CHAPTER 512

SALE OF GOODS

FORMATION OF THE CONTRACT

512.01 CONTRACT TO SELL AND SALES.

HISTORY. 1917 c. 465 s. 1; G.S. 1923 s. 8376; M.S. 1927 s. 8376.

The original uniform sales act was promulgated in 1906 and has been adopted by Alabama, Alaska, Arizona, California, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota,. Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, Wisconsin, and Wyoming. A revised uniform sales act was reported on and discussed at the September, 1941, conference.

When the seller of goods delivers them to a carrier for transportation to the buyer pursuant to contract, a presumption arises that the property passes to the buyer. If the bill of lading provides for delivery to the shipper or his order, ownership is reserved to the seller, and he holds ownership only to secure the buyer's performance of the contract. Banik v Railway, 147 M 175, 179 NW 899.

Acceptance of goods not shipped in accordance with order waives the conditions of the order; and where the carrier delivers to the true owner, failure to pick up bill of lading made to shipper's order is immaterial. Banik v Railway, 147 M 175, 179 NW 899.

In an action for damages for the alleged breach of a warranty of the quality of certain building material sold by defendant to plaintiff, the complaint is held to state facts showing an implied warranty of quality as created by the uniform sales act. Kitowski v Thompson, 150 M 436, 185 NW 504.

Where personal property has been bid in at an auction sale for more than $50.00 and it has not been actually received by the bidder, the contract of sale is not enforceable unless there is a memorandum in writing in compliance with the uniform sales act. Memorandum entered by the clerk of the auction in a sales book at the time the bid was accepted was properly admitted as a compliance with the statute. Sargent v Bryan, 153 M 198, 189 NW 935.

Where parties execute a written contract for the sale of goods from one to the other on the terms and conditions therein specified, both are bound in the absence of fraud, and where the contract allowed 30 days for discovery of defects in the flour, and no claim was made, the vendee is estopped from maintaining a claim. Marshall v Hintz-Cameron, 156 M 301, 194 NW 772.

In an action to recover the purchase price of a carload of tires and tubes, sold on written contract, parol evidence would be admissible to show a separate agreement to accept certain oversize tires in a payment arrangement. Yale v Schmauss, 158 M 456, 197 NW 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. Dworsky v Braunstein, 167 M 334, 209 NW 14.

Where the seller of personal property knows the purpose for which it is to be used and the buyer relies upon the seller's judgment that it is suitable therefor, there is an implied warranty that it is reasonably fit for such purpose. Such an implied warranty arises independently and outside of the contract and is imposed by operation of law. Bekkevold v Potts, 173 M 87, 216 NW 790.

The lien which the seller, in a conditional sales contract may foreclose on default, is the unpaid seller's common-law lien which rests on possession. The reservation of title in such contract gives the seller control of the property, which is the equivalent of the necessary possession to support the lien. The lien mentioned in

section 512.56 relates to the possessory lien mentioned in section 512.53, which is a statutory affirmance of the unpaid seller's common-law lien. Holmes v Schnedler, 176 M 483, 223 NW 908.

The vendor in a conditional sales contract may on default take the property as his own, and the vendee does not have the rights of redemption provided for in chattel mortgages, nor can he sue in conversion. Penchoff v Heller, 176 M 493, 223 NW 911.

The contract for the sale of pulpwood for "measurement and acceptance" on board cars at vendee's docks at Erie was properly held to be ambiguous, as was likewise the actual measurement, and both as to intent and proof of measurement was properly left to the jury. Hayday v Hammermill, 184 M 8, 237 NW 600.

Where the buyer of goods under a conditional sales contract has received the goods and defaults in payment, the seller may (1) reclaim the property, (2) treat the sale as absolute and sue for the unpaid price, or (3) enforce the lien by action and possibly obtain a judgment for the deficiency. In this case the plaintiff selected remedy (2) and was non-suited because he could not prove delivery to or acceptance of possession by the defendant. Reese v Evans, 187 M 568, 246 NW 250.

There being no statute in this state authorizing the creation by parol of remainders in personal property, the common-law rule must be followed which causes a reversion to the donor. Conveyance thereof by the donor gave the plaintiff the right of recovery. Mowry v Thompson, 189 M 479, 250 NW 52.

