

1938 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1938)  
(Superseding Mason's 1931, 1934, and 1936 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General; construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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Truck Sales Corp. v. S., 190M5, 250NW713. See Dun. Dig. 8607.

Evidence justified finding that buyer gave notice of election to rescind before seller retook truck. Id.

#### 5. Damages.

180M19, 230NW114.

A vendee of corporation stock who has rescinded for good cause, may recover of the vendor in action for money had and received the purchase price, with interest from the time of its payment. *Dohs v. K.*, 183M379, 236NW620. See Dun. Dig. 6128, 6129.

Loss of good will as element of damages in suit for breach of implied warranty. 15MinnLawRev721.

#### 6. Measure of damages.

Consequential damages for breach of warranty of merchantability in sale by trade name. 16MinnLawRev 219.

#### 9. Evidence.

Unmerchantable condition of shoes held sufficiently made to appear by testimony of experts, without aid of those who wore the shoes. 173M535, 217NW941.

Defendant pleading breach of warranty as to fitness of fire escapes must show that warranty was broken. *Potter Mfg. Co. v. B.*, 188M32, 246NW470. See Dun. Dig. 8642.

In action on notes, evidence held to sustain verdict for defendant for damages for breach of warranty as to condition of motor truck. *Donaldson v. C.*, 188M443, 247NW522. See Dun. Dig. 8546.

In an action to recover damages for loss of profits in sale of bread due to imperfect wrapping paper purchased from defendant, evidence in support of damage held to be speculative, uncertain and conjectural to sustain a verdict for plaintiff. *Rochester Bread Co. v. R.*, 193M244, 258NW302. See Dun. Dig. 2535.

#### 10. Questions for jury.

Whether cows sold were infected with contagious abortion and whether purchaser's herd thereby became infected, held for jury. *Alford v. K.*, 183M158, 235NW 903. See Dun. Dig. 8627.

Whether right to rescind sale of personal property for breach of warranty is made within reasonable time is usually fact for jury. *Laundry Service Co. v. F.*, 187M 180, 245NW36. See Dun. Dig. 8606, 8607, 9764.

Whether or not certain fire escapes purchased satisfied warranty of suitability for purpose installed, held question of fact. *Potter Mfg. Co. v. B.*, 188M32, 246NW 470. See Dun. Dig. 8576.

In action on notes, evidence held sufficient to sustain finding that ginseng plants and seed were infected with disease which caused failure of growth. *Wiebke v. E.*, 189M102, 248NW702. See Dun. Dig. 8576.

#### 8444. Interest and special damage.

Vendee of corporate stock having rescinded and received the purchase price paid from the vendor cannot recover interest from the broker or agent of the vendor except upon an alleged express agreement. *Dohs v. K.*, 183M379, 236NW620. See Dun. Dig. 6137.

Consequential damages for breach of warranty of merchantability in sale by trade name. 16MinnLawRev 219.

## PART VI

### INTERPRETATION

#### 8445. Variation of implied obligations.

Evidence held to show liability for goods by one taking over a business and continuing the account. *Mammen v. R.*, 183M175, 235NW878. See Dun. Dig. 8644.

Remedies of seller—payment and delivery as concurrent or independent conditions. 19MinnLawRev816.

#### 8450. Definitions.

Where seller of "future goods" to be manufactured from farm products reserves right to make proportionate deliveries among buyers in event that designated contingencies beyond his control prevent full delivery on all contracts, burden is upon him to show, not only cause justifying partial and proportionate deliveries, but also that he has treated all his original buyers with absolute fairness. *Clay Grocery Co. v. K.*, 198M533, 270NW590. See Dun. Dig. 8508a.

8455½. \* \* \*

### COMMON LAW

#### DECISIONS RELATING TO STOCKBROKERS AND OTHER BROKERS DEALING IN PERSONAL PROPERTY

##### 1. Employment of broker.

Where customer places order with stockbroker, a contractual relationship between principal and agent exists, as regards broker's duties. *Drake-Jones Co. v. D.*, 188M133, 246NW664. See Dun. Dig. 1125, 1126.

##### 2. Duties and liabilities.

Customer held not to have ratified stockbroker's act in failing to have stock issued in customer's name at once. *Drake-Jones Co. v. D.*, 188M133, 246NW664. See Dun. Dig. 1124c, 1126.

