

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 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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MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1940

Findings failed to show that defendants converted wheat or received proceeds from sale of wheat grown from seed furnished by plaintiff under a seed grain note given by tenant. *McCarthy v. T.*, 182M409, 234NW591. See Dun. Dig. 247(51).

8375. Chattel mortgage provision, how applicable.

This section does not make conditional sales, chattel mortgages, nor give a right of redemption after for-

feiture thereof, nor prevent the vendor from retaking and forfeiting of property. 176M493, 223NW911.

A vendor in a conditional sales contract may retake property on default in payments and treat it as his own, and purchaser's only remaining interest is right to redeem. *C.I.T. Corp. v. C.*, 198M337, 269NW825. See Dun. Dig. 8651.

Section 8217 may not be complied with where instrument is presented for filing as a chattel mortgage. *Op. Atty. Gen.* (373b-5), Dec. 22, 1937.

CHAPTER 67A

Sale of Goods

The Uniform Sales Act has been adopted by Alaska, District of Columbia, Hawaii, and all the states except: Colorado, Florida, Georgia, Kansas, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, Virginia, West Virginia.

PART I

FORMATION OF THE CONTRACT

8376. Contracts to sell and sales.

There is no reason why the Uniform Sales Act does not apply to a conditional sales contract, except that the contract itself is to control as to those elements which it covers. 176M483, 223NW908.

Vendor in conditional sale contract may upon default retake the property and hold it as his own. 176M493, 223NW911.

Section 8375 does not make conditional sales chattel mortgages, nor give a right of redemption after forfeiture, nor prevent the vendor from retaking and forfeiting the property. 176M493, 223NW911.

Evidence held to sustain finding that mother and not son living in the same house purchased groceries. *Buro v. M.*, 183M518, 237NW186.

The terms "measurement and acceptance" in the contract were ambiguous, and the meaning intended by the parties was likewise properly submitted. *Hayday v. H.*, 184M8, 237NW600. See Dun. Dig. 8629b.

Contract for the sale of 20,000 cords of pulpwood, for "measurement and acceptance" on board cars at buyer's dock, as Erie, Pa., was properly held ambiguous as to being entire or severable in cargoes, and its construction with respect to intent correctly submitted to the jury. *Hayday v. H.*, 184M8, 237NW600. See Dun. Dig. 8629b.

A remainder in personal property cannot be created by parol. *Mowry v. T.*, 189M479, 250NW52. See Dun. Dig. 3171a, 8870.

Oral remainder in personal property having failed, there was reversion of property to donor by operation of law and subsequent conveyance thereof by donor to remainderman gave him right to recover same from executors of donee. *Id.*

Where money was deposited both as consideration for option to purchase considerable amount of stock and also with right to accept stock equivalent to amount of deposit, and depositor elected to take smaller amount of stock just after death of other party, there existed no right to rescind and recover amount of money deposited by reason of delay in appointment of administrator. *Miller's Estate*, 196M543, 265NW333. See Dun. Dig. 8500a.

Evidence held to sustain finding that caskets were sold upon consignment and were returned to plaintiff within a reasonable time. *J. J. Meany Casket Co. v. M.*, 199M117, 271NW99. See Dun. Dig. 728.

Where there is not merely the right but the obligation to buy, contract is not one of option but of sale. *Oleson v. B.*, 204M450, 283NW770. See Dun. Dig. 8500a.

An option is an offer to sell coupled with an agreement to hold offer open for acceptance for a specified time; it secures the privilege to buy and is not of itself a purchase. *Id.* See Dun. Dig. 8500a.

Contract respecting corporate stock held an absolute contract of sale and purchase, and not an option to purchase, and seller was entitled to recover unpaid part of purchase price, though one paragraph of contract designated the transaction as an option to purchase. *Id.* See Dun. Dig. 8500a.

An option is an offer to sell coupled with an agreement to hold offer open for a specified time, secures privilege of buying but is not of itself a purchase, and owner does not sell his property but simply gives to another right to buy at latter's election. *Johnson v. K.*, 285NW715. See Dun. Dig. 8500a.

Validity of oral agreement to execute mutual wills bequeathing personality. 20MinnLawRev238.

Quasi contractual recovery in law of sales. 21MinnLawRev529.

8377. Capacity—Liabilities for necessities.

When infant, by fraudulent representation that he is of age, induces another to sell property to him, such other person may recoup damage due to depreciation of property when infant rescinds purchase and sues for

what he has paid. *Steigerwalt v. W.*, 186M558, 244NW412. See Dun. Dig. 4435(18).

A minor may purchase stock in a credit union. *Op. Atty. Gen.*, Dec. 21, 1931.