Where the vendee in an option contract exercised his option and made a tender four days after the death of the vendor, but one day before the expiration date of the option, to which there was no reply for more than a year, it is held that there was no laches in non-acceptance because there was no general administrator fully qualified during the interim. In re Miller, 196 M 543, 265 NW 333.

On the record the jury was justified in finding that the merchandise was sold upon consignment and was returned within a reasonable time. Meany v McCarthy, 199 M 117, 271 NW 99.

An option is an offer to sell coupled with an agreement to hold the offer open for acceptance for a specified time. It is not a purchase. The distinguishing characteristic of an option contract is that it imposes no obligation upon the person holding the option, and when there is not merely the right but the obligation to buy, the contract is not one of option but of sale. Olesen v Bergwell, 204 M 450, 283 NW 770; Johnson v Kruse, 205 M 237, 285 NW 715.

Repurchase agreement requiring assignor of conditional sales contract to repurchase automobile covered thereby within 15 days of default in first payment was not breached or violated by failure of assignor to pay the repurchase price, in the absence of a tender or delivery to him of the automobile involved. Midland Loan v Madsen, 217 M 267, 14 NW(2d) 475.

In other states it has been held that the sale of tracts and pamphlets on the street at a few pennies each constitutes a sale. People v Lechner, 307 Michigan 358, 11 NW(2d) 918.

Uniform fraudulent conveyance act. 7 MLR 453.

Implied warranties in sale of goods by trade name. 11 MLR 485.

Uniform warehouse receipts act. 12 MLR 640.

Bids as acceptances in auctions "without reserve." 15 MLR 375.

Uniform conditional sales act. 16 MLR 690.

Validity of oral agreement to execute mutual wills bequeathing personalty. 20 MLR 238.

Quasi-contractual recovery in the law of sales. 21 MLR 529.

512.02 CAPACITY; LIABILITIES FOR NECESSARIES.

HISTORY. 1917 c. 465 s. 2; G.S. 1923 s. 8377; M.S. 1927 s. 8377.

Where an infant, by fraudulent representation that he is of age, deceives and induces another to sell and deliver property to him, such other person may recoup damage due to the depreciation of the property when the infant rescinds the purchase and sues for what he has paid. Steigerwald v Woodhead, 186 M 558, 244 NW 412.

A minor may purchase credit union stock. OAG Dec. 21, 1931.

FORMALITIES OF THE CONTRACT

512.03 FORM OF CONTRACT OR SALE.

HISTORY. 1917 c. 465 s. 3; G.S. 1923 s. 8378; M.S. 1927 s. 8378.

Application of the statute of frauds under the uniform sales act. 15 MLR 391.

512.04 STATUTE OF FRAUDS.

HISTORY. 1917 c. 465 s. 4; G.S. 1923 s. 8379; M.S. 1927 s. 8379.

1. **Generally**
2. **Acceptance and receipt of part of goods**
3. **Part payment**
4. **Memorandum**
5. **Within the statute**
6. **Not within the statute**

1. Generally

An oral contract within the statute of frauds is void and not merely non-enforceable, and in this case it was a question for the jury as to whether or not delivery to the railway company was delivery to the consignee. Waite v McKelvey, 71 M 167, 72 NW 727.

The rule that defense of the statute is personal to the parties is not applicable to the sheriff's levying on the goods. Waite v McKelvey, 71 M 167, 72 NW 727.

Hill employed Spinney for three years, at $10,400 per year, one-half to be payable in cash and the other one-half in stock. Spinney was discharged. The contract was oral. Hill in defense pleaded that the contract was one that could not be performed within a year, and the stock payment was in fact a sale of merchandise in a greater amount than $50.00. Held, a forced or strained construction may not be placed on the statute and this contract, though not enforceable under the statute, will control the rights of the parties with respect to what they have done under it. Spinney v Hill, 81 M 316, 84 NW 116.

A memorandum of an oral contract subscribed by the seller only is a sufficient memorandum of the contract to satisfy the statute of frauds, as to the party subscribing it, and against whom the contract is sought to be enforced. Bowers v Whitney, 88 M 168, 92 NW 540.

On an appeal from an order overruling plaintiff's complaint, suing on an executory contract for the sale of personal property exceeding $50.00 in value, and not specifically stating that the contract was in writing, held, the motion was properly overruled. The contract will be presumed to be in writing unless otherwise stated. Laybourn v Zinn, 92 M 208, 99 NW 798.