In action by stockbroker to recover loss occasioned by refusal of customer to accept stock, court did not err in excluding defendant's testimony relative to number of shares of stock dealt in on exchange between certain dates, offered to excuse delay in delivery of stock. Id.

Stockbroker must execute customer's order in conformity with instructions. Id.

Where customer ordered stock from broker to be issued in his name at once, broker could not recover for losses where customer repudiated transaction on tender 30 days after purchase of stock not in his name. Id.

##### 3. Compensation.

Stock brokers on Minneapolis-St. Paul stock exchange were entitled to commissions at the rate prescribed by its rules. *McCormick v. H.*, 184M374, 238NW633.

In action to recover money advanced in purchase of stock "rights" and commission for services, evidence held to show that such "rights" were to be delivered at the office of the plaintiffs and that plaintiffs were entitled to recover. *McCormick v. H.*, 184M374, 238NW 633.

Evidence held not to justify a ruling as a matter of law that a written contract whereby plaintiff agreed to sell defendant's oil products for a certain commission was modified by a subsequent oral agreement reducing amount of commissions. *Dwyer v. I.*, 190M616, 252NW 837. See Dun. Dig. 1774.

## CHAPTER 68

### Frauds

#### STATUTE OF FRAUDS

##### 8456. No action on agreement, when.

*Renn v. W.*, 185M461, 241NW581.

##### ½. In general.

Agent who had exclusive management of property under an agreement to pay all expenses of operation and a fixed monthly income to the owner, and to retain the difference, had authority to lease an apartment for more than a year and take in payment of the rent a conveyance to him of an equity in a house and lot. 172M40, 214NW759.

An oral contract of present insurance, or an oral contract for insurance effective at a future date, is valid. *Schmidt v. A.*, 190M585, 252NW671. See Dun. Dig. 4647.

Oral contract to be entitled to specific performance must be established by clear, positive and convincing proof. *Anderson v. A.*, 197M252, 266NW841. See Dun. Dig. 8806.

1. Contracts not to be performed within one year—not void but simply non-enforceable.

##### 2. —Performance by one party within year.

Agreement for transfer of service line to defendant electric company was fully performed by plaintiff, and statute of frauds had no application to oral agreement to pay therefor. *Bjornstad v. N.*, 195M439, 263NW289. See Dun. Dig. 8859.

##### 4. —When year begins to run.

In action for damages for failure to give tenant possession under written lease for holding "from month

to month," trial court was not authorized to find that lease was oral for term of one year to begin at certain future date. *Vethourikas v. S.*, 191M573, 254NW909. See Dun. Dig. 5366, 5419.

A verbal agreement to extend terms of a lease for period of one year, such year to commence at a future time, is within statute of frauds and unenforceable. *Atwood v. F.*, 199M596, 273NW85. See Dun. Dig. 8858.

##### 8. Promises to answer for another.

Contract of guaranty signed by members of a cooperative company was within the statute as to loans already made to the company and renewals of such loans, though it was valid as to subsequent loans. 174 M383, 219NW454.

Construction of guaranty by directors of corporation. 180M27, 230NW121.

##### 10. —Contracts held within the statute.

Oral promise to pay mechanic's lien, made to person other than owner, by one who intended to purchase the land, held within statute, where no advantage accrued to promisor, and no disadvantage to promisee. 180M441, 231NW16.

##### 11. —Promises held not within the statute.

Promise to pay existing debt of another, which promise arises out a new transaction between parties to it and for which there is fresh consideration, is original undertaking and not within statute of frauds. *Marckel Co. v. R.*, 186M125, 242NW471. See Dun. Dig. 8865.

Promise of vendor to pay for heating plant installed for vendee, held not within statute of frauds. *Marckel Co. v. R.*, 186M125, 242NW471. See Dun. Dig. 8868.

Appellant's promise that plaintiff would be paid if it printed a special issue of a paper for benefit of another became a primary obligation, and binding, though oral. *North Central Pub. Co. v. S.*, 193M120, 258NW22. See Dun. Dig. 8867.

Where one receiving money with instructions to deposit it in bank, instead purchased bonds and sent them to person forwarding money, his promise to take over the bonds at any time if they were not wanted was not a promise to respond for debt of another and was not within statute of frauds. *Wigdale v. A.*, 193M384, 258NW 726. See Dun. Dig. 8865.

Evidence held to sufficiently support conclusion that appellant promised to pay premium for liability insurance issued in name of a taxicab association and its individual members, and obligation thus assumed was an original and primary one, not within statute of frauds. *Kenney Co. v. H.*, 194M357, 260NW358. See Dun. Dig. 8865.

Acceptance by contractor of order from subcontractor was not an agreement to pay debt of another, but an agreement by contractor to pay his own indebtedness, and was not within statute of frauds. *Farmers State Bank v. A.*, 195M475, 263NW443. See Dun. Dig. 8868.

Parol evidence held admissible with regard to pledging of stock to secure debt of a third person. *Stewart v. B.*, 195M543, 263NW618. See Dun. Dig. 7738a.

Third person's verbal promise to pay pre-existing debt is not within statute when creditor furnishes a consideration at least equivalent in value to amount of pre-existing debt. *Rolfsmeyer v. R.*, 198M213, 269NW411. See Dun. Dig. 8868.

Where individual in business organizes a corporation to take it over, transferring all his assets, subject to his liabilities and obligations, corporation becomes obligated to fulfill written contract of individual whereby he employed a superintendent for business for a term of years, and fact that corporation assumed employment contract may be proven by parol. Statute of frauds is not applicable. *McGahn v. C.*, 198M328, 269NW830. See Dun. Dig. 8864.

**11½. Agreement upon consideration of marriage.**  
Conversation before marriage between a testator and members of his family wherein the former announced his mere intention or plans concerning the disposition of his property, properly held not to impose contractual obligation upon any one. *Hanefeld v. F.*, 191M547, 254NW 821. See Dun. Dig. 10207.

**11¼. Promise to pay debt discharged in bankruptcy.**  
Promise to pay debt discharged by bankruptcy. 172M 390, 215NW784.

**8459. Conveyance, etc., of land.**

**1. Conveyances, etc., generally.**  
Son of decedent held not entitled to specific performance of a verbal agreement to convey land. *Happel v. H.*, 184M377, 238NW783. See Dun. Dig. 8788.

Statute of frauds was no defense where contract permitting tenant to cut wood was performed. *Morrow v. P.*, 186M516, 245NW785. See Dun. Dig. 8852.

Verbal authority does not confer upon an agent authority to bind his principal to a conveyance of real estate. *Peterson v. S.*, 192M315, 256NW308. See Dun. Dig. 8882.

An agreement relocating an easement is within statute of frauds, but if oral agreement has been executed or so far carried out that one of parties is estopped, law may regard new easement as substituted for old. *Schmidt v. K.*, 196M178, 265NW347. See Dun. Dig. 8876.

Doctrine of part performance rests on ground of fraud. Equity will not permit statute of frauds, purpose of which was to prevent fraud, to be used as a means of committing it. *Schaefer v. T.*, 199M610, 273NW190. See Dun. Dig. 8862, 8885.

Promise to make a gift of realty where promisee entered into possession and made improvements. 15Minn LawRev825.

**2. Leases.**  
178M330, 227NW46; note under §8640.  
Agent who had exclusive management of property under an agreement to pay all expenses of operation and a fixed monthly income to the owner, and to retain the difference, had authority to lease an apartment for more than a year and take in payment of the rent a conveyance to him of an equity in a house and lot. 172M40, 214NW759.

Taking possession of and operating a farm under an oral lease void under the statute of frauds creates a tenancy at will, which may be terminated only by statutory notice. *Hagen v. B.*, 182M136, 233NW822. See Dun. Dig. 5440.

Paper held sufficient compliance to show modification of lease by surrender of right of cancellation without cause. *Oakland Motor Car Co. v. K.*, 186M455, 243NW 673. See Dun. Dig. 8877, 8881.

A three-year lease could not be terminated or modified by parol. *Hoppman v. P.*, 189M40, 248NW281. See Dun. Dig. 8877.

Lessor held not estopped to deny termination of lease by lessee after fire. *Id.* See Dun. Dig. 8877.

Finding that lease was for one year to begin at future date held erroneous. *Vethourikas v. S.*, 191M573, 254NW 909. See Dun. Dig. 5366, 5419.

Payment of rent could not be considered as a part performance of an oral lease for one year to commence in future so that an action for damages could be maintained for failure to give tenant possession of premises. *Id.* See Dun. Dig. 8885.

Evidence supports finding that a tenant surrendered its lease and landlord accepted surrender and terminated relationship. *Sjoberg v. H.*, 199M81, 271NW329. See Dun. Dig. 5438.

**4. Partnership to deal in real estate.**

Oral partnership agreement for purpose of dealing in land. 19MinnLawRev581.

**7. Promise to execute mortgage.**

An oral contract on one hand to make and on other to accept a mortgage on real estate is unenforceable if not void under statute of conveyances, §8459, and statute of frauds, §8460. *Hatlestad v. M.*, 197M640, 268NW665. See Dun. Dig. 8880.

**9. Agreement modifying instrument affecting land.**

Oral agreement of real estate mortgagee to extend time of payment to certain date in consideration of mortgagor giving chattel mortgage on crops to secure payment of taxes was not void as an attempt to vary terms of written instrument, which instrument was within statute of frauds. *Hawkins v. H.*, 191M543, 254NW 809. See Dun. Dig. 3374.

**8460. Leases—Contracts for sale of lands.**

**1. In general.**

Creditor of vendor with notice and knowledge of sale cannot urge that contract of sale was invalid under statute of frauds after payment but before deed is given. 173M225, 217NW136.

Not construed as prescribing a rule of evidence, but rather as precluding the substantive right to sue upon an oral contract. 178M330, 227NW46.

A contract for sale or exchange of real property, modified by parol agreement and so performed, is not violative of statute. *Erickson v. K.*, 195M623, 263NW795. See Dun. Dig. 8880.

Equitable doctrine of part performance is inapplicable to an action for damages for breach of contract as distinguished from one for specific performance. *Hatlestad v. M.*, 197M640, 268NW665. See Dun. Dig. 8885.

**2. The memorandum.**

Acceptance of terms of a written proposal for purchase of real estate must be in writing, and a writing is insufficient where it does not contain acceptance of proposal in regard to terms of a mortgage and the furnishing of an abstract. *Bey v. K.*, 192M283, 256NW140. See Dun. Dig. 8880, 8881.

Vendor under oral contract held not entitled to specific performance in face of findings that alleged vendee made advancements and went into possession with understanding that he would be repaid if he did not purchase the premises, subject to liability for certain rents. *Johlf v. C.*, 193M553, 259NW57. See Dun. Dig. 8788.

**3. Authority of agent.**

Agent who had exclusive management of property under an agreement to pay all expenses and a fixed monthly income to the owner, and retain the difference, had authority to lease an apartment for more than a year and take in payment of the rent a conveyance of an equity in a house and lot. 172M40, 214NW759.

**4. Contracts held within statute.**

An oral contract on one hand to make and on other to accept a mortgage on real estate is unenforceable, if not void under statute of conveyances, §8459, and statute of frauds, §8460. *Hatlestad v. M.*, 197M640, 268NW665. See Dun. Dig. 8880.

**5. Contracts not within statute.**

Whether plowing was part performance taking lease out of statute, held for jury. 178M460, 227NW656.

Inflexible rule "once a mortgage always a mortgage" and doctrine whereunder a deed absolute in form may be declared a mortgage, if it was so intended, are in operation wholly independent of statute of frauds. *Hatlestad v. M.*, 197M640, 268NW665. See Dun. Dig. 8880.

**7. Pleading.**

Defendant, by answer having denied making of contract, properly invoked the statute, although he did not plead it. 178M330, 227NW46.

**8461. Specific performance.**

Evidence sustains the finding of the trial court that the plaintiff partially performed an oral contract made in 1921 for the purchase of real property so as to justify a decree of specific performance. 181M458, 233NW 20. See Dun. Dig. 8885.

In action for specific performance of agreement to convey land, evidence held insufficient to establish part performance sufficient to take case out of statute of frauds. *Arntson v. A.*, 184M60, 237NW820. See Dun. Dig. 8852(92), 8862.

Vendor under oral contract held not entitled to specific performance in face of findings that alleged vendee made advancements and went into possession with understanding that he would be repaid if he did not purchase the premises, subject to liability for certain rents. *Johlf v. C.*, 193M553, 259NW57. See Dun. Dig. 10005a.

Equitable doctrine of part performance is inapplicable to an action for damages for breach of contract as distinguished from one for specific performance. *Hatlestad v. M.*, 197M640, 268NW665. See Dun. Dig. 8880.

Part performance which takes a case out of statute for specific performance must be unequivocally referable

to oral contract, and if it is equivocal, if it reasonably may be accounted for otherwise than by a contract, it will be of no avail. *Id.* See Dun. Dig. 8885.

In action for specific performance of option, evidence held to sustain finding that defendant had knowledge of plaintiff's outstanding option when he purchased land involved. *McKercher v. V.*, 199M263, 271NW489. See Dun. Dig. 8811.

Part performance by lessees in preparation of land for crop in reference to and in reliance upon oral agreement of extension, held sufficient to avoid bar of statute. *Atwood v. F.*, 199M596, 273NW85. See Dun. Dig. 8862.

Doctrine of part performance rests on ground of fraud. *Schaefer v. T.*, 199M610, 273NW190. See Dun. Dig. 8862, 8885.

## CONVEYANCES FRAUDULENT AS TO CREDITORS

### 8467. Of chattels without delivery.

A trust deed on land and the equipment of a flour and feed mill, providing that the mortgagor shall operate the business, and recorded as a real estate mortgage, but not as a chattel mortgage, held not invalid as to creditors where there was no expressed agreement that the mortgagor should not account to the mortgagee for the proceeds of the sale of flour, feed, etc. In re *Hanover Milling Co.*, (DC-Minn.), 31F(2d)442.

A conditional sale of a stock of merchandise under which buyer is permitted to retain possession and to sell from and replenish the stock, is valid. In re *Horwitz*, (USDC-Minn.), 32F(2d)285.

A chattel mortgage covering a stock of merchandise under which mortgagor is permitted to retain possession and to sell from and replenish the stock, is fraudulent as a matter of law and void as to creditors. In re *Horwitz*, (USDC-Minn.), 32F(2d)285.

A sale by a vendor of goods or chattels when there is not an immediate change of possession is presumed to be fraudulent and void as against creditors of the vendor. 175M157, 220NW560.

This statute creates only a rebuttable presumption of fraud. 176M433, 223NW683.

Conditional sales contract of a new and unregistered automobile, which remained in the possession and in the salesroom of the vendor, a retail dealer in automobiles, held subject to this section. *Drew v. F.*, 185 M133, 240NW114. See Dun. Dig. 3842, 3855.

### 8470. Question of fact—Voluntary conveyances.

#### 1. Question of fact.

179M7, 228NW177.

Whether a real estate mortgage covering personal property on the premises is invalid as to creditors because permitting the mortgagor to retain possession of the personal property, is a question of fact. (DC-Minn.) 31F(2d)442.

### 8473. Sale of stock of merchandise.

Limitations upon application of bulk sales act. 15Minn LawRev475.

## FRAUDULENT CONVEYANCES

### 8475. Definition of terms.

175M47, 220NW400.

This act does not impliedly repeal §8345. 172M355, 215NW517.

The Fraudulent Conveyance Act (Chapter 415, Laws 1921) did not modify or repeal any part of the Homestead Law. 173M576, 218NW108.

A surety upon a fidelity bond becomes an existing creditor from the date of the taking effect of the bond for the purpose of attaching as fraudulent a transfer of property by his principal obligor. *National Surety Co. v. W.*, 184M44, 237NW690. See Dun. Dig. 3901.

A transfer made in good faith and without intent to hinder, delay or defraud creditors was not void prior to passage of Uniform Fraudulent Conveyance Act. *National Surety Co. v. W.*, 184M44, 237NW690. See Dun. Dig. 3842.

Assignment of future wages held not to preclude discharge of assignor in bankruptcy. *Strane v. S.*, (USCCA-Minn.), 87F(2d)365.

Remedy of creditors. 18MinnLawRev225.

### 8477. Fair consideration.

174M423, 219NW550; note under §8481.

Transfer to directors of bank to secure payment of a debt of grantor, the managing officer of the bank, to the bank, was given upon a fair consideration and was not void, though it rendered grantor insolvent. 172M 149, 214NW787.

Evidence held to support finding that conveyances to wife and daughter were made in good faith for adequate consideration and not with intent to defraud creditors. 173M468, 217NW593.

Conveyance, held not to have been given in payment of antecedent debt. 179M7, 228NW177.

In an action by a creditor, who furnished material for improvement of a homestead, to set aside as fraudulent a transfer thereof by the husband to his wife through a third party, evidence sustains findings that the transfer was supported by a fair consideration and was made without any actual intention of defrauding. *Steinke-Seidl Lumber Co. v. N.*, 183M491, 237NW194. See Dun. Dig. 3859.

Satisfaction of an antecedent debt may constitute a fair consideration. *Steinke-Seidl Lumber Co. v. N.*, 183 M491, 237NW194.

That a transfer of property in part payment of an antecedent debt results in a preference does not constitute fraud as against attacking creditors. *National Surety Co. v. W.*, 184M21, 237NW585. See Dun. Dig. 3852 (7).

Evidence held to show an antecedent debt owing by husband which was sufficient consideration for transfer of property to wife. *National Surety Co. v. W.*, 184M21, 237NW585. See Dun. Dig. 3859.

Evidence held not to show that consideration for conveyance was unfair. *Larson v. T.*, 185M366, 241NW43. See Dun. Dig. 3928a.

Finding sustained that transfers of property from father to son were honestly made in payment of antecedent debt and without intent to defraud other creditors of father. *Skinner v. O.*, 190M456, 252NW418. See Dun. Dig. 3846, 3848, 3851, 3852.

Evidence sustains finding that mortgage to children was given for "a good, sufficient, valuable and adequate consideration." *Kray v. P.*, 197M364, 267NW144. See Dun. Dig. 3895.

Evidence held to sustain finding that transfers of chattel mortgages were made upon payment of full and adequate consideration and were not fraudulent as to creditors. *Hamilton v. W.*, 198M308, 269NW635. See Dun. Dig. 3895.

(b). Whether there was a fair or sufficient consideration for the transfer of securities attacked as fraudulent as to creditors was a question of fact for trial court. *Weese v. W.*, 191M526, 254NW816. See Dun. Dig. 3849.

### 8478. Conveyance by insolvent.

172M149, 214NW787; note under §8477.

173M576, 218NW108; note under §8475.

174M423, 219NW550; note under §8481.

*Strane v. S.*, (USCCA-Minn.), 87F(2d)365; note under §8475.

Where Minnesota corporation, to avoid double liability of stockholders, organized a Delaware corporation, to which it transferred all of the assets of the corporation, in exchange for stock in the Delaware corporation, the creditors of the Minnesota corporation could not have the transfer set aside in a federal court of equity as fraudulent, to the prejudice of the creditors of the Delaware corporation, the federal court applying equitable principles independent of the state statutes. *Brill v. W.* (CCA8), 65F(2d)420. Cert. den. 290US643, 54SCR 61. See Dun. Dig. 3866a.

In such case the Delaware creditors having secured the appointment of a receiver before the Minnesota creditors had taken any action or had reduced their claims to judgment, had a superior equity against the assets, and both sets of creditors would be treated alike. *Id.*

Evidence held to show conveyance from husband and wife to daughter rendered husband insolvent. 171M284, 213NW911.

Evidence held not to show agreement for repayment of advances made by wife to husband. 171M284, 213NW 911.

Payment of an honest debt is not fraudulent although it operates as a preference, in view of the federal bankruptcy act (Mason's Code, Title 11). 171M284, 213NW911.

Evidence held to support finding that conveyances to wife and daughter were made in good faith for adequate consideration and not with intent to defraud creditors. 173M468, 217NW593.

The consideration must be one which fairly represents the value of the property. 179M7, 228NW177.

Evidence held not to show that conveyance rendered grantor insolvent. *Larson v. T.*, 185M366, 374, 241NW43, 47. See Dun. Dig. 3928a.

Evidence held not to require finding that transfer of land rendered grantor insolvent. *National Surety Co. v. W.*, 184M21, 242NW545. See Dun. Dig. 3846.

Every conveyance made by a person who will thereby be rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made without a fair consideration. *State Bank of New London v. S.*, 197M425, 267NW366. See Dun. Dig. 3848.

Transfers between husband and wife, whether made directly or indirectly, are prima facie fraudulent as to existing creditors; burden resting upon wife to show by clear and satisfactory evidence that a valuable consideration was paid by her or by some one in her behalf. *Id.* See Dun. Dig. 3907.

### 8479. Conveyances by persons in business.

Whether transferee of securities participated in fraud or acted in bad faith, held question of fact for trial court. *Weese v. W.*, 191M526, 254NW816. See Dun. Dig. 3851.

4½. Subd. 3. Statement showing that materials were furnished by subcontractor to owner, though actually furnished to principal contractor, held sufficient. 199NW 475, 47SD494.

### 8481. Conveyance made with intent to defraud.

½. In general.

*Brill v. W. B. Foshay Co.* (CCA8), 65F(2d)420. Cert. den. 290US643, 54SCR61, note under §8478.

Assignment of future wages held not to preclude discharge of assignor in bankruptcy. *Strane v. S.* (USCCA-Minn), 87F(2d)365.

Evidence held to show that makers of note to bank were not estopped as against creditors to deny that note was given for valid consideration. *Grant Co. State Bk. v. S.*, 178M556, 228NW150.

#### 6. Subsequent creditors.

Creditors could not impress proceeds of life insurance policies with claims based on fraud of insured after issuance of policies. *Cook v. P.*, 182M496, 235NW9. See Dun. Dig. 4801, 3876a.

In action to set aside conveyance as fraudulent evidence held to establish that claim upon which judgment rested arose prior to transfer. *Larson v. T.*, 185M370, 241NW45. See Dun. Dig. 3928a.

In action to set aside conveyance as fraudulent, evidence held to establish that intervenor's claim upon which his judgment rested arose prior to the conveyance attacked. *Larson v. T.*, 185M374, 241NW47.

#### 31. Chattel mortgages.

Title that passes on foreclosure of prior and paramount mortgage. 171M197, 213NW892.

Evidence sustained finding that chattel mortgage given by father to son was not executed in good faith. 177M84, 224NW457.

#### 35. Action to set aside.

In action to set aside fraudulent conveyances, grantee cannot set up defenses which were available to the grantor in the original action. *Weber v. A.*, 176M120, 222NW646.

A change procured by misrepresentations in form of indebtedness held not to relieve defendant from his obligation. 176M550, 224NW237.

Causes of action set forth in complaint in intervention in action to set aside conveyances as fraudulent held not well pleaded. *Larson v. T.*, 185M370, 241NW45. See Dun. Dig. 3925.

Court was not justified in vacating mortgage foreclosure proceedings in action to set aside transfer of mortgage as fraudulent as to creditors. *Larson v. T.*, 185M370, 241NW45. See Dun. Dig. 3930.

#### 38. Burden of proof.

Transfer of real estate in full value for payment of a debt was not fraudulent in absence of showing of actual interest to hinder, delay or defraud plaintiff. 174M423, 219NW550.

#### 39. Degree of proof required.

Finding of fraudulent intent in transfer of real estate, supported by evidence. 176M550, 224NW237.

#### 40. Evidence.

Evidence held to show that conveyance from father to daughter was not in fraud of creditors. 181M71, 231NW397.

Evidence held to sustain finding that conveyance left grantor insolvent and that grantee had knowledge of intent to defraud creditors of grantor. *Larson v. T.*, 185M374, 241NW47. See Dun. Dig. 3928a.

In action to set aside fraudulent conveyance, finding of good faith held supported by evidence. *National Surety Co. v. W.*, 186M93, 242NW545. See Dun. Dig. 3848.

Evidence held to support finding that transfer of real estate was fraudulent as to creditors and that crops did not belong to grantee. *Joop v. S.*, 188M419, 247NW526. See Dun. Dig. 3910.

#### 8483. Rights of creditors with matured claims.

Simple creditor, suing to set aside fraudulent conveyance does not obtain lien upon property conveyed until rendition of final judgment. *Emrich v. E.* (USCCA8), 78F(2d)858, 29AmB(NS)458. Cert. den., 297US709, 56SCR501.

Assignment of future wages held not to preclude discharge of assignor in bankruptcy. *Strane v. S.*, (USCCA-Minn), 87F(2d)365.

Rights of holder of prior and paramount mortgage, and a purchaser at foreclosure sale. 171M197, 213NW892.

Appointment of a receiver for a judgment debtor's nonexempt property in proceedings supplementary to execution is discretionary with court. *Ginsberg v. D.*, 191M12, 252NW669. See Dun. Dig. 3549.

#### (a).

*Emrich v. E.* (USCCA8), 78F(2d)858, 29AmB(NS)458. Cert. den., 297US709, 56SCR501.

#### 8484. Creditors whose claims have not matured.

A receiver cannot attack a chattel mortgage as void to creditors because not recorded, without showing that he occupies a status to assail it. 175M47, 220NW400.

G. S. 1923, §8345, does not apply to general creditors, but to such as are armed with process, or to a receiver representing creditors and vested with the right to attack. 175M47, 220NW400.