FORMALITIES OF THE CONTRACT

8379. Statute of frauds.

Evidence sustains finding that the time of performance of a written contract for the sale of merchandise was extended by a parol agreement. *Bemis Bros. Bag Co. v. N.*, 183M677, 237NW586. See Dun. Dig. 8870.

The time of performance of a written contract for the sale of merchandise may be extended by parol without additional consideration and without offending the statute of frauds. *Bemis Bros. Bag Co. v. N.*, 183M677, 237NW586. See Dun. Dig. 8870.

Where parties concerned with application for an order extending period for redemption from mortgage foreclosure made a settlement in regard to extension by agreeing that period of redemption should be extended to a certain date and that petitioner should have right to receive and retain rents from that date and receive a certain sum for a mechanical stoker, the agreement was a binding settlement of the litigation, notwithstanding terms had not been incorporated in a written stipulation or memorial of the completed settlement, and the agreement was not vitiated under the statute of frauds or otherwise by reason of inclusion of transfer of personal property or fixtures. *State v. District Court*, 194M32, 259NW542. See Dun. Dig. 8875.

Application of statute of frauds under the uniform sales act. 15MinnLawRev391.

SUBJECT MATTER OF CONTRACT

8380. Existing and future goods.

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.

Applicability of uniform sales act to sales of corporate stock. 17MinnLawRev106.

THE PRICE

8384. Definition and ascertainment of price.

Open price in contracts for sale of goods. 16MinnLawRev733.

Sale of goods at price to be fixed by subsequent agreement—certainty. 19MinnLawRev702.

Validity of oral agreement to execute mutual wills bequeathing personality. 20MinnLawRev238.

CONDITIONS AND WARRANTIES

8386. Effect of conditions.

Enforceability of restrictive conditions on personality against purchasers with notice. 16MinnLawRev864.

Parol evidence rule and warranties of goods sold. 19MinnLawRev725.

8387. Definition of express warranty.

A statement in advertisement that 95 per cent of a tested portion of seed corn germinated constituted an express warranty. 171M289, 214NW27.

An implied warranty of fitness of corn for seed was not excluded by reason of an express warranty. 171M289, 214NW27.

A retailer who has sold a washing machine with a warranty or representations of quality is entitled to the benefit of anything thereafter done by the manufacturer in the way of repairs to make the machine comply with the representations or warranty. 176M232, 222NW920.

Where tag or label attached to a bag or package of seed states kind of seed and that it is 98% pure, such statement is a warranty of purity of seed as so stated. *Mallery v. N.*, 196M129, 264NW573. See Dun. Dig. 8546.

Delivery of tent in deteriorated and rotten condition is a breach of seller's warranty to deliver in good condi-

tion, *Saunders v. C.*, 201M574, 277NW12. See Dun. Dig. 8552.

Provision in written contract that goods are to be in good condition when delivered is a warranty of quality. *Id.* See Dun. Dig. 8546.

Implied and oral warranties and the parol evidence rule. 12MinnLawRev209.

§8390. Implied warranties of quality.

There was an implied warranty that corn sold for seed was fit for that purpose. 171M289, 214NW27.

Implied warranty attached by this section is not excluded by provision in a written contract excluding warranties "made" by the seller. 173M87, 216NW790.

A sale consisting of four units, only one of which is sold under a trade-mark, is not free from an implied warranty. 173M87, 216NW790.

When the seller of personal property knows the purpose for which it is to be used when the buyer relies upon the seller's judgment that it is suitable therefore, there is an implied warranty that it is reasonably fit for such purposes. 173M87, 216NW790.

Plaintiff did not waive breach of warranty. 173M87, 216NW790.

In a suit to recover damages for breach of warranty in the sale of an automobile, the evidence supports the verdict for the plaintiff. 181M603, 233NW313. See Dun. Dig. 8627.

When the buyer, ignorant of his own requirements, informs the seller of his particular needs and the seller undertakes to select and supply an article suitable to the purpose involved, subd. 1, and not subd. 4, applies even though the article may be described in the contract of sale by its trade name. *Iron Fireman Coal Stoker Co. v. B.*, 182M399, 234NW685. See Dun. Dig. 8572.

The intent is that the seller is not held to an implied warranty because the buyer gets the exact article selected by him and for which he bargains. *Iron Fireman Coal Stoker Co. v. B.*, 182M399, 234NW685. See Dun. Dig. 8572.

Where lumber was ordered by written contract, buyer selecting grades and dimensions, there was no implied warranty of fitness for intended purpose simply because seller was familiar with specifications of contract under which buyer was erecting building in which lumber was to be used. *Central Warehouse Lumber Co. v. R.*, 193M42, 257NW656. See Dun. Dig. 8576.

It is doubtful that an implied warranty that food sold is fit for purpose intended would constitute a basis for an action for wrongful death. *Doherty v. S.*, 227Wis661, 278NW437.