The guaranty covering a five-year lease of property in Iowa read: "We hereby guarantee the payment of the rental as per this lease." The guaranty was valid, because it was in Iowa contract, even if within the statute of frauds of Minnesota no consideration having been expressed. Halloran v Schmidt, 137 M 141, 162 NW 1082.

As to the germination of seed grain. Moorhead v Minneapolis, 139 M 13, 165 NW 485.

The complaint in an action to recover the purchase price of personal property alleged a sale and delivery. The answer was a general denial. The plaintiff offered no proof of delivery and his offer to produce evidence that the plaintiff had kept and resold the cow was objected to as not admissible under the pleadings and the objection was sustained. Held, the proffered evidence should have been received and, if the proposed amendment to the answer was necessary, the motion to amend should have been granted. Sargent v Bryan, 160 M 200, 199 NW 737.

Defendant sold plaintiff certain bonds, and suit being threatened on implied warranty, an agreement was entered into by which the plaintiff was to sue on the

bonds, and if defeated in the action defendant agreed to take the bonds and repay the purchase price and pay the expenses of suit. Held to be sufficient consideration for the agreement and not within the statute of frauds. Bank v Drake, 164 M 175, 205 NW 59.

Where notes were forwarded from one bank to another for collection and credit, an agreement, "We agree to repurchase on demand. Notice of due and collections to be made by us," is enforceable even as to renewal notes. Bank v Bank, 165 M 285, 206 NW 459.

The time of performance of a written contract for the sale of burlap potato bags may be extended by parol without additional consideration and without offending the statute of frauds. Bemis v Nesbitt, 183 M 577, 237 NW 586.

Construction as to pulpwood cut on leased land. Morrow v Bank, 186 M 516, 243 NW 785.

Construction as to a lamb-feeding contract. Stebbins v Friend, 193 M 446, 258 NW 824.

Notwithstanding the provisions of section 541.17, a defendant may be estopped to set up the statute as a defense by his oral promise before the statute has run that, if plaintiff would wait until after the statute had run, he would make a new arrangement or settlement of plaintiff's claim. Albachten v Bradley, 212 M 359, 3 NW(2d) 783.

Conflict of laws. 11 MLR 51.

Statute of frauds relating to contracts. 14 MLR 746.

Conflicting considerations regarding the usefulness of the statute of frauds. 15 MLR 392.

Applicability of uniform sales act to sales of corporate stock. 17 MLR 106.

Parol sale of a building permanently annexed to realty. 18 MLR 234.

Validity of oral agreement to execute mutual wills bequeathing personalty. 20 MLR 238.

Enforceability of oral contract to repurchase stock. 20 MLR 569.

Situation where contract is unenforceable because of statute of frauds. 21 MLR 564.

Effect of oral sale of goods already in possession of buyer. 22 MLR 119.

2. Acceptance and receipt of part of goods

The delivery requisite to take a verbal agreement for the sale of goods out of the statute of frauds may be subsequent to such agreement. McCarthy v Nash, 14 M 127 (95); Goslin v Pinney, 24 M 322; Ortloff v Klitzke, 43 M 154, 44 NW 1085; Ward v Ward, 75 M 269, 77 NW 965.

A bare acceptance of part of the goods may 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. Simpson v Krumdick, 28 M 352, 10 NW 18; Taylor v Mueller, 30 M 343, 15 NW 413; Beyerstedt v Winona, 49 M 1, 51 NW 619; Perkins v Thorson, 50 M 85, 52 NW 1272; Hart v Kessler, 53 M 546, 55 NW 742; Trust Co. v Howell, 59 M 295, 61 NW 141.

A delivery by the seller to a carrier selected by him, for transportation to the purchaser, of goods sold under an agreement void by the statute of frauds, is not such a delivery and acceptance as will take the agreement out of the operation of the statute. Simmons v Mullen, 33 M 195, 22 NW 294; Fontaine v Bush, 40 M 141, 41 NW 465; Waite v McKelvey, 71 M 167, 72 NW 727.

A parol contract to furnish railroad ties to the amount of $50.00 or more is not a contract for labor, but a sale of chattels, and where the defendant agreed by parol to take railroad ties of the plaintiff, but no definite amount or number was specified, the acceptance of a certain number actually delivered by the plaintiff cannot be held to obligate the defendant to receive any more. Russell v Wisconsin, 39 M 145, 39 NW 302.