A surety upon a fidelity bond becomes an existing creditor from the date of the taking effect of the bond for the purpose of attacking as fraudulent a transfer of property by his principal obligor. *National Surety Co. v. W.*, 184M44, 237NW690. See Dun. Dig. 3901.

## CHAPTER 69

### Liens for Labor and Material

#### FOR IMPROVEMENT OF REAL ESTATE

#### 8490. Mechanics, laborers and materialmen.

##### ½. In general.

A surety bond to protect the owner of land against mechanic's liens, held not discharged by a transfer of the land where the grantee was made a party to the bond. *Hartford A. & I. Co. v. F.*, (CCA8), 59F(2d)950. See Dun. Dig. 9094, 9107.

The surety on a bond to protect the owner of land against mechanic's liens cannot complain of a change in the title taking place after liability on the bond had attached by the filing of a lien. *Id.*

The surety on a bond to protect land from mechanics' liens is not discharged by a transfer of the land where the principals on the bond are not released. *Id.*

That obligee in a surety bond to protect against mechanics' liens compelled a lienor to elect between his lien and the taking of a lease on a part of the building in satisfaction of the lien, held not to discharge the surety. *Id.* See Dun. Dig. 9099.

That mortgagee protected by surety bond against mechanics' liens paid a balance of the proceeds of the mortgage to the surety to discharge the liens other than that of a lienor who had an option to take a lease on part of the premises, held not to discharge the surety. *Id.*

Surety on bond to protect mortgagee against mechanics' liens held to have no rights with respect to fund obtained by the mortgage and was not released because fund was applied in payment of other than lienable claims. 176M281, 223NW139.

Where one on accepting contract includes new conditions there is no contract unless the maker of original offers consents to the new conditions. *Johnson v. O'N.*, 182M232, 234NW16. See Dun. Dig. 1740(24).

Evidence held to show that contractor plumber had been paid for fixtures and had paid plaintiff therefor before plaintiff filed liens. *A. Y. McDonald Mfg. Co. v. L.*, 187M240, 244NW804. See Dun. Dig. 6061.

##### 2. Nature of lien.

The condition of a bond given to a mortgagee to protect his security against mechanics' liens was broken by the entry of a judgment perfecting the liens and subjecting the property to sale, and an action begun after judgment, but before expiration of period to re-

deem from mortgage foreclosure, was not premature. 172M320, 215NW67.

##### 3. Basis of lien.

Finding that door and wall rail were not sold and furnished for construction of certain building upon which seller asserted mechanic's lien, held sufficiently sustained by evidence. *Lake Street Sash & Door Co. v. D.*, 186M316, 243NW110. See Dun. Dig. 6049.

Evidence held to show that plumber who installed plaintiff's fixtures did so for owners, as affecting mechanic's lien. *A. Y. McDonald Mfg. Co. v. L.*, 187M240, 244NW804. See Dun. Dig. 6037.

##### 8. Nature of work or material.

Where lienable fixture proves defective before paid for and is taken back and replaced by materialman, he may claim lien for new fixture, no claim being made for defective one. *A. Y. McDonald Mfg. Co. v. L.*, 187M240, 244NW804. See Dun. Dig. 6046.

A towel bar and a tumbler holder did not contribute to any improvement of realty and were not lienable. *A. Y. McDonald Mfg. Co. v. N.*, 187M237, 244NW806. See Dun. Dig. 6045.

##### 18. Release and waiver.

Mechanic's lien, satisfied in order that first mortgage loan might be negotiated, was subordinate to mortgage and other liens superior to mortgage. *Minneapolis Builders' Sup. Co. v. C.*, 186M635, 244NW53. See Dun. Dig. 6065.

##### 21. Held not entitled to lien.

Where materialman waived lien on materials furnished prior to certain date, and subsequently filed lien, which, through mistake, contained certain items delivered before the waiver date, owner who paid the lien could recover the amount of items delivered prior to waiver, the lien statement constituting a false representation. 171M274, 213NW917.

One installing wiring, lights, poles and appliances for lighting miniature golf course, held charged with knowledge of terms of lease which he was handed for examination by lessee. *Johnson v. G.*, 187M104, 244NW409. See Dun. Dig. 5402, 6037.

#### 8494. When lien attaches—Notice.

Finding that trust deed was recorded before any mechanics' liens attached to the property, held sustained by the evidence. 171M445, 214NW503.