Mason's Minn. St. 1927, §3789, creates a tort liability in favor of a person injured by eating of unwholesome, poisonous, or deleterious food sold to him, independently of any showing of culpability or negligence, and recovery may be had for death of one from unwholesome food without proof of negligence. *Id.*

Implied warranty of fitness for the purpose in the sale of second-hand goods. 15MinnLawRev723.

Contractual disclaimers of warranty. 23MinnLawRev784.

Effect of buyer's inspection upon existence of an express or implied warranty in sale of goods. 23MinnLawRev941.

Subd. 1.

180M19, 230NW114.

A breeder of registered Guernsey cows, who sells them to a purchaser with the knowledge that they are to be used for breeding purposes and that his herd from which they are sold is infected with contagious abortion, is liable upon an implied warranty that the cows sold are fit for the purposes intended and are not infected with the disease. *Alford v. K.*, 183M158, 235NW903. See Dun. Dig. 8576(11).

Evidence supports finding breach of implied warranty of fitness, that damages exceeded unpaid part of purchase price, and that defendants were entitled to a return of machines or their value of \$5,000. *National Equipment Corp.*, 189M632, 250NW677.

Sale of a truck under its trade name did not exclude an implied warranty of fitness for work for which it was bought; nor did express warranties in conditional sales contract. *Federal Motor Truck Sales Corp. v. S.*, 190M5, 250NW713. See Dun. Dig. 8576.

Evidence justified finding a breach of implied warranty of fitness in that braking system of truck sold be made to operate properly. *Id.*

Where seed is sold to a farmer for sowing and raising a given kind of crop therefrom and such facts are known to seller, there is an implied warranty that seed is reasonably fit for purpose intended. *Mallery v. N.*, 196M129, 264NW573. See Dun. Dig. 8576.

Where a buyer ignorant of his own needs fully informs the seller of the purpose for which an article is to be used and after so doing adopts a description supplied by the seller, a warranty of fitness for the purpose can be implied, and that goods are secondhand does not preclude a warranty of fitness for the purpose, being but a fact tending to show the unreasonableness of the buyer's reliance. *E. Edelman & Co. v. Q.*, 284NW838. See Dun. Dig. 8576.

Subd. 2.

Warranty of merchantability in sale by trade name. 15MinnLawRev479.

Subd. 4.

False assertion of sales agent that machine would do certain amount of work and coordinate with machines already owned by defendant was an assertion of fact and constituted fraud. *National Equipment Corp. v. V.*, 190M596, 252NW444. See Dun. Dig. 8589.

Subd. 6.

Conditional sales contract, through containing express warranties as to workmanship and material in machines sold, does not exclude implied warranty of fitness for work machines were to do. *National Equipment Corp.*, 189M632, 250NW677. See Dun. Dig. 8576.

SALE BY SAMPLE

§8391. Implied warranties in sale by sample.

Fordson tractor, a two wheeled truck used as trailer, a connecting hitch and hydraulic hoist for unloading, held not sold by "sample." 173M87, 216NW790.

Shoes sold from samples carry implied warranty that they are free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample, and purchaser may rescind or may accept by conduct. 173M535, 217NW941.

PART II

TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

§8392. No property passes until goods are ascertained.

Evidence held to sustain finding that title passed to cement in seller's warehouse. *Freeman v. M.*, 185M503, 241NW677. See Dun. Dig. 8511.

§8393. Property in specific goods passes when parties so intend.

Freeman v. M., 185M503, 241NW677.
Title in property is presumed to pass when contract is made, if goods are properly identified and nothing further remains, other than delivery of goods and payment of price. *E. Albrecht & Son v. L.*, (DC-Minn), 27FSupp65.
Purchase money mortgage held superior to prior chattel mortgage. 177M441, 225NW389.

Passing of title is a question of intention of the parties. 177M441, 225NW389.
Whether at time of accident defendant was owner of truck and driver its agent, held for jury. *Ludwig v. H.*, 187M315, 245NW371. See Dun. Dig. 5841.

In action by prospective car buyer to recover amount for which dealer sold car turned in for trade purposes, evidence held to sustain finding that agreement was modified and that defendant undertook to account for sale price of old car, less a reasonable commission. *Mishler v. N.*, 194M499, 260NW865. See Dun. Dig. 85091.

§8394. Rules for ascertaining intention.

Freeman v. M., 185M503, 241NW677.
Where order for goods contemplated that they should be delivered to buyer and that title did not pass until goods were delivered to carrier, buyer relieved itself from liability for the purchase price by countermanding the order before the goods were delivered to the carrier, notwithstanding that the goods were set aside for the buyer in seller's warehouse. 172M4, 214NW475.

Title passed where calendars were manufactured and set aside for purchaser, and latter was liable for purchase price. *Louis F. Dow Co. v. B.*, 187M143, 244NW556. See Dun. Dig. 8514.