When, at the time of sale or transfer of whiskey certificates, personal property is in the hands of one who has a lien upon it, notice to him of such sale or

transfer is sufficient to constitute a delivery, as against a subsequent attaching creditor. Freiberg v Steenback, 54 M 509, 56 NW 175.

To take a parol contract for the sale of goods of the value of $50.00 or more out of the statute of frauds by an acceptance of a part thereof, there must be a delivery by the seller, and the purchaser must receive and accept a part of the goods contracted for, pursuant to the contract. An unaccepted tender of earnest money will not take the sale out of the statute. Hershey v St. Paul, 66 M 449, 69 NW 215.

Where stockholders by parol agree that for every share of stock paid for five additional shares are to be issued, the agreement is not binding on a shareholder to whom the additional shares were not issued, and the shareholder must respond in a superadded stockholder's liability action only to the extent of the stock issued and paid for. Rogers v Gross, 67 M 224, 69 NW 894.

A written order, addressed to a party, and directing a shipment of goods, such order being "subject to approval at your office," is nothing more than a conditional offer to purchase. To become a valid, enforceable contract, it must be approved or accepted by the party to whom it is addressed, and the party signing same must be notified of the approval or acceptance within a reasonable time. Reid v Northwestern, 79 M 369, 82 NW 672.

An action by a purchaser to recover the purchase price of goods remaining on hand after a stipulated time according to the contract of purchase, held that the contract was not within the statute of frauds. Gilfoil v Western, 108 M 193, 121 NW 904.

There may be sufficient compliance with the provisions of the statute of frauds relating to a note or memorandum of a contract of sale, if the party to be charged write a letter to the opposite party admitting the contract and repudiating its obligation, but the letter set out in the opinion is not such an admission. Upton v Baldwin, 147 M 205, 179 NW 904.

Satisfaction of the statute by acceptance and actual receipt. 15 MLR 406.

3. Part payment

Payment of consideration takes the case out of the statute of frauds. Perkins v Thorson, 50 M 85, 52 NW 272.

An unaccepted tender of earnest money will not take the sale out of the statute. Hershey v St. Paul, 66 M 449, 69 NW 215.

A logging contract between a lumber company and the contractee, who had agreed to perform services thereunder, was verbally transferred by the contractee to a third party as security for supplies, and a portion of which were delivered at the time of such transfer. Held, the agreement to transfer was not void under the statutes. Benton v Gage, 85 M 355, 88 NW 997.

4. Memorandum

The subscription of the party to be charged is sufficient. Morin v Martz, 13 M 191 (180); Wemple v Knopf, 15 M 440 (355).

Parol evidence is not admissible to modify the terms of the memorandum. In a contract for flax straw, no part of the purchase price having been paid, and no straw having been accepted or received, evidence of an oral modification as to "weeds" was not admissible. Brown v Sanborn, 21 M 402; Heisley v Swanstrom, 40 M 196, 41 NW 1029; Kessler v Smith, 42 M 494, 44 NW 794.

The stipulated price for a sale of chattels is an essential part of the contract, and must be stated in the memorandum to be within the statute. Hanson v Marsh, 40 M 1, 40 NW 841.

An order for goods which is sought and procured by the seller is to be deemed accepted by him at once and, if signed by the buyer, becomes a contract binding on him, within the statute of frauds. Kessler v Smith, 42 M 494, 44 NW 794.

No question was raised as to the sufficiency of the contract, except as to the sale and purchase of "all soiled or damaged goods at valuation." Held, sufficient memorandum and facts as to damage or value may be ascertained and determined as any other question of fact. Sargent v Dwyer, 44 M 309, 46 NW 444.

A written contract falling within the statute cannot be varied by adding to or subtracting from its terms. Burns v Fidelity, 52 M 31, 53 NW 1017.

Certain writings, telegrams and letters, when taken together, constitute a sufficient memorandum of a contract for the sale of goods under the statute. Olson v Sharpless, 53 M 91, 55 NW 125.

Where a written contract contains characters, abbreviations, or apparently ambiguous terms, parol evidence is admissible to show that they have a recognized and generally understod meaning in the trade. Maurin v Lyon, 69 M 257, 72 NW 72.

A memorandum of an oral contract subscribed by the seller only, as, "I hereby agree to deliver at Cable 800 bushels of number two rye to Bowers Bros. on or before September 25, 1901. Price to be 36 cents per bushel," is sufficient under the statute to bind the seller. Bowers v Whitney, 88 M 168, 92 NW 540.

