable by the holder thereof. (3490)

#### STATUTE OF FRAUDS GENERALLY

**1. Construction—**The statute should be construed to apply only to contracts clearly within its provisions (3-109, 61, 74 Am. Dec. 743; 81-316, 84+116).

**2. Contracts partly within statute—**Where parts of an entire contract within the statute have been performed other parts of the same contract not within the statute may be proved and enforced (61-214, 63+624). The fact that a contract for a sale of goods embraces an agreement as to other matters does not take it out of the statute (40-1, 40+841).

**3. Executed contracts—**The statute has no application to executed contracts (9-252, 237, 86 Am. Dec. 100; 87-11, 91+33).

**4. Pleading—**A defendant who denies in his answer the making of the contract alleged in the complaint may invoke the statute without pleading it (34-272, 25+596, 26+121; 40-141, 41+465, 12 Am. St. Rep. 722; 82-320, 84+1016); otherwise if he admits the contract (56-299, 57+800; 82-320, 84+1016). But see 40-433, 42+292; 2-277, 238, 72 Am. Dec. 97). In declaring on a contract within the statute it is not necessary to allege that it was in writing (8-127, 99; 11-220, 142, 88 Am. Dec. 81; 31-312, 17+621; 33-50, 21+855; 33-329, 23+530; 92-208, 99+798). A complaint which shows on its face that it is based on a verbal contract within the statute is demurrable in the absence of an allegation of facts taking it out of the statute (2-277, 238, 72 Am. Dec. 97; 20-40, 33; 39-145, 39+302). Allegations of the payment of earnest money or part acceptance are put in issue by a general denial (30-145, 39+302). An answer held to authorize proof either of a written contract sufficient to satisfy the statute or an oral one with part performance (94-209, 102+373).

**5. Who may invoke statute—**Either party to a contract may invoke the statute (5-247, 193). It is the general rule that third parties cannot invoke the statute (92-201, 99+804; 94-138, 102+390), but this has been held not applicable to a sheriff levying an execution (71-167, 72+727).

**6. Parol modification of written contract—**A written contract within the statute cannot be modified by a subsequent parol agreement between the parties (21-163; 21-402; 40-196, 41+1029; 52-31, 53+1017; 74-224, 77+34; 78-379, 81+204, 543). Not applicable to contract so modified which has been fully performed (113-148, 129+216, 389).

#### CONVEYANCES FRAUDULENT AS TO PURCHASERS

**7006. When made to defraud, void—Exception—**Every conveyance of any estate or interest in lands, or the rents and profits thereof, 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; but no conveyance or charge shall be deemed fraudulent, in favor of a subsequent purchaser who had actual or constructive notice thereof at the



time of his purchase, unless it appears that the grantee in such conveyance, or the person to be benefited by such charge, was privy to the intended fraud. (3491)

**7007. With power of revocation, etc., 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 of 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 liable to be so 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. (3492)

**7008. Under power of revocation**—When a power to revoke a conveyance of any lands, or of 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. (3493)

**7009. Same—Premature conveyance**—If a conveyance to a purchaser under either of §§ 7007, 7008 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. (3494)

#### CONVEYANCES FRAUDULENT AS TO CREDITORS

**7010. In trust for grantor, void**—Every deed of gift, every conveyance, and every transfer or assignment, 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. (3495)

Basis and scope of section defined (62-341, 345, 64+818). Applicable to realty (62-341, 345, 64+818; 64-476, 67+538). Not applicable where transfer is primarily for the benefit of the grantee and the reservation to the grantor is incidental and partial (3-364, 257, 74 Am. Dec. 764; 19-367, 312; 25-175; 62-341, 345, 64+818; 64-476, 67+538; 94-67, 102+376). Held not applicable to transfer of exempt property (51-296, 53+637); to bill of sale of partnership property to secure firm debts with right of redemption (74-439, 77+236, 73 Am. St. Rep. 358). Requisites of complaint to bring case within (64-476, 67+538). Statute affirmative of common law principles (see 3-364, 257, 74 Am. Dec. 764; 19-17, 1; 29-23, 8+876; 35-194, 28+252; 39-527, 40+831).

**7011. Of chattels without delivery—Fraud presumed**—Every sale 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 or assigned, shall be presumed to be fraudulent and void as against the creditors of the vendor or assignor and 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. The term "creditors," as herein used, shall include 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. (3496)

Sufficiency of change of possession considered (19-367, 312; 39-269, 39+628; 40-421, 42+290, 41-292, 42+1062; 42-457, 44+988; 44-541, 47+164; 45-124, 47+544; 72-329, 75+230). When possession held by lienholder notice of transfer to him is sufficient (54-509, 56+175). A vendee has the burden of proving his own good faith but not that of his vendor (63-24, 65+121). A subsequent purchaser, to avail himself of the statute, has the burden of proving that he is a bona fide purchaser. This he may do, prima facie, by proof that he paid a valuable consideration (44-541, 47+164; 103-412, 115+203, 24 L. R. A. [N. S.] 1127). Statute affirmative of common law principles (85-264, 267, 88+761). But see 103-412, 115+203, 24 L. R. A. [N. S.] 1127). Those who become creditors subsequent to the sale but while the property is in the possession of the vendor are "creditors" within the statute (40-421, 42+290; 41-292, 42+1062). Cited (18-308, 278; 27-530, 533, 8+765; 48-396, 399, 51+222; 103-459, 115+640).

See note under § 7018.

**7012. Same—Limitations—**Nothing contained in § 7011 shall apply to contracts of bottomry or respondentia, or assignments or hypothecations of vessels or goods at sea, in foreign ports, or out of the state, if the assignee or mortgagee takes possession of such vessel or goods as soon as possible after the arrival thereof within the state. (3497)

**7013. With intent to defraud creditors, 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 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, action commenced, and order or judgment suffered, with like intent, as against the persons so hindered, delayed, or defrauded, shall be void. (3498)

**1. Based on 13 Eliz. c. 5—**7-337, 264, 82 Am. Dec. 97; 48-490, 494, 51+475, 31 Am. St. Rep. 663; 53-110, 114, 54+942.

**2. Declaratory of common law—**12-60, 27; 13-326, 299; 18-414, 373; 53-110, 115, 54+942.

**3. Personality—**Fraudulent transfers of personality are voidable the same as fraudulent transfers of realty (13-326, 299; 13-434, 398; 22-247; 53-110, 115, 54+942).

**4. Who are "other persons"—**Wife suing or about to sue for divorce (53-110, 115, 54+942. See 90-471, 97+122). Wife after decree dissolving marriage (96-523, 105+183).

**5. Meaning of "lawful"—**7-337, 264, 82 Am. Dec. 97; 11-104, 62.

**6. Subsequent creditors—**A subsequent creditor cannot avoid a conveyance merely because it was made with intent to defraud creditors existing at the time of its execution (48-490, 51+475, 31 Am. St. Rep. 663; 88-506, 515, 93+665, 67 L. R. A. 590; 95-414, 104+479; 99-301, 109+242); otherwise if it was made to defraud him (39-527, 40+831; 48-490, 51+475, 31 Am. St. Rep. 663; 53-110, 115, 54+942), or where the necessary consequence of the transfer is to defraud creditors (47-507, 50+696).

**7. Essential elements—**To make a debtor's transfer of property fraudulent as respects his creditors there must be an intent to defraud, express or implied, and an act which, if allowed to stand, will actually defraud them by hindering, delaying or preventing the collection of their claims (28-544, 549, 11+77; 51-296, 298, 53+637; 89-432, 437, 95+216, 769). The thing transferred must be of value out of which the creditor could have realized the whole or a part of his claim, or, otherwise expressed, property which is appropriable by law to the payment of the debt (51-296, 298, 53+637; 89-432, 437, 95+216, 769).

**8. Intent—**As a general rule a fraudulent intent is essential (4-204, 146, 77 Am. Dec. 507; 6-305, 213; 18-414, 373; 21-187, 192; 23-242, 252; 47-247, 49+982; 62-341, 345, 64+818). When a fraud on creditors is a necessary consequence of the transfer the fraudulent intent will be presumed (4-533, 418; 47-507, 50+696). The intent must exist at the time of the transfer (4-204, 146, 77 Am. Dec. 507; 45-307, 47+969). No fraudulent intent is necessary to render a voluntary transfer void (see § 7015). Good faith (101-107, 111+947; 101-344, 112+266).

**9. Property must be appropriable—**The transfer of exempt property is not fraudulent (27-116, 6+455; 27-156, 161, 6+618; 28-77, 9+172; 89-247, 250, 94+677, 99 Am. St. Rep. 566), nor is the transfer of property incumbered to its full value (28-544, 11+77; 40-193, 41+1031; 51-296, 53+637; 56-531, 58+551; 76-311, 318, 79+305, 77 Am. St. Rep. 651; 88-311, 316, 92+1125; 89-247, 251, 94+677, 99 Am. St. Rep. 566; 89-432, 436, 95+216, 769). There may be a fraudulent transfer of a "contingent interest" (88-311, 92+1125); and of a "beneficial interest" (14-205, 149).

**10. Voidable—Good between parties—Confirmation—**The term "void" means voidable (22-214; 25-432, 437; 44-534, 47+258, 10 L. R. A. 665, 20 Am. St. Rep. 592; 87-456, 461, 92+340, 67 L. R. A. 865, 94 Am. St. Rep. 709; 93-274, 277, 101+167). A fraudulent conveyance is good between the parties (2-191, 251; 12-60, 27; 30-45, 46, 14+63; 66-195, 197, 68+340; 70-125, 131, 72+963; 72-27, 31, 74+902; 87-456, 461, 92+340, 67 L. R. A. 865, 94 Am. St. Rep. 709). And their privies (86-199, 206, 90+364). The grantor cannot maintain an action to set it aside (90-471, 473, 97+122). But a fraudulent mortgagor may redeem (35-55, 27+74), or resist a foreclosure (36-123, 30+439; 44-534, 47+258, 10 L. R. A. 665, 20 Am. St. Rep. 592). A fraudulent pledgor may redeem (16-320, 233). Creditors may confirm a fraudulent transfer and they will be held to have done so if they pursue the property or money which the debtor received in exchange for the transfer (2-291, 251; 3-377, 271; 22-214; 69-60, 65, 71+827; 70-125, 72+963. See 3-389, 282).

**11. Creditor's right to debtor's property—**The law regards the property of the debtor as of right belonging to his creditors and sanctions no scheme or device to deprive them of it (6-305, 213). A debtor's property is by law subject immediately to process issued at the instance of his creditor (28-23, 26, 8+876).

**12. Knowledge of grantee—**As a general rule, to render a transfer fraudulent, the grantee must participate in the fraud or have knowledge of it (18-414, 373). But it is not necessary in the case of a fraudulent assignment for the benefit of creditors (6-305, 213; 23-242), or in the case of any other voluntary conveyance (83-265, 86+99), or where the necessary consequence of the transfer is to defraud creditors (47-507, 50+696).

**13. Devices to hinder and delay—**A transfer by a debtor to secure an extension of time in which to pay his debts is fraudulent (23-242; 69-60, 71+827).

**14. Transfer with trust for grantor—**A debtor cannot place his property beyond

the reach of the process of his creditors, and, at the same time, retain control over it and its avails and it is immaterial that he intends ultimately to apply the avails of it to the payment of his debts (19-17, 1; 28-23, 26, 8+876. See § 7010). Transfer of real or personal property by debtor to third party to be held in trust for his use and benefit is void as to existing and subsequent creditors (99-301, 109+242).

**15. Existence of other property**—If a transfer is made with a fraudulent intent it is void although the creditor has other property out of which the debt might be made (76-311, 316, 79+305, 77 Am. St. Rep. 651. See 25-175, 181). If a grantor retains property sufficient for the payment of all his debts he has a right in good faith to provide for his future support by a conveyance of a portion of his property (62-341, 346, 64+818).

**16. Consideration**—Transfer may be fraudulent although based on a valuable consideration (3-364, 257, 74 Am. Dec. 764; 20-435, 389; 42-519, 44+535).

**17. Preferences**—The payment of an honest debt is not deemed fraudulent under this statute although it operates as a preference and hinders and delays the other creditors (11-104, 62; 19-367, 312; 25-432; 30-60, 14+262; 45-341, 352, 48+187, 12 L. R. A. 741; 46-1, 48+413; 48-396, 51+222; 60-397, 401, 62+383; 81-167, 173, 83+505; 89-432, 439, 95+216, 769). Preferential mortgage is not void under this statute (33-29, 21+840; 34-416, 26+237; 74-439, 77+236, 73 Am. St. Rep. 358; 89-432, 439, 95+216, 769).

**18. Deed fraudulent in part void in toto**—21-187; 47-507, 50+696; 47-525, 526, 50+699.

**19. Title of grantee**—Becomes absolute when statute of limitations has run (87-456, 92+340, 67 L. R. A. 865). A fraudulent grantee may do with the property all that the grantor might have done if he had retained it (72-27, 32, 74+902).

**20. Liability of grantee**—19-17, 1.

**21. Crops on land fraudulently conveyed**—26-273, 3+351; 28-469, 10+781, 36-223, 30+815; 51-114, 52+1096; 66-195, 68+840. See 47-525, 50+699.

**22. Badges of fraud**—31-348, 350, 17+950; 51-546, 548, 53+871, 38 Am. St. Rep. 516; 73-265, 266, 76+26; 75-341, 77+991; 82-204, 84+746.

**23. Transfers between husband and wife**—Transfers between a husband and his wife, whether directly or indirectly, are prima facie fraudulent as to existing creditors. The burden is on the wife to show good faith and a valuable consideration paid by her or by some one in her behalf (56-469, 57+1136; 89-423, 425, 95+214. See 8-226, 195; 26-273, 3+351; 28-365, 10+20; 28-469, 10+781; 34-107, 24+366; 39-242, 39+320, 12 Am. St. Rep. 641; 44-168, 46+304; 45-294, 47+812; 46-1, 48+413; 73-265, 76+26).

**24. Transfers between near relatives**—Transfers between near relatives are scrutinized by the courts closely but they are not presumptively fraudulent except in the case of husband and wife (89-423, 95+214. See 45-540, 48+440; 64-152, 66+124; 84-483, 87+1120; 88-35, 92+511; 92-139, 99+631). When they are voluntary they are, like all voluntary conveyances, presumptively fraudulent (79-299, 82+539. See § 7015).

**25. Transfers in consideration of future support**—25-199; 26-385, 4+621; 62-341, 346, 64+818.

**26. Transfers of stocks of merchandise**—22-214; 27-454, 8+168; 29-114, 12+355; 30-93, 14+365; 67-116, 69+703; 68-104, 70+871; 72-329, 75+230; 73-498, 76+265; 75-341, 77+991; 75-542, 78+1, 77-279, 79+970; 82-204, 84+746; 83-309, 86+339; 90-249, 95+1108. See § 3503.

**27. Assignment of claims**—82-223, 84+797.

**28. Assignment of wages to be earned**—47-247, 49+982.

**29. Voluntary transfers**—See § 7015.

**30. Assignments for the benefits of creditors**—See § 8326 note 9.

**31. Mortgages of real estate**—19-17, 1; 27-320, 7+355; 35-55, 27+74; 38-443, 38+359; 40-193, 41+1031; 44-534, 47+258, 10 L. R. A. 665, 20 Am. St. Rep. 592; 69-124, 71+924; 70-125, 72+963; 71-139, 73+850, 70 Am. St. Rep. 319; 71-211, 73+729; 73-397, 76+24; 75-523, 78+111; 80-492, 83+418; 86-255, 90+387.

**32. Chattel mortgages**—4-533, 418; 20-435, 389; 21-187; 24-383; 24-390; 24-435; 25-175; 25-500; 27-431, 8+144; 30-35, 14+61; 30-419, 15+687; 31-456, 18+149; 32-52, 19+81; 32-259, 20+187; 32-381, 20+334; 33-29, 21+840; 33-104, 22+126; 34-416, 26+237; 36-123, 30+439; 36-156, 30+659; 37-82, 33+117, 5 Am. St. Rep. 822; 37-509, 35+372; 41-218, 43+137; 42-519, 44+535; 44-541, 47+164; 45-307, 47+969; 47-403, 50+368; 47-507, 50+696; 51-546, 53+871, 38 Am. St. Rep. 516; 55-195, 56+814; 58-502, 60+343; 62-307, 64+821; 62-338, 64+825; 64-265, 66+977, 67+537; 64-428, 67+200; 65-409, 68+65; 67-191, 69+809, 64 Am. St. Rep. 408; 68-86, 70+868; 72-253, 75+127; 74-337, 77+231; 74-439, 77+236, 73 Am. St. Rep. 358; 81-107, 83+469; 89-432, 95+216, 769; 96-340, 104+963. See cases under § 6966.

**33. Who may assail**—Assignees and receivers for the benefit of creditors (see § 8332). Partners (35-213, 28+511). Purchaser at execution sale (32-259, 20+187). Receiver in supplementary proceedings (36-106, 30+402). Administrator (24-383). Judgment creditors (12-145, 83, 90 Am. Dec. 287). Wife of grantor (90-471, 97+122. See 53-110, 115, 54+942). Debtor of assignor when sued by assignee (4-407, 309). One not a creditor (7-421, 336).

**34. Remedies of creditors—Election**—Judgment creditor has election of three remedies. He may sell on execution; or maintain an action to set aside the conveyance; or maintain an action in the nature of a creditors' bill (36-494, 498, 32+852, 1 Am. St. Rep. 683; 87-456, 460, 92+340, 67 L. R. A. 865).

**35. Sale on execution**—9-108, 98; 25-155, 159; 26-385, 4+621.

**36. Action to set aside**—It is the general rule that a simple contract creditor cannot maintain the action. The creditor must first obtain a judgment and docket it in the county where the land lies. It is not necessary to issue execution and have it returned unsatisfied (7-40, 24; 12-145, 83, 90 Am. Dec. 287; 29-139, 12+454; 32-84, 19+390; 51-536, 53+799;

76-311, 316, 79+305, 77 Am. St. Rep. 651; 82-288, 291, 84+1024). A simple contract creditor may maintain the action where the debtor is a non-resident or has absconded (see 48-372, 51+121, 31 Am. St. Rep. 660; 64-326, 67+60). In the case of personalty the creditor must first have an execution returned unsatisfied (32-84, 19+390). Requisites of complaint (12-60, 27; 29-139, 12+454; 32-84, 19+390; 39-527, 40+831; 43-297, 45+434; 45-540, 48+440; 51-536, 53+799; 58-205, 212, 59+1003, 49 Am. St. Rep. 499; 64-476, 67+538; 67-24, 69+475; 70-113, 72+838; 76-311, 316, 79+305, 77 Am. St. Rep. 651; 89-184, 94+551; 99-301, 109+242). Parties (25-155; 36-494, 32+852; 53-73, 54+1055; 59-52, 60+848; 81-341, 84+44; 91-96, 97+574). Venue (91-96, 97+574). Joinder of causes of action (9-183, 169; 81-341, 84+44; 91-96, 97+574). Relief allowable (58-99, 104, 59+977). Debtor may assert homestead right (40-193, 195, 41+1031). Interest giving right to defend (4-192, 133.)

**37. Action in nature of creditor's bill**—7-40, 24; 32-84, 19+390; 48-372, 51+121, 31 Am. St. Rep. 660; 64-326, 330, 67+60; 76-311, 79+305, 77 Am. St. Rep. 651.

**38. Limitation of actions**—28-248, 9+372; 29-139, 12+454; 35-493, 29+193; 70-113, 72+838; 87-456, 92+340, 67 L. R. A. 865, 94 Am. St. Rep. 709; 89-184, 94+551. See 39-330, 40+161.

**39. Burden of proof**—It is the general rule that fraud will not be presumed and that the burden of proving a conveyance fraudulent is on him who asserts it (18-414, 373; 50-414, 52+907; 84-483, 87+1120; 87-456, 460, 92+340, 67 L. R. A. 865, 94 Am. St. Rep. 709; 89-423, 95+214; 90-497, 97+379; 91-204, 97+976), including the fact that the grantee had notice of the fraudulent intent (18-414, 373. See 36-223, 30+815; 73-397, 400, 76+24). Until a prima facie case is made in proof of fraudulent intent on the part of the grantor it is not incumbent on the grantee to prove that he paid a valuable consideration (50-414, 52+907). Special rules apply to voluntary transfers (see § 7015); to transfers between husband and wife (56-469, 57+1136); to unfiled chattel mortgages (see § 6966); to unfiled conditional sales (see § 6981); to sales of personalty where the possession is retained by the vendor (see § 7011). The creditor must prove that the claim on which his judgment is based existed prior to the transfer and the judgment itself does not prove it. But the judgment proves the validity of the claim and cannot be attacked except for fraud or want of jurisdiction (7-337, 264, 82 Am. Dec. 97; 20-435, 389; 36-223, 30+815; 43-397, 45+715, 19 Am. St. Rep. 243; 48-490, 51+475, 31 Am. St. Rep. 663; 71-211, 215, 73+729; 77-228, 79+964, 77 Am. St. Rep. 674; 88-506, 93+665, 67 L. R. A. 590). Burden of officer to justify seizure of goods fraudulently transferred (31-337, 17+946).

**40. Degree of proof required**—Proof that a conveyance is fraudulent must be clear and satisfactory. It must be sufficiently strong and cogent to satisfy a man of sound judgment (89-432, 439, 95+216, 769). The fraud must be manifest or plainly inferable (63-24, 65+121). Plaintiff must show, by evidence outside of proof of judgment, that claim on which the judgment was based existed so as to make him creditor when transfer was made. Not required to establish that such claim was valid and enforceable. Grantee estopped from setting up any defense, including statute of limitations, which might have been interposed in original action (100-189, 110+968).

**41. Evidence**—To be admitted freely (34-107, 24+366; 62-119, 121, 64+108; 66-223, 227, 68+1072; 77-116, 119, 79+602). Circumstantial evidence sufficient (62-119, 121, 64+108; 75-542, 545, 78+1). Acts and declarations of grantor while in possession (40-421, 42+290; 42-277, 44+59; 52-216, 221, 53+1147; 70-496, 498, 73+402, 68 Am. St. Rep. 550; 77-116, 119, 79+602. See 53-516, 55+596). Admissions of grantor subsequent to transfer (30-45, 14+63, and cases cited. See 96-340, 104+963). Solvency and insolvency of debtor (8-226, 195; 31-348, 17+950; 45-283, 47+807; 102-256, 113+689). Payment of grantor's debts by grantee (31-348, 17+950). Grantor may testify as to fraudulent intent (96-340, 104+963). Books of account, etc., to show insolvency (69-60, 71+827). Value of the land (6-220, 142). Inadequacy of price (82-204, 84+746). Declarations of fellow conspirators (30-45, 14+63; 62-119, 64+108; 82-204, 84+746). Failure to investigate title (75-341, 77+991). Generally (53-516, 55+596; 66-195, 68+840; 67-116, 69+703; 77-279, 79+970).

**42. Cross-examination**—Great latitude is allowable in the cross-examination of the immediate parties. Not limited to matters touched on in the direct examination (32-241, 20+186; 34-107, 110, 24+366; 35-401, 29+123; 37-218, 34+21; 39-269, 39+628; 62-119, 121, 64+108; 65-473, 67+1149; 66-223, 68+1072; 75-542, 544, 78+1), and the same rule applies to the examination of one claiming to be a bona fide purchaser (49-532, 52+141).

**43. Findings**—28-23, 8+876; 28-93, 9+585; 43-137, 45+4; 62-341, 347, 64+818; 90-497, 97+379.

**7014. Rights of heirs, etc.**—Every conveyance, charge, instrument, or proceeding, declared void by this chapter as against creditors or purchasers, shall be equally void as against their heirs, successors, personal representatives, or assigns. (3499)

19-17, 1; 24-383.

**7015. Question of fact—Voluntary conveyances**—The question of fraudulent intent, in all cases arising under this subdivision, 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. (3500)

**1. Question of fact—Fraudulent intent** a question of fact (19-367, 312; 27-530, 533, 8+765; 44-168, 46+304; 45-124, 127, 47+544; 48-396, 400, 51+222; 62-307, 64+821; 63-24, 65+121). If the fraudulent intent unequivocally appears on the face of the conveyance or from

the facts admitted by the pleadings there is no necessity of submitting the question to the jury (4-204, 146, 77 Am. Dec. 507; 4-391, 296, 77 Am. Dec. 522; 6-305, 213). When the evidence is reasonably susceptible of but one inference the court may direct a verdict as in other cases (42-519, 44+535; 52-216, 53+1147; 62-341, 345, 64+818). In an action tried by the court it is not necessary to submit the question of fraud to a jury (84-10, 86+612). Statute not applicable to transfers of personalty (18-414, 373).

**2. Voluntary transfers**—Voluntary transfers are prima facie fraudulent (4-391, 296, 77 Am. Dec. 522; 25-199; 26-385, 4+621; 39-527, 40+831; 45-540, 48+440; 79-299, 303, 82+589; 83-265, 86+99). Knowledge of grantee immaterial (83-265, 86+99).

**7016. Bona fide purchasers**—The provisions of this subdivision 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. (3501)

Affirmative of common law (18-414, 373; 63-24, 28, 65+121). If the grantee has knowledge of facts which would put an ordinarily prudent man on inquiry which would lead to the discovery of the fraudulent intent he is charged with notice of such intent (55-515, 518, 57+223; 69-101, 103, 71+829; 75-542, 78+1). Valuable consideration essential (13-434, 398). Effect of paying only portion of purchase money before notice (49-532, 52+141. See 33-157, 160, 22+292). Purchaser with notice from bona fide purchaser protected (67-116, 118, 69+703). If the instrument of transfer bears a fraudulent intent on its face the purchaser is charged with notice (25-199, 201). Burden of proof (see § 7013 note 39).

**7017. Assignment of debt**—Every assignment of a debt, unless the same be in writing and be filed with the clerk of the town or municipality in which the assignor resides, shall be presumed to be fraudulent and void as against his creditors, unless those claiming thereunder make it appear that it was made in good faith and for a valuable consideration: Provided, that this section shall not apply to debts evidenced by writing subscribed by the debtor, and delivered to the assignee at the time of the assignment thereof. Assignments required by this section to be filed need not be acknowledged. (3502)

82-21, 84+640; 85-355, 88+997.

1899 c. 268 cited (97-258, 106+1053).

Does not "require" a "recording or registering" within the meaning of federal bankruptcy act; and hence an assignment made more than four months prior to filing of petition in bankruptcy could not be avoided by trustee as preference, though it was never filed (139+941).

**7018. Sale of stock of merchandise**—Every sale of a portion of a stock of merchandise, otherwise than in the ordinary course of the seller's business, and every sale of an entire stock of merchandise, shall be presumed fraudulent and void as against the seller's creditors, unless at least five days before the sale:

1. The seller and purchaser make an inventory showing the quantity, and, so far as possible, with the exercise of reasonable diligence, the cost to the seller, of each article to be sold;

2. The purchaser in good faith make full inquiry of the seller as to the names and places of residence and business of the seller's creditors and the amount owing to each; and

3. The purchaser mail to each creditor, of whom he can with the exercise of reasonable diligence acquire knowledge, notice of the proposed sale, stating the cost to the seller of the merchandise sold and the price to be paid therefor.

Except as herein provided, nothing in this section shall change or affect the rules of evidence and the presumptions of law otherwise applicable to such sales. (3503)

95-422, 104+371. See § 7013 note 26.

1899 c. 291 constitutional (99-22, 108+940, 9 Ann. Cas. 229). Sales presumptively fraudulent only: statute merely prescribing a rule of evidence (99-22, 108+940, 9 Ann. Cas. 229). Failure of vendee to secure inventory, or inquire as to vendor's creditors and amount owing each, rendered sale presumptively fraudulent (103-459, 115+640).

Cited and applied (106-544, 119+65; 118-139, 136+401).

**7019. "Conveyance" defined**—The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, except a will, whatever its form, and by whatever name known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered. (3504)

Leases included (24-172; 37-218, 34+21). Names and forms not controlling (4-533, 418; 23-242, 252; 30-419, 421, 15+687).