Evidence held to sustain finding that caskets were sold upon consignment, and were returned to plaintiff within a reasonable time. *J. J. Meany Casket Co. v. M.*, 199M117, 271NW99. See Dun. Dig. 8610.

Title in property is presumed to pass when contract is made, if goods are properly identified and nothing further remains, other than delivery of goods and payment of price. *E. Albrecht & Son v. L.*, (DC-Minn), 27FSupp65.

Rule 1.

Where corporation contracted to sell assets, received a part of the price in cash, and transferred the assets to trustees, who completed the sale and collected the balance of the purchase price, the profit from the sale was income to the corporation, and not to the stockholders receiving the proceeds in liquidation. *Northwest U. S. Corp. v. H.* (CCA8), 67F(2d)619, aff'g 27BTA524. Cert. den. 291US684, 54SCR561.

Rule 2.

Placing of seat covers and tire covers on automobile after conditional contract of sale did not amount to any manufacturing process or alteration such as to come within holding in *Louis F. Dow. Co. v. Bittner*, 187M143, 244NW556. *Reese v. E.*, 187M568, 246NW250. See Dun. Dig. 8514.

Rule 5.

Evidence held not to conclusively show such delivery of an automobile as to vest either title or possession in defendant. *Reese v. E.*, 187M568, 246NW250. See Dun. Dig. 8511.

TRANSFER OF TITLE

§8398. Sale by a person not the owner.

Drew v. F., 185M133, 240NW114; note under §8467.
One purchasing personal property from a seller who has converted the goods is liable to the true owner as for conversion. 180M447, 231NW408.

Stolen Liberty bonds mailed by appellant to a Federal Reserve Bank with request to remit, bonds having been called by the government for redemption, were, before remittance, subject to replevin by true owners. The action was not against the United States. Commercial Union Ins. Co. v. C., 183M1, 235NW634. See Dun. Dig. 961a(21), 8594a(89).

Where owner of personal property so clothes another with indicia of title as to deceive bona fide purchaser relying upon such indicia of title, purchaser will be protected against true owner. Gustafson v. E., 186M236, 243NW106. See Dun. Dig. 8599.

Rights of purchasers of timber from permittee of state. National Surety Co. v. W., 244NW290, 187M50. See Dun. Dig. 7955.

(1).

Estoppel of owner against bona fide purchaser—apparent authority of one who habitually deals in the goods. 15MinnLawRev837.

8406. Who may negotiate a document.

Right of factor to pledge negotiable documents of title. 12MinnLawRev633.

8410. Warranties on sale of document.

A certificate of stock is a continuing representation by the corporation issuing it that the stock described is valid and genuine. Shepard v. C., (DC-Minn), 24FSupp 682.

PART III

PERFORMANCE OF THE CONTRACT

8415. Seller must deliver and buyer accept goods.

1/2. In general.

In action to recover purchase price of tractor after purchasing retailer had ordered it reshipped as not salable, whether block man to whom reshipment order was given was a representative with whom defendant was entitled to deal, held for jury. Northwestern Rock Island Plow Co. v. T., 182M622, 235NW378. See Dun. Dig. 152, 8534, 8644.

Evidence did not require a finding of a sale and delivery of merchandise by the plaintiff to the defendants. Great Lakes Varnish Works v. E., 184M25, 237NW609. See Dun. Dig. 8532.

Contract and accompanying correspondence construed, and held to require judgment for plaintiff for unpaid balance of purchase price of player piano sold defendants under an earnings contract. Morse v. N., 185M266, 240NW899. See Dun. Dig. 8520a.

Where manufacturer furnished dealer with stock in excess of deposit required from dealer under contract, it did not constitute a waiver of manufacturer's right under contract to demand deposit pursuant thereto if necessary. Ewing v. V. (USCCA8), 76F(2d)177.

Where manufacturer had authorized dealer to operate with no restriction as to territory, he was without authority to demand dealer to withdraw from certain states or to refuse merchandise to dealer upon latter's refusal to comply with such demand, and by continuing long enough to dispose of merchandise then on hand dealer did not waive manufacturer's repudiation. Id.

1. Injuries caused by defects in thing delivered or installed.

Contract of milking machine manufacturer held not to obligate it to install or connect a milking machine with the motive power, but merely provided for free service to make the parts sold work properly. Diddams v. E., 185M270, 240NW895. See Dun. Dig. 8510.

Members of family, not parties to contract, could recover for negligence of furnace company in installing furnace pipe causing fire. Wright v. H., 186M265, 243NW887. See Dun. Dig. 6978.

Instruction construing ordinances regarding installation of stacks from furnaces, held correct. Wright v. H., 186M265, 243NW887.

Whether defendant's installation of smoke pipe from furnace was negligent, and whether it was proximate cause of burning of house, held for jury. Wright v. H., 186M265, 243NW887.

Complaint against washing machine manufacturer for injuries to hand in wringer, held to state cause of action. Stone v. P., 187M173, 244NW555. See Dun. Dig. 7549, 7687, 7688.

Actual knowledge on part of dealers of dangerous nature of tar compound, and its explosive qualities if coming in contact with flame, and failure to adequately warn buyer thereof would give rise to a good cause of action. Rost v. K., 195M219, 262NW460. See Dun. Dig. 6995.

In action against druggist, evidence held to sustain finding that mineral oil contaminated with formalin or formaldehyde in deleterious quantity was sold to plaintiff for family use and that it caused death of his child. Berry v. D., 195M366, 263NW115. See Dun. Dig. 2847b.

Retail used car dealer held liable for injuries caused by dangerous defect in steering mechanism which was patent or discoverable in exercise of reasonable care. Egan Chevrolet Co. v. B., (CCA8), 102F(2d)373.

Testimony of driver of car purchased from used car dealer that collision was due to sudden failure of steering mechanism, held substantial evidence warranting finding that defect existed when car left dealer's hands, in absence of evidence conclusively showing that dealer

used reasonable care in examining car for defects in steering mechanism. Id.

Tort liability of manufacturers of goods sold. 19MinnLawRev752.

Liability of restaurateur for defective food. 20MinnLawRev527.

Liability of manufacturers and dealers. 21MinnLawRev314.

Recovery for wrongful deaths for breach of implied warranty. 23MinnLawRev92.

Liability of retail dealers for defective food products. 23MinnLawRev585, 612.

8416. Delivery and payment are concurrent conditions.

A contract in form for future delivery of personal property not intended to represent an actual transaction but merely to pay and receive difference between agreed price and market price at a future day is in nature of a wager on future market price of commodity and is void, but burden of establishing that such a contract is a wager is upon party who asserts fact. Peterson's Estate, 203M491, 281NW877. See Dun. Dig. 10133.

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

8418. Delivery of wrong quantity.

Estimate as to quantity made by buyer's representative should be considered as final unless attacked by pleading and proof of fraud or gross mistake, where seller's representative refused to participate. 176M315, 223NW614.

(2).

When merchandise is wrongfully delivered in violation of order, buyer may reject excess or all, but when he does an act in relation to such goods which is inconsistent with ownership of seller, he accepts all goods. Bashaw Bros. Co. v. C., 187M621, 246NW358. See Dun. Dig. 8538.

8419. Delivery in installments.

When failure to pay on time constitutes a material breach of an installment sale contract. 23MinnLawRev246.

8422. What constitutes acceptance.

Federal Motor Truck Sales Corp. v. S., 190M5, 250NW713; note under §8443.

Shoes sold from samples carry implied warranty that they are free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample, and purchaser may rescind or may accept by conduct. 173M535, 217NW941.

When merchandise is wrongfully delivered in violation of order, buyer may reject excess or all, but when he does an act in relation to such goods which is inconsistent with ownership of seller, he accepts all goods. Bashaw Bros. Co. v. C., 187M621, 246NW358. See Dun. Dig. 8538.

8423. Acceptance does not bar action for damages.

Federal Motor Truck Sales Corp. v. S., 190M5, 250NW713; note under §8443.

Attempted rescission of sale of fur coat seven months after purchase and six months after discovery of breach, held not within reasonable time. 181M347, 232NW522. See Dun. Dig. 8607.

Purchaser of pulpwood did not waive terms of contract as to subsequent cargoes by having accepted cargoes of larger balsam content than prescribed. Hayday v. H., 184M8, 237NW600. See Dun. Dig. 8566.

Right to rescind a sale of personal property on account of breach of warranty must be exercised within a reasonable time after discovery of facts. Laundry Service Co. v. F., 187M180, 245NW36. See Dun. Dig. 8606, 8607, 9764.

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., 187M180, 245NW36.

Purchaser of laundry machinery held as matter of law to have waived right to rescind for breach of warranty. Laundry Service Co. v. F., 187M180, 245NW36.

In action for purchase price of machines where defendant counterclaimed for damages for breach of implied warranty, contention on appeal that defendants did not give timely notice of defects in machine could not be considered in absence of pleading or trial of such issue. National Equipment Corp., 189M632, 250NW677. See Dun. Dig. 384.

A buyer held not entitled to maintain an offset for damages, for defects in lumber, because it did not comply with a trade usage, which entered into contract, requiring it to give reasonably prompt notice to seller of details of its claim and submit to an official reinspection to determine merits thereof. Central Warehouse Lumber Co. v. R., 193M42, 257NW656. See Dun. Dig. 2515, 8620.

Evidence does not justify holding, as a matter of law, that plaintiff was prevented or estopped from recovery of damages for breach of warranty of seed purchased, on ground that he failed to inspect seed before sowing same. Mallery v. N., 196M129, 264NW573. See Dun. Dig. 8566.

Section applies to sales of seed as well as to other articles of commerce. *Id.*

What constitutes sufficient notice under sales act of a breach of warranty. 16MinnLawRev480.

PART IV

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

8427. Remedies of an unpaid seller.

176M267, 223NW288.

Replevin to recover property conditionally sold, plaintiff dismissing the case, was not an election to proceed against the property and to rescind the contract, and plaintiff could sue for the debt. 171M483, 214NW284.

The lien mentioned in §8430(2) relates to the possessory lien mentioned in §8427(1)(a), which is a statutory affirmation of the unpaid seller's common-law lien. 176M483, 223NW908.

The lien which the seller in a conditional sale contract may foreclose on default is the unpaid seller's common-law lien, which rests upon possession, the reservation of title being the equivalent of the necessary possession. 176M483, 223NW908.

Where a contract is completed, an action will lie on the common counts for the balance due. 178M275, 226NW933.

The issue as to whether defendant's signature to a bill of sale was forged held, on conflicting evidence, one of fact and so settled by the verdict. *Lincoln Furnace Corp. v. D.*, 183M19, 235NW392. See *Dun. Dig.* 9707.

If check of purchaser of personal property is not good, seller may retake property. *Gustafson v. E.*, 186M236, 243NW106. See *Dun. Dig.* 8604(22).

Sale of diamond with payment by forged check, did not pass title, and seller could retake property. *Gustafson v. E.*, 186M236, 243NW106.

If purchaser in cash sale of personal property evades payment upon obtaining possession of property, seller may immediately reclaim property. *Gustafson v. E.*, 186M236, 243NW106.

Kind of possession necessary to support seller's lien. 18MinnLawRev603.

(2).

Where buyer of goods, under a conditional sales contract, has received possession of goods and defaults in payment therefor, seller may (1) reclaim property, (2) treat sale as absolute and sue for unpaid price, or (3) enforce his lien upon property by lawful sale thereof and recover judgment for any deficiency. *Reese v. E.*, 187M568, 246NW250. See *Dun. Dig.* 8651.

Remedies of seller in credit sale upon buyer's insolvency. 23MinnLawRev105.

UNPAID SELLER'S LIEN

8428. When right of lien may be exercised.

A contract which contains a provision that upon default of the buyer, the seller, at his option, shall have the right to retake the property and retain payments made as "rental" does not render the contract a lease instead of a conditional sale. Likewise it does not prevent conditional seller from maintaining action to foreclose his lien and recover a deficiency judgment. *National Cash Register Co. v. N.*, 204M148, 282NW827. See *Dun. Dig.* 8648.

Conditional vendor's lien is equitable in nature rather than conventional common law seller's lien which requires that seller be in possession. *Id.* See *Dun. Dig.* 8651.

(2).

Where buyer of automobile under conditional sales contract refuses to accept it, seller may foreclose his lien or sue for damages. *Reese v. E.*, 187M568, 246NW250. See *Dun. Dig.* 8651.

8430. When lien is lost.

Replevin to recover property conditionally sold did not bar an action for the debt on the theory of a rescission or election, the replevin action being dismissed by plaintiff. 171M483, 214NW284.

The lien mentioned in §8430(2) relates to the possessory lien mentioned in §8427(1)(a), which is a statutory affirmation of the unpaid seller's common-law lien. 176M483, 223NW908.

While the unpaid seller in a conditional sale contract has a right to reduce his debt to judgment without losing the lien, such lien is lost where he does not bring the property into actual possession before making an election of remedies which would terminate the conditional sale contract. 176M483, 223NW908.

(1) (c).

Where conditional purchaser of automobile refused to accept it and seller retained car and sued for damages, buyer did not become invested with title and possession. *Reese v. E.*, 187M568, 246NW250. See *Dun. Dig.* 8611.

STOPPAGE IN TRANSIT

8431. Seller may stop goods on buyer's insolvency.

What constitutes a sufficient delivery. 13MinnLawRev702.

Clauses in sales contracts protecting seller against impairment of buyer's credit. 20MinnLawRev367.

PART V

ACTIONS FOR BREACH OF THE CONTRACT REMEDIES OF THE SELLER

8437. Action for the price.

Title to goods held still in the seller until they were delivered to carrier, and buyer was not liable for the price where he countermanded the order before delivery to carrier, though seller set aside the goods for buyer in its warehouse. 172M4, 214NW475.

Evidence held to show that defendant was the real purchaser of the goods in controversy and that there was no novation of the indebtedness. 177M560, 225NW725.

Misrepresentation by law book seller that two prominent attorneys in city had purchased sets of books offered for sale was immaterial in action to recover purchase price. *Edward Thompson Co. v. P.*, 190M566, 252NW438. See *Dun. Dig.* 8591.

Whether plaintiff was entitled to recover with respect to mechanical corn-picker attachment returned by defendant, held for jury. *Schutz v. T.*, 191M116, 253NW372. See *Dun. Dig.* 8633a.

Where seller accepts goods back, he cannot recover the price unless he reverts himself with possession merely as bailee or lienholder. *Id.*

Seller's suit for price, under a conditional sales contract, is not inconsistent with his reserved title and right to repossess upon buyer's default, and is not such an election of remedies as to bar a subsequent exercise of right of repossession. *Midland Loan Finance Co. v. O.*, 201M210, 275NW681. See *Dun. Dig.* 8651.

Quasi contractual recovery in law of sales. 21MinnLawRev529.

(1).

In action to recover part of purchase price of contract and notes, verdict for plaintiff, held sustained by evidence. *Adams v. R.*, 187M209, 244NW810.

8438. Action for damages for nonacceptance of the goods.

Whether plaintiff was entitled to recover with respect to mechanical corn-picker attachment returned by defendant, held for jury. *Schutz v. T.*, 191M116, 253NW372. See *Dun. Dig.* 8633a.

Where plaintiff and defendant entered into a contract wherein defendant purchased a definite quantity of oil of any weight or weights, defendant should designate within weights listed, weight controlling price, lack of agreement as to weight and price created such an indefiniteness and uncertainty in contract as to make it unenforceable. *Wilhelm Lubrication Co. v. B.*, 197M626, 268NW634. See *Dun. Dig.* 8629.

Contract held to be severable, and as to item therein for which a definite quantity and price were agreed upon, plaintiff is entitled to recover damages. *Id.*

Under particular facts and circumstances, proper measure of damages for breach of contract held to be difference between entire cost of goods to seller and the price defendant agreed to pay under contract. *Id.*

REMEDIES OF THE BUYER

8440. Action for converting or detaining goods.

The vendee's measure of damages, for the conversion by the vendor of the property covered by a conditional sales contract, is the value of the chattel at the time of the conversion, less the unpaid purchase price. *Novak v. B.*, 183M254, 236NW221. See *Dun. Dig.* 8652a.

Quasi contractual recovery in law of sales. 21MinnLawRev529.

8441. Action for failure to deliver goods.

(3).

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.

Resale contract of vendee as affecting measure of damages for delay in delivery of goods. 16MinnLawRev591.

(3).

Open price in contracts for sale of goods. 16MinnLawRev733.

8443. Remedies for breach of warranty.

1. In general.

Retention and use of property purchased does not estop purchaser from bringing suit for breach of warranty or from presenting a counterclaim for breach of warranty in a suit by seller for purchase price. *Donaldson v. C.*, 188M443, 247NW522. See *Dun. Dig.* 8565.

The only remedy of a purchaser of a soda fountain for fraud and deceit is an action or counterclaim for damages, such purchaser having continued to use the fountain for purposes for which it was bought. *Knight Soda Fountain Co. v. D.*, 192M387, 256NW657. See *Dun. Dig.* 8612, 8633a.

Use of property after notice of rescission for breach of warranty. 15MinnLawRev604.

Effect of provision in contract for exclusive remedy upon breach of warranty. 15MinnLawRev839.

2. Rescission.

In action for price of carbide lighting plant, evidence held sufficient to show breach of warranty and fraud. 171M211, 213NW902.

Whether purchaser exercises his right to rescind within a reasonable time is usually a question of fact. 172 M535, 217NW941.

Held there was no rescission by consent of sale of hotel property when it was abandoned by purchaser. 177 M208, 225NW19.

Attempted rescission of sale of fur coat seven months after purchase and six months after discovery of breach, held not within reasonable time. 181M347, 232NW522. See Dun. Dig. 8607.

A rescission of a sale of personal property on account of breach of warranty must be sought within a reasonable time after discovery of the facts out of which the right arises. 181M547, 233NW302. See Dun. Dig. 8607.

A request for fulfillment of a warranty nullifies a previous attempt to rescind on account of breach of warranty in the sale of personal property. 181M547, 233 NW302. See Dun. Dig. 8607(36).

Purchaser of laundry machinery held as matter of law to have waived right to rescind for breach of warranty. Laundry Service Co. v. F., 187M180, 245NW36.

Right to rescind a sale of personal property on account of breach of warranty must be exercised within a reasonable time after discovery of facts. Laundry Service Co. v. F., 187M180, 245NW36. See Dun. Dig. 8606, 8607, 9764.

Rescission of sales contract for false representations must be within reasonable time. Edward Thompson Co. v. P., 190M566, 252NW438. See Dun. Dig. 8607.

Evidence held not to show right of rescission by buyer of mechanical corn-picker attachment. Schutz v. T., 191M116, 253NW372. See Dun. Dig. 8605.

A buyer may rescind a sale for breach of warranty by the seller. Saunders v. C., 201M574, 277NW12. See Dun. Dig. 8605.

Use of property after notice of rescission for breach of warranty. 15MinnLawRev604.

3. Partial rescission.

A divisible contract can be affirmed in part and rescinded in part, and whether or not it is divisible depends on the intent of the parties. E. Edelman & Co. v. Q., 284NW838. See Dun. Dig. 8605.

4. Diligence in discovering defects.

Purchaser waives fraud in sale of goods where he gives renewal note with full knowledge of false representations, or is chargeable with such knowledge. Wiebke v. E., 189M102, 248NW702. See Dun. Dig. 8593a, 3833b.

While the seller of truck was attempting to remedy defect in the brakes, reasonable time within which buyer could rescind did not commence to run. Federal Motor 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.

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., 183M 379, 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.

8. Misrepresentation.

A synthesis of the law of misrepresentation. 22Minn LawRev939.

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 too speculative, uncertain and conjectural to sustain a verdict for plaintiff. Rochester Bread Co. v. R., 193M244, 258NW302. See Dun. Dig. 2535.

Where buyer examined goods prior to contract of sale and examination did not disclose particular defects later complained of, it will be presumed that buyer relied on a written warranty in contract of sale. Saunders v. C., 201M574, 277NW12. See Dun. Dig. 8563.

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.

Contractual disclaimers of warranty. 23MinnLawRev 784.

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.

(1).

Provision in written contract that goods are to be in good condition when delivered is a warranty of quality. Saunders v. C., 201M574, 277NW12. See Dun. Dig. 8546.

Delivery of tent in deteriorated and rotten condition is a breach of seller's warranty to deliver in good condition. Saunders v. C., 201M574, 277NW12. See Dun. Dig. 8564.

Remedies of seller in credit sale upon buyer's insolvency. 23MinnLawRev105.

8455 1/2.

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.

Customers in placing orders with broker for stocks for execution in New York Stock Exchange authorized a course of dealing in accordance with the rules of that exchange. Korn v. T., (DC-Minn), 22FSupp442, 36AmB (NS)854. App. dism'd, (CCA8), 102F(2d)993, —AmB(NS)

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.

In suit by a securities salesman for commissions, evidence held to support a finding by jury that salesman's efforts resulted in sales. *Armstrong v. B.*, 202M26, 277 NW348. See Dun. Dig. 1128.

A broker is not entitled to a commission unless he is procuring cause of sale. *Armstrong v. B.*, 202M26, 277NW 348. See Dun. Dig. 1149.

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.

Where defendant by answer denied making of alleged contract, there was nothing to claim that he waived right to invoke statute of frauds by failure to plead it. *Roberts' Estate*, 202M217, 277NW549. See Dun. Dig. 8857.

Claim to value of estate, in lieu of specific performance of oral contract to will entire estate including land, is a claim for recovery of damages for breach of agreement, and damages for breach of contract void under statutes of fraud cannot be recovered by action in any court. *Roberts' Estate*, 202M217, 277NW549. See Dun. Dig. 8859, 2567.

Where decision hinges upon oral evidence of that which statute of frauds and statute of wills require to be in writing, oral evidence to establish facts claimed must be clear, unequivocal, and convincing. *Ives v. P.*, 204M142, 283NW140. See Dun. Dig. 8857.

Equity may specifically enforce an oral contract void under statute of frauds where there has been full performance by party seeking relief and it would work a fraud to deny the same. *Hecht v. A.*, 204M432, 283NW 753. See Dun. Dig. 8779, 8852.

Comments. 14MinnLawRev746.

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

Vendor's lien of common law is "created by the law and not by the parties" and is not considered within statute of frauds. *Hecht v. A.*, 204M432, 283NW753. See Dun. Dig. 8876.

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. *Vethoulikas 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.

7. Promise to execute mortgage.

An agreement to give a real estate mortgage is within statute of frauds. *Hecht v. A.*, 204M432, 283NW753. See Dun. Dig. 8880.

8. Promises to answer for another.

Contract of guaranty signed by members of a co-operative 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.

Statute of frauds in suretyship cases. 12MinnLawRev 716.

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.

1½. 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.

1¼. Promise to pay debt discharged in bankruptcy.

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

8458. Grants of trusts, when void.

Section is not applicable to express oral trusts in personalty where full possession of property is passed by trustor to trustee. *Salschelder v. H.*, 286NW347. See Dun. Dig. 8852.

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, 243NW785. 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.*, 192M316, 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.