In order to recover for the breach of a verbal contract of sale of goods within the statute of frauds, where the memorandum is not signed by the defendant, the writing containing his signature must connect itself with the memorandum, or must with other writings be so connected therewith, by reference or internal evidence, that parol testimony is not necessary to establish the connection with the verbal contract of sale, or else, if the signature was not appended to the writing for the purpose of becoming a part of the memorandum, the writing in order to satisfy the statute must clearly admit or confess that a sale was made. Quinn v Triumph, 149 M 24, 182 NW 710.

Memorandum, entered by clerk of the auction in a sales book at the time the bid was accepted, was properly admitted as compliance with the statute, not being impliedly repealed by the uniform sales act. Such memorandum made by the clerk must be regarded as the act of the auctioneer. Sargent v Bryan, 153 M 198, 189 NW 935.

Telegrams and letters between the parties, signed by them, show such connection, without the aid of oral testimony, that they constitute a memorandum sufficient to satisfy the statute of frauds and prove the purchase of a carload of coal by the defendant, and also indicate an admission by defendant that such a contract of purchase had been made. Kline v Minnesota, 156 M 6, 193 NW 958.

The memorandum is not the contract but only the written evidence of it. It need no consist of a single paper. It is sufficient if the terms of the contract can be gathered from other writings, provided their connection is obvious without resort to parol evidence. The time of delivery if agreed upon is material and must appear in the memorandum. Union Hay v Des Moines, 159 M 106, 198 NW 312.

Subject matter within the statute. 15 MLR 400.

5. Within the statute

Where a legal written contract was executed, but no part of the purchase money having been paid, nor any part of the items accepted or received, it is incompetent to show that the written evidence of the sale required by the statute has been modified by parol. Brown v Sanborn, 21 M 402.

Where the defendant agreed generally by parol to take railroad ties of the plaintiff, but no definite amount or number was specified, the acceptance of a certain number actually delivered by the plaintiff cannot be held to obligate the defendant to receive any more. Russell v Wisconsin, 39 M 145, 39 NW 302.

An executory contract for the sale of chattels for a price of $50.00 or more is within the statute, although it also embraces some other agreement to which the statute is not applicable. The stipulated price is an essential part of the contract, and must be stated or a note thereof made. Hanson v Marsh, 40 M 1, 40 NW 841.

Relating to illegal issuance of corporate stock. Rogers v Gross, 67 M 224, 69 NW 894.

A sale of wild grass growing on the vendor's land cannot be made by parol. Such an agreement comes within the statute, and a written contract cannot be dispensed with. Kirkeby v Erickson, 90 M 299, 96 NW 705.

An agreement for a sale of a two-story frame building, built on a permanent stone foundation to be wrecked and removed by the buyer but not immediately,

and which gives the buyer a present interest in the building and material composing it, is a sale of an interest in the land and, under our statute of frauds, it is required to be evidenced in writing. Rosenstein v Gottfried, 145 M 243, 176 NW 844.

Construing alleged modification of a contract for the purchase and delivery of grain. Consumers v Lindeke, 153 M 231, 190 NW 65.

An agreement for the purchase by a corporation from its stockholders of preferred stock in the corporation was within the statute of frauds, as the letter merely went out from the office, and there was no evidence of an agreement of any kind by the individual stockholders and no price was stated. Peterson v New England, 210 M 449, 199 NW 208.

6. Not within the statute

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

A verbal contract for the manufacture of goods of special and peculiar design, not suitable for the general trade, and for the price of more than $50.00, is not a contract for the sale of goods and chattels, within the statute of frauds. A verbal contract to furnish material and, after performing labor thereon, attach it to the realty, as a part of a building in the course of construction, is not a sale of goods or chattels, and is not within the statute. Brown v Wunder, 64 M 450, 67 NW 357.

Hurley sold a threshing machine to Swenson to be paid for our of the first earnings of the machine. Swenson threshed grain for the defendant at a price of $84.00. Defendant was notified by both Hurley and Swenson to pay the money to Hurley. Held not within the statute, and the denfendant was liable. Hurley v Bendel, 67 M 41, 69 NW 477; Shove v Martine, 85 M 29, 88 NW 254.

Under the statute no action can be maintained upon a parol contract for the rendition of personal services for a period exceeding one year, and therefore damages, as such, cannot be recovered by either party in case of failure to perform or a refusal to allow such performance. Spinney v Hill, 81 M 316, 84 NW 116.

Action upon an account stated which was based upon stock transactions by a broker for his principal in Northern Pacific stocks. The manager of the brokerage office reported the orders executed in each case. Held, that as to the customer the orders must be deemed to have been executed, and that the statute of frauds does not apply. McCarthy v Weare, 87 M 11, 91 NW 33.

If the contract was merely for the sale of ordinary clothing, suitable for general trade, it was within the statute of frauds; but if the plaintiff contracted to furnish material, labor and skill, and then made up the clothes in compliance with the contract, the contract was not within the statute. Schloss v Jacobs, 98 M 442, 108 NW 474; Becker v Calmenson, 102 M 406, 113 NW 1014; Greenhut v Oreck, 130 M 304, 153 NW 613.

In an action against a railway company for damages for not furnishing cars to ship sheep, which cars the railway agent had agreed to furnish and did furnish in part, the subject matter was not within the statute of frauds, because not goods, nor chattels, nor things in action, nor for the sale of anything. Pope v Wisconsin, 112 M 112, 127 NW 436.

Where a parol contract is made between a manufacturer and a jobber for the sale of goods, a subsequent delivery and acceptance of part of the goods, under and pursuant to the contract, satisfied the statute of frauds. Scott v Stevenson, 130 M 151, 153 NW 316.

As to certificates of deposit. Darielius v Bank, 145 M 21, 175 NW 993.

The release of each party by the other was a sufficient consideration for so much of the contract as remained unexecuted, and the rescission was an executed contract and not within the statute of frauds, although made by an oral agreement. Kineto v Ugland, 146 M 44, 177 NW 1018.

Plaintiff performed services and furnished goods to his mother under an oral agreement that she would convey to him a farm for a certain price, or if she failed to so do to pay cash for what she had received from him. She died without having

tendered a deed, so that the obligation became fixed, at her death, and the cause of action on the contract then accrued. Welsh v Welsh, 148 M 235, 181 NW 356.

Where a controversy is compromised and settled, the contract is deemed executed and not within the statute of frauds. Whitnock v Twin Valley, 148 M 357, 182 NW 444.

Sufficient performance to justify a finding of part performance to take an oral agreement to assign a 99-year lease of real property out of the statute of frauds, and to entitle defendant, in a partnership accounting, to credit of a one-half interest in the proceeds of the sale thereof. Carlson v Johnson, 156 M 416, 195 NW 41.

Time for performance of the terms of a conditional sales contract on an automobile may be extended by an oral agreement entered into at a time subsequent to the reduction of the contract to writing. Hafiz v Midland, 206 M 76, 287 NW 677.

SUBJECT MATTER OF CONTRACT

512.05 EXISTING AND FUTURE GOODS.

HISTORY. 1917 c. 465 s. 5; G.S. 1923 s. 8380; M.S. 1927 s. 8380.

The authorized agent of the defendant agreed with plaintiff to purchase at a fixed price "all the cabbage he could get and load." Two carloads were shipped and accepted, the third car was refused. In a sale of future goods by description, the title passes when goods of that description are unconditionally appropriated by both parties to the contract. In this case there is such an appropriation and the plaintiff may recover. Bundy v Meyer, 148 M 252, 181 NW 345.

The rights of a landlord on future crop under a mortgage clause in a lease not filed are postponed to the rights of a beet sugar factory under a grower's contract. Griffin v Minnesota Sugar, 162 M 240, 202 NW 445.

Where the seller of "future goods" reserves the right to make proportionate deliveries among the buyers in the event that designated contingencies beyond his control prevent full delivery on all contracts, the burden is upon him to show not only the cause justifying partial delivery, but also that he has treated all his original buyers with absolute fairness, given each a ratable share. Clay v Kenyon, 198 M 533, 270 NW 590.

Applicability to shares of corporate stock. 17 MLR 106.

Assignment of beneficial interest enforced as a contract to assign. 23 MLR 111.

512.06 UNDIVIDED SHARES.

HISTORY. 1917 c. 465 s. 6; G.S. 1923 s. 8381; M.S. 1927 s. 8381.

512.07 DESTRUCTION OF GOODS SOLD.

HISTORY. 1917 c. 465 s. 7; G.S. 1923 s. 8382; M.S. 1927 s. 8382.

512.08 DESTRUCTION OF GOODS CONTRACTED TO BE SOLD.

HISTORY. 1917 c 465 s. 8; G.S. 1923 s. 8383; M.S. 1927 s. 8383.

Goods destroyed after contract is made. 21 MLR 534.

PRICE

512.09 DEFINITION AND ASCERTAINMENT OF PRICE.

HISTORY. 1917 c. 465 s. 9; G.S. 1923 s. 8384; M.S. 1927 s. 8384.

Because the intervenor did not comply with the statute relating to a seed potato lien, the mortgagee of a chattel mortgage on crops to be grown by the mortgagor had the superior claim on the potato crop. Opatril v Cook, 156 M 57, 194 NW 103.

Satisfaction of the statute by earnest or part payment. 15 MLR 422.

Open price in contracts for the sale of goods. 16 MLR 733, 741.

Sale of goods at price to be fixed by subsequent agreement. 19 MLR 702.

Validity of oral agreement to execute mutual wills bequeathing personalty. 20 MLR 238.

512.10 SALE AT A VALUATION.

HISTORY. 1917 c. 465 s. 10; G.S. 1923 s. 8385; M.S. 1927 s. 8385.

Contract silent as to price. 16 MLR 741.

Price-fixing method fails. 21 MLR 563.

CONDITIONS AND WARRANTIES

512.11 EFFECT OF CONDITIONS.

HISTORY. 1917 c. 465 s. 11; G.S. 1923 s. 8386; M.S. 1927 s. 8386.

Enforceability of restrictive conditions on personalty against purchaser with notice. 16 MLR 864.

Parol evidence rule and warranties of goods sold. 19 MLR 725.

Contractual disclaimer of warranty. 23 MLR 789.

Warranty of merchantable quality. 27 MLR 161.

512.12 EXPRESS WARRANTY DEFINED.

HISTORY. 1917 c. 465 s. 12; G.S. 1923 s. 8387; M.S. 1927 s. 8387.

In an action for damages for deceit in the sale of an ice machine the representation that the machine when installed would keep the temperature in the ice-box low enough to keep meat from spoiling. Purchaser could make payments or complete the entire contract and still maintain the action for damages. Schmitt v Ornes, 149 M 370, 183 NW 840.

If the seller of goods knows they are to be re-sold or to be consumed as food, and that the buyer will not discover the defects until used or re-sold, and the value of goods used or re-sold is readily obtainable, the buyer may rescind the contract, return the remainder of the goods, and require the seller to refund a corresponding portion of the purchase price. Clifford v Stewart, 153 M 382, 190 NW 613.

A guaranty printed on the back of an order for goods is a warranty and not mere trade talk. The uniform sales act gives the purchaser the right to rescind for breach of warranty, provided he did not know of the breach when the goods were accepted and gives timely notice of election to rescind. Orange v Stacy, 156 M 436, 195 NW 147.

Reprensentation by the seller regarding qualities and pedigree of a bull calf held to be mere trade talk, and not an actionable warranty. Frederickson v Hackney, 159 M 234, 198 NW 806.

In advertising seed corn for sale, the grower represented that 95 per cent of a tested portion of the seed had germinated. Relying on that representation, the plaintiff farmer purchased and planted the corn, which failed to germinate. It was held that the advertisement under the circumstances was a warranty, and the purchaser may recover damages. Baumgartner v Glesener, 171 M 289, 214 NW 27.

A retailer who has sold a washing machine with a warranty or representation of quality is entitled to the benefit of anything thereafter done by the manufacturer in the way of repairs to comply with the warranty. Halla v Ingalls, 176 M 232, 222 NW 920.

Retention and use of trucks purchased did not estop purchaser from suing for breach of warranty or from presenting counter-claim for breach of warranty in suit by seller for purchase price. Donaldson v Carstensen, 188 M 446, 247 NW 522.

Where the tag or label attached to a bag or package of seed states the kind of seed and that it is 98 per cent pure, such statement is a warranty of the purity of the seed as so stated; and where the seed is sold to a farmer for sowing there is an implied warranty that the seed is fit for the purpose intended. Mallery v Northfield, 196 M 129, 264 NW 573.

Where the word "good" is used to designate quality, kind, or condition of goods sold, as a tent in this case, it is an affirmation of fact and not a mere expression of opinion. Saunders v Cowl, 201 M 574, 277 NW 12.

In an action on a note given by buyer in part payment of an exhaust fