

MASON'S MINNESOTA STATUTES

1927

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STATUTE COMPILATION COMMISSION FOR THE PUBLICATION OF
THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

COMPILED AND EDITED BY THE EDITORIAL STAFF OF THE
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of his county and safely keep and preserve the same in his office, and endorse on each instrument and record book the date of the receipt of the same by him, and thereafter said instruments and records shall be notice to all persons of the existence and terms thereof. ('15 c. 364 § 5)

8369. Fees for recording documents so filed—For receiving, keeping and preserving, and endorsing all of said instruments and records transferred to him as aforesaid, there shall be paid to the register of deeds out of the treasury of his county, a fee according to the population of his county as shown by the 1910 national census of the United States of America, which fee shall be as follows:

In counties having a population of 50,000 or less, \$10.00.

In counties having a population exceeding 50,000 and not more than 100,000, a fee of \$25.00.

In counties having a population exceeding 100,000 and not more than 150,000, a fee of \$50.00.

In counties having a population exceeding 150,000 and not more than 200,000, a fee of \$100.00.

In counties having a population exceeding 200,000 and not more than 300,000, a fee of \$125.00.

In counties having a population exceeding 300,000 a fee of \$200.00. ('15 c. 364, § 6)

8370. Application—This act shall not apply to cities of the first class, nor to counties wherein the salary of the register of deeds is fixed by special law. ('15 c. 364 § 7)

18 F. (2d) 108, note under § 8346
162-261, 202+481, note under § 8364.

8371. Report of sale—Filing—On and after July 1st, 1913, the certified report of his proceedings required to be made by the person or officer making a sale of mortgaged property as required by section 3470, Revised Laws 1905 [8354], shall be filed in the office of the register of deeds where the chattel mortgage is filed or to which it has been transferred, and when so filed, such report, or a duly certified copy thereof, shall be prima facie evidence of the facts therein stated, and on and after July 1st, 1913, no such report shall be filed in the office of any clerk, or recorder of a municipality. ('13 c. 143 § 5) [6989]

136-356, 162+468. As to what constitutes a conditional sale (129-198, 151+971).

8372. Seed grain loans—Agreement—Contract—To secure a loan or purchase of seeds, grain, or seed potatoes, the person receiving the same shall execute

to the vendor or lender a note or contract containing a statement of the amount and kind of seed, and the terms of the agreement relative thereto. Upon filing the same or a copy thereof, as hereinafter provided, said vendor or lender shall have a lien on the crop grown therefrom. (R. L. '05 § 3479, G. S. '13 § 6994, amended '23 c. 48 § 1)

194+104.
The intervener did not comply with the seed grain statute, Gen St. 1913, § 6994, giving a lien upon "a loan or purchase of seed grain," afterwards amended by Laws 1923, c. 48, so as to include in terms seed potatoes, and claims no statutory lien. It is held, that he has no claim to the potatoes raised from the seed superior to that of crop mortgagee. 156-57, 194+103.

8373. Seed grain contracts to be filed with the register of deeds—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 register of deeds of the county 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. (R. L. '05 § 3480, G. S. '13 § 6995, amended '15 c. 191 § 1)

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

8374. 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) [6996]

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

8375. 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) [6997]

32-193, 196, 20+85.

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PART I.

FORMATION OF THE CONTRACT

8376. Contracts to sell and sales—(1) A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.

(2) A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

(3) A contract to sell or a sale may be absolute or conditional.

(4) There may be a contract to sell or a sale between one part owner and another. ('17 c. 465 § 1)

147-175, 179+899; 150-436, 185+504; 152-556, 188+735.
 Where parties execute a written contract for the sale of goods from one to the other on the terms and conditions therein specified, they are bound thereby in the absence of fraud or mistake; and where neither fraud nor mistake is alleged a party to such a contract cannot relieve himself from liability thereon by showing that he executed it without examining it sufficiently to discover that its terms differed from the terms of a prior oral agreement. 156-301, 194+772.

The wording of the contract warranted the jury in finding that the quantity of wood was to be ascertained by scaling or measuring it at the place where plaintiff delivered it to defendants. 156-349, 194+718.

In an action to recover the purchase price of a car-load of automobile tubes and tires, sold on a written contract, parol evidence is admissible to show that the vendor agreed to receive from the vendee certain oversize tires and to credit the value thereof on the written contract, where the vendor accepts and sets aside as his property such oversize tires and later refuses to take the same. 158-456, 197+753.

Evidence found to show that there was an agreement executed for a substituted delivery under an original contract, rather than the substitution of a new contract of sale. 167-334, 209+14.

8377. Capacity—Liabilities for necessities—Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Where necessities are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of delivery. ('17 c. 465 § 2)

FORMALITIES OF THE CONTRACT

8378. Form of contract or sale—Subject to the provisions of this act and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be

inferred from the conduct of the parties. ('17 c. 465 § 3)

8379. Statute of frauds—(1) A contract to sell or a sale of any goods or choses in action of the value of fifty dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

(2) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

(3) There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods. ('17 c. 465 § 4)

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).

164-175, 205+53.

Sale of cow. 160-200, 199+737.

The fact that the Correll banks co-operated with the plaintiff and its officials in procuring the renewal of the unpaid original notes, to its advantage, was in direct keeping with the agreement to look after and collect the notes, and is not such as to bring the same within the statute of frauds. 165-285, 206+459.

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; 39-145, 39+302; 40-141, 41+465, 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; 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 (50-35, 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 evidence (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). It is sufficient if signed only by the party sought to be charged (13-191, 180; 15-440, 42-494, 44+794; 88-168, 92+540). Oral evidence is not admissible to supply omis-

sions (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); 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); a contract to furnish material and, after performing labor thereon, to attach it to real estate (64-450, 67+357; 3-109, 61); 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).

145-21, 175+1001; 145-244, 176+844; 147-205, 179+904; 153-201, 189+935; 153-233, 190+66; 193+958; 195+414; Subd. 3, 153-201, 189+936; 193+958. See also 130-151, 153+316; 130-304, 153+613; 137-141, 162+1084; 139-13, 165+485; 146-44, 177+1018; 148-236, 181+356; 148-358, 182+444; 149-25, 182+711.

SUBJECT MATTER OF CONTRACT

8380. Existing and future goods—(1) The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in this act called "future goods."

(2) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods. ('17 c. 465 § 5)

148-254, 181+346.

162-240, 202+445, note under § 8345.

8381. Undivided shares—(1) There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

(2) In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears. ('17 c. 465 § 6)

8382. Destruction of goods sold—(1) Where the parties purport to sell specific goods and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

(2) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material

part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale:

- (a) As avoided, or
- (b) As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible. ('17 c. 465 § 7)

8383. Destruction of goods contracted to be sold—

(1) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

(2) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract:

- (a) As avoided, or
- (b) As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible. ('17 c. 465 § 8)

THE PRICE

8384. Definition and ascertainment of price—(1) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

(2) The price may be made payable in any personal property.

(3) Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, this act shall not apply.

(4) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. ('17 c. 465 § 9)

156-57, 194+103.

8385. Sale at a valuation—(1) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person without fault of the seller or the buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by parts IV and V of this act. ('17 c. 465 § 10)

Conduct and associations of a spouse with one of the opposite sex, carried on against the protest of the one wronged and of a character justifying the belief that the object is criminal may constitute cruel and inhuman treatment within the meaning of the divorce statute. 212+193.

CONDITIONS AND WARRANTIES

8386. Effect of conditions—(1) Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the non-performance of the condition as a breach of warranty.

(2) Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligation to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods. ('17 c. 465 § 11)

8387. Definition of express warranty—Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty. (17 c. 465 § 12)

149-372, 183+841; 153-384, 190+613.

A guaranty printed over the seller's name on the back of an order for goods is held a warranty, and not mere trade talk. The evidence made a breach of this warranty a fair jury question. 156-436, 195+147.

Representations by the seller of a bull calf that he would be a "wonderful asset" to the buyer and "would put him on the map," that "his father was the greatest living dairy bull," and that he would help to build up the buyer's herd, held to be "trade talk" and not to amount to an express warranty of the procreative ability of the calf at his maturity. 159-234, 198+806.

In such a case there is no implied warranty that the animal will possess at his maturity the requisite procreative ability. 159-234, 198+806.

8388. Implied warranties of title—In a contract to sell or a sale, unless a contrary intention appears, there is—

(1) An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass.

(2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale;

(3) An implied warranty that the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person, not declared or known to the buyer before or at the time when the contract or sale is made.

(4) This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, or other person professing to sell by virtue of authority in fact or law goods in which a third person has a legal or equitable interest. ('17 c. 465 § 13)

8389. Implied warranty in sale by description—Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. ('17 c. 465 § 14)

8390. Implied warranties of quality—Subject to the provisions of this act and of any statute in that behalf, there is no implied warranty or condition as to the

quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

(3) If the buyer has examined the goods there is no implied warranty as regards defects which such examination ought to have revealed.

(4) In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

(5) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(6) An express warranty or condition does not negative a warranty or condition implied under this act unless inconsistent therewith. ('17 c. 465 § 15)

Subd. 3, 153-501, 190+986; Subd. 6, 150-438, 185+505.
Record examined, and it is found to appear therefrom that the evidence is sufficient to sustain the findings of fact made by the trial court, and that the findings warrant the conclusions. 157-222, 195+918

Representations by the seller of a bull calf that he would be a "wonderful asset" to the buyer and "would put him on the map," that "his father was the greatest living dairy bull," and that he would help to build up the buyer's herd, held to be "Trade talk" and not to amount to an express warranty of the procreative ability of the calf at his maturity.

In such a case there is no implied warranty that the animal will possess at his maturity the requisite procreative ability. 159-234, 198+806.

The damages allowed for defective goods largely exceeds the damages proven. 162-355, 202+820.

SALE BY SAMPLE

8391. Implied warranties in sale by sample—In the case of a contract to sell or a sale by sample:

(a) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 47 (3).

(c) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample ('17 c. 465 § 16)

153-500, 190+986.

Section 47 (3) is § 8421 (3), herein.

PART II.

TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

8392. No property passes until goods are ascertained—Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 6. ('17 c. 465 § 17)

8393. Property in specific goods passes when parties so intend—(1) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade and the circumstances of the case. ('17 c. 465 § 18)

8394. Rules for ascertaining intention—Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Rule 1. Where there is an unconditional contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

Rule 2. Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done.

Rule 3. (1) When goods are delivered to the buyer "on sale or return," or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revert the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

(2) When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer.

(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 4. (1) Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section 20. This presumption is applicable, although by the terms of the contract, the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words "collect on delivery" or their equivalents.

Rule 5. If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation

to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon. ('17 c. 465 § 19)

147-178, 179+900; 148-254, 181+346; 151-342, 186+947; 153-100, 189+603; Subd. 2, 147-178, 179+900; Rule 4 subd. 2, 154-424, 191+911.

Section 20 is § 8395, herein.
Reformation to show verbal agreement. 166-507, 208+408.

Rule 1. Same as at common law. 160-200, 199+737.

8395. Reservation of right of possession or property when goods are shipped—(1) Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(3) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

(4) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. ('17 c. 465 § 20)

153-100, 189+603. Subd. 2, 147-78, 179+900.

8396. Sale by auction—In the case of sale by auction—(1) Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

(3) A right to bid may be reserved expressly by or on behalf of the seller.

(4) Where notice has not been given that a sale

by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer. ('17 c. 465 § 21)

Subd. 2, 153-201, 189+936.

8397. Risk of loss—Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that—

(a) Where delivery of the goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from time of such delivery.

(b) Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. ('17 c. 465 § 22)

TRANSFER OF TITLE

8398. Sale by a person not the owner—(1) Subject to the provisions of this act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in this act, however, shall affect—

(a) The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

(b) The validity of any contract to sell or sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction. ('17 c. 465 § 23)

Agency. 157-47, 195+542.

Burden is upon purchaser to prove the agent's authority to make the contract. 157-285, 196+263.

Where A. puts chattels into the possession of B as his agent with authority to sell in his own name, without disclosing the name of his principal, and the agent sells to one who knows nothing of any principal, but honestly believes that the agent is selling on his own account, the purchaser may set off any demand he has on the agent against the demand made by the principal. 157-285, 196+263.

8399. Sale by one having a voidable title—Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title. ('17 c. 465 § 24)

8400. Sale by seller in possession of goods already sold—Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice

of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. ('17 c. 465 § 25)
146-109, 177+1022.

8401. Creditors' rights against sold goods in seller's possession—Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void. ('17 c. 465 § 26)
147-175, 179+899.

8401½. Definition of negotiable documents of title—A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title. ('17 c. 465 § 27)

8402. Negotiation of negotiable documents by delivery—A negotiable document of title may be negotiated by delivery—

(a) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the bearer, or

(b) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee. ('17 c. 465 § 28)

8403. Negotiation of negotiable documents by indorsement—A negotiable document of title may be negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner. ('17 c. 465 § 29)

8404. Negotiable documents of title marked "Not negotiable."—If a document of title which contains an undertaking by a carrier, warehouseman or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of a specified person, or which contains words of like import, has placed upon it the words "not negotiable," "non-negotiable" or the like, such a document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of this act. But nothing in this act contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title of placing thereon the words "not negotiable," "non-negotiable," or the like. ('17 c. 465 § 30)

8405. Transfer of non-negotiable documents—A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable document cannot be negotiated and the indorsement of such a document gives the transferee no additional right. ('17 c. 465 § 31)

8406. Who may negotiate a document—A negotiable document of title may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the document has been entrusted by the owner, if, by the terms of the document the bailee issuing the document undertakes to deliver the goods to the order of the person to whom the possession or custody of the document has been entrusted, or if at the time of such entrusting the document is in such form that it may be negotiated by delivery. ('17 c. 465 § 32)

8407. Rights of person to whom document has been negotiated—A person to whom a negotiable document of title has been duly negotiated acquires thereby;

(a) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him. ('17 c. 465 § 33)

8408. Rights of person to whom document has been transferred—A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods subject to the terms of any agreement with the transferor.

If the document is non-negotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification of such bailee by the transferor or transferee of a non-negotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. ('17 c. 465 § 34)

8409. Transfer of negotiable document without indorsement—Where a negotiable document of title is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. ('17 c. 465 § 35)

8410. Warranties on sale of document—A person who for value negotiates or transfers a document of title by indorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

(a) That the document is genuine;

(b) That he has a legal right to negotiate or transfer it.

(c) That he has knowledge of no fact which would impair the validity or worth of the document, and

(d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties

had been to transfer without a document of title the goods represented thereby. ('17 c. 465 § 36)

8411. **Indorser not a guarantor**—The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations. ('17 c. 465 § 37)

8412. **When negotiation not impaired by fraud, mistake or duress**—The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was induced by fraud, mistake or duress to entrust the possession or custody thereof to such person, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor, without notice of the breach of duty, or fraud, mistake or duress. ('17 c. 465 § 38)

8413. **Attachment or levy upon goods for which a negotiable document has been issued**—If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they cannot thereafter, while in the possession of such bailee, be attached by garnishment or otherwise or be levied upon under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court. ('17 c. 465 § 39)

8414. **Creditors' remedies to reach negotiable documents**—A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. ('17 c. 465 § 40)

147-175, 179+899.

PART III

PERFORMANCE OF THE CONTRACT

8415. **Seller must deliver and buyer accept goods**—It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale. ('17 c. 465 § 41)

Conclusive proof was made of tender of full performance of the contract by plaintiff. 159-158, 198+425.

As a general rule, a contract to furnish a specified amount of goods at a specified price, to be shipped and delivered as ordered, constitutes a contract to be performed within a reasonable time. 161-266, 201+423.

In determining that question, a general custom of the trade may be considered, and it was error to exclude evidence of such custom. 161-266, 201+423.

8416. **Delivery and payment are concurrent conditions**—Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods. ('17 c. 465 § 42)

145-62, 176+54.

Cited in 160-200, 199+737.

8417. **Place, time and manner of delivery**—(1) Whether it is for the buyer to take possession of the

goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one, and if not his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

(2) Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as *ineffectual unless made at a reasonable hour*. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. ('17 c. 465 § 43)

143-10, 172+883. Subd. 2, 154-424, 191+911.

8418. **Delivery of wrong quantity**—(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties. ('17 c. 465 § 44)

153-501, 190+986.

Insufficient delivery after regrade of potatoes. 161-526, 201+537.

8419. **Delivery in instalments**—(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract to sell goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it depends in each case on the terms of the contract and the circumstances of the case,

whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation, but not to a right to treat the whole contract as broken. ('17 c. 465 § 45)

142-391, 172+490.

8420. Delivery to a carrier on behalf of the buyer—

(1) Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 19, rule 5, or unless a contrary intent appears.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. ('17 c. 465 § 46)

Subd. 1, 154-424, 191+911.

Section 19 is § 8394, herein.

8421. Right to examine the goods—(1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

(3) Where goods are delivered to a carrier by the seller in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words "collect on delivery," or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination. ('17 c. 465 § 47)

8422. What constitutes acceptance—The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. ('17 c. 465 § 48)

8423. Acceptance does not bar action for damages—In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or

other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fail to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know of such breach, the seller shall not be liable therefor. ('17 c. 465 § 49)

194+774.

The contract gave the buyer thirty days after receiving the goods in which to discover and report defects in quality and provided that he should be estopped from claiming defects unless reported within such thirty days. Having given no notice of defects within that time he cannot thereafter maintain a claim for damages therefor. 156-301, 194+772.

Evidence sustains a finding that defendant failed to give notice to the plaintiff of its claim within a reasonable time. 166-228, 207+628.

8424. Buyer is not bound to return goods wrongly delivered—Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them. ('17 c. 465 § 50)

8425. Buyer's liability for failing to accept delivery—When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the right against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default. ('17 c. 465 § 51)

PART IV.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

8426. Definition of unpaid seller—(1) The seller of goods is deemed to be an unpaid seller within the meaning of this act.

(a) When the whole of the price has not been paid or tendered.

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

(2) In this part of this act the term "seller" includes an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price, or any other person who is in the position of a seller. ('17 c. 465 § 52)

The evidence considered as a whole supports the verdict. 169-326, 200+293.

During the period of an extension granted by him, even without consideration, the seller cannot declare a forfeiture under a conditional sales contract for default in payment. 167-322, 209+15.

8427. Remedies of an unpaid seller—(1) Subject to the provisions of this act, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has—

(a) A lien on the goods or right to retain them for the price while he is in possession of them;

(b) In case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;

- (c) A right of resale as limited by this act;
 (d) A right to rescind the sale as limited by this act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer. ('17 c. 465 § 53)

143-10, 172+883; 147-175, 179+899; 153-100, 189+603.
 The defendant Tople, a party to the sales contract, was a guarantor of payment and not merely of indemnity against damage, and could be sued jointly with the purchaser. 159-158, 198+425.

UNPAID SELLER'S LIEN

8428. When right of lien may be exercised—(1) Subject to the provisions of this act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(a) Where the goods have been sold without any stipulation as to credit;

(b) Where the goods have been sold on credit, but the term of credit has expired;

(c) Where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. ('17 c. 465 § 54)

143-10, 172+883.

8429. Lien after part delivery—Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention. ('17 c. 465 § 55)

8430. When lien is lost—(1) The unpaid seller of goods loses his lien thereon—

(a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof;

(b) When the buyer or his agent lawfully obtains possession of the goods;

(c) By waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods. ('17 c. 465 § 56)

153-100, 189+603.
 165-252, 206+385.

STOPPAGE IN TRANSITU

8431. Seller may stop goods on buyer's insolvency—Subject to the provisions of this act, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession. ('17 c. 465 § 57)

8432. When goods are in transit—(1) Goods are in transit within the meaning of section 57—

(a) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee;

(b) If the goods are rejected by the buyer, and the

carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

(2) Goods are no longer in transit within the meaning of section 57—

(a) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(b) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer;

(c) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

(3) If goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(4) If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods. ('17 c. 465 § 58)

Section 57 is § 8431, herein.

8433. Ways of exercising the right to stop—(1) The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

(2) When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation. ('17 c. 465 § 59)

RESALE BY THE SELLER

8434. When and how resale may be made—(1) Where the goods are of a perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

(3) It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the

right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

(4) It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

(5) The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale. ('17 c. 465 § 60)

RESCISSION BY THE SELLER

8435. When and how the seller may rescind the sale—(1) An unpaid seller having a right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted. ('17 c. 465 § 61)

143-10, 172+883.

8436. Effect of sale of goods subject to lien or stoppage in transitu—Subject to the provisions of this act, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu. ('17 c. 465 § 62)

PART V.

ACTIONS FOR BREACH OF THE CONTRACT REMEDIES OF THE SELLER

8437. Action for the price—(1) Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property

in the goods has not passed, and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

(3) Although the property in the goods has not passed, if they cannot readily be resold for a reasonable price, and if the provisions of section 64 (4) are not applicable, the seller may offer to deliver the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price. ('17 c. 465 § 63)

153-202, 189+937.

160-200, 199+737; 166-478, 208+190; 209+867.

8438. Action for damages for non-acceptance of the goods—(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

(4) If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing towards carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages. ('17 c. 465 § 64)

Subd. 2. 153-261, 190+73; Subd. 4. 153-261, 190+73.

Measure of damages. 165-406, 200+931.

Subdivision 4. 166-487, 208+194.

8439. When seller may rescind contract or sale—Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer. ('17 c. 465 § 65)

153-261, 190+73.

REMEDIES OF THE BUYER

8440. Action for converting or detaining goods—Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld. ('17 c. 465 § 66)

8441. Action for failing to deliver goods—(1) Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain

an action against the seller for damages for non-delivery.

(2) The measure of damages is the loss directly and naturally resulting in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver. ('17 c. 465 § 67)

The making of the contract and its breach were conclusively established, and the court correctly instructed the jury to assess plaintiff's damages and return a verdict therefor.

161-437, 201-926.

8442. Specific performance—Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as to the court may seem just. ('17 c. 465 § 68)

A court of equity will not decree performance of a continuing contract which one of the parties can terminate at will, but will leave the parties to their remedy at law. 164-252, 204-882.

8443. Remedies for breach of warranty—(1) Where there is a breach of warranty by the seller, the buyer may, at his election—

(a) Accept or keep the goods and set up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price;

(b) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(c) Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty;

(d) Rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

(2) When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

(3) Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time or offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

(4) Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to

return the goods in exchange for repayment of the price.

(5) Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 53.

(6) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(7) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. ('17 c. 465 § 69)

In General.

153-384, 190-614; 194-399; 195-147. Subd. 3, 153-387, 190-615; 194-400; 195-148.

The plaintiff sold, the defendants a patent right for which they gave a note. It was an essential term or condition of the contract of sale that the plaintiff would work for the defendants in the manufacture of the patented articles, a process which he understood and which they did not. He breached his contract, the defendants could not get the requisite skilled service, and the project failed. Held, that because of his breach the plaintiff cannot recover on the note. 157-81, 195-771.

Record examined, and it is found to appear therefrom that the evidence is sufficient to sustain the findings of fact made by the trial court, and that the findings warrant the conclusions. 157-222, 195-918.

The evidence sustains the finding that the defendant sold the plaintiff diseased cows, with a warranty that they were healthy, and that the plaintiff sustained the amount of damages awarded. 162-145, 202-713.

Farmers of practical experience in the care of cows, having gained thereby knowledge of a particular disease, may testify as to its presence. Evidence is not confined to the testimony of licensed veterinarians. 162-135, 202-713.

Record examined and held that the evidence justifies the findings that the wood was sold as pulpwood, that it was impaired in quality by rot and worm holes to the extent of 30 per cent. of its value, and that it was sold as sound. 163-416, 204-322.

Rescission.

The evidence justified the trial court in finding that goods sold were not as the seller had represented them to be, that the buyer had elected to rescind for that reason, had notified the seller of his election within a reasonable time, and had not waived its right to rescind. 156-201, 194-399.

The evidence justified the jury in finding that notice of election to rescind was given within a reasonable time after knowledge of the breach of the warranty. 156-436, 195-147.

No error appears in the rulings made at the trial. 156-436, 195-147.

Where, in order to procure an executory contract for the conditional sale of a typewriter, the seller guarantees to keep the typewriter in repair for a definite length of time, title of machine not to pass until full payment of the monthly rent, the buyer may rescind if, during the time specified, the seller neglects or refuses to repair within a reasonable time after requested so to do. 158-389, 197-751.

Not applicable in matter of rescission for fraud. 158-396, 197-840.

Evidence held to show a rescission by agreement of the purchase of a tractor. 165-54, 205-626.

The rescission of a contract because of fraud inducing it prevents the defrauded party from recovering damages for the fraud. His only right is to be placed in statu quo. 165-54, 205-626.

Partial Rescission.

There may not be a partial rescission of an entire contract of sale, but it is not an invariable rule that the buyer cannot rescind the contract if he is unable to return all he received from the seller. 156-201, 194-399.

Diligence in Discovering Defects.

If goods are purchased for resale, and the buyer, exercising due diligence, fails to discover that they were not as the seller represented until after he has resold some of them, and they have been returned because of their defects, he may return the goods and compel the seller to refund what he received for them if the seller is permitted to retain all he got for the goods the buyer cannot return. 156-201, 194+399.

The contract gave the buyer thirty days after receiving the goods in which to discover and report defects in quality and provided that he should be estopped from claiming defects unless reported within such thirty days. Having given no notice of defects within that time he cannot thereafter maintain a claim for damages therefor. 156-301, 194+772.

What is a reasonable time in a given case is, as a general rule, a question of fact. 156-436, 195+147.

Damages.

One, who has performed contract in whole or in part before discovering falsity of representation inducing him to enter it, may affirm contract, and sue for damages for deceit. 161-527, 201+918.

In buyer's action for misrepresentations as to fur coat, evidence held to prove damages. 161-527, 201+918.

Measure of Damages.

The measure of damages for breach of warranty of quality of personal property is the difference between the value at the time and place of the sale, if the article had been as warranted, and its value in its actual condition. 158-309, 197+266.

Where a secondhand farm tractor complied with a warranty except for carbon in the engine, obstructions in the fuel conduits, and defects in the clutch and magneto, the two latter being detachable parts which can easily be replaced, the damages for breach of warranty consist only of the cost of renovation and repair necessary to remove the carbon, clean the fuel lines, replace the defective clutch, and readjust or replace the magneto.—Id.

Rejection of goods.

Rejection of inferior goods. 161-526, 201+537.

Misrepresentation.

Misrepresentation. 212+892.

8444. Interest and special damages—Nothing in this act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed. ('17 c. 465 § 70)

PART VI.**INTERPRETATION**

8445. Variation of implied obligations—Where any right, duty or liability would arise under a contract to sell or a sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale. ('17 c. 465 § 71)

145-62, 176+55; 194+774.
156-301, 194+772.

8446. Rights may be enforced by action—Where any right, duty or liability is declared by this act, it may, unless otherwise by this act provided, be enforced by action. ('17 c. 465 § 72)

8447. Rule for cases not provided for by this act—In any case not provided for in this act, the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to contracts to sell and to sales of goods. ('17 c. 465 § 73)

8448. Interpretation shall give effect to purpose of uniformity—This act shall be so interpreted and con-

strued, as to effectuate its general purpose to make uniform the laws of those states which enact it. ('17 c. 465 § 74)

8449. Provisions not applicable to mortgages—The provisions of this act relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security. ('17 c. 465 § 75)

8450. Definitions—(1) In this act, unless the context or subject matter otherwise requires—

"Action" includes counterclaim, set-off and suit in equity.

"Buyer" means a person who buys or agrees to buy goods or any legal successor in interest of such person.

"Defendant" includes a plaintiff against whom a right of setoff or counterclaim is asserted.

"Delivery" means voluntary transfer of possession from one person to another.

"Divisible contract to sell or sale" means a contract to sell or a sale in which by its terms the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.

"Document of title to goods" includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by indorsement or by delivery, goods represented by such document.

"Fault" means wrongful act or default.

"Fungible goods" means goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.

"Future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale.

"Goods" include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

"Order" in sections of this act relating to documents of title means an order by indorsement on the document.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

"Plaintiff" includes defendant asserting a right of set-off or counterclaim.

"Property" means the general property in goods, and not merely a special property.

"Purchaser" includes mortgagee and pledgee.

"Purchases" includes taking as a mortgagee or as a pledgee.

"Quality of goods" includes their state or condition.

"Sale" includes a bargain and sale as well as a sale and delivery.

"Seller" means a person who sells or agrees to sell goods, or any legal successor in the interest of such person.

"Specific goods" means goods identified and agreed upon at the time a contract to sell or a sale is made.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing claim, whether for money or not, constitutes value where goods or documents of titles are taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the

meaning of this act when it is in fact done honestly, whether it be done negligently or not.

(3) A person is insolvent within the meaning of this act who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not.

(4) Goods are in a "deliverable state" within the meaning of this act when they are in such a state that the buyer would, under the contract, be bound to take delivery of them. ('17 c. 465 § 76)

162-240, 202+445, note under § 8345.

8451. Act does not apply to existing sales or contracts to sell—None of the provisions of this act shall apply to any sale, or to any contract to sell, made prior to the taking effect of this act. ('17 c. 465 § 76a)

8452. No repeal of uniform warehouse receipt act or uniform bills of lading act—Nothing in this act or in any repealing clause thereof shall be construed to repeal or limit any of the provisions of the act to make uniform the law of warehouse receipts, or of the act to make uniform the law of bills of lading. ('17 c. 465 § 76b)

8453. Inconsistent legislation repealed—All acts or parts of acts inconsistent with this act are hereby repealed except as provided in section 76b. ('17 c. 465 § 77)

G. S. 1913 § 6999 [8379] is by necessary implication repealed and in its place is substituted '17 c. 465 § 4. Hence, the reference in § 6999 [8379] is to the substitute thereof. (153-202, 189+936).

8454. Time when the act takes effect—This act shall take effect on the 1st day of June, 1917. ('17 c. 465 § 78)

8455. Name of act—This act may be cited as the uniform sales act. ('17 c. 465 § 79)

CHAPTER 68

FRAUDS

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STATUTE OF FRAUDS

8456. 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) [6998]

4. In General.

210+854, note under § 8460.

Must be given a liberal construction. 210+84.

Did not preclude the defendant from asserting a claim for damages caused by the plaintiff's failure to repair a rooming house occupied by the defendant under an oral lease from plaintiff. 212+18.

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).
4. When year begins to run—34-510, 26+906; 48-319, 51+216.
After working hours in the evening of December 27, 1922, defendant made an oral contract of employment with plaintiff for one year. The year was to commence at once—that date. Plaintiff reported for work on the following morning. Held, that the year would end at the close of working hours on December 27, 1923, and the contract would be performed within one year from the making thereof. 165-8, 207+320.
5. Effect of part performance—While no action can be maintained on an oral agreement for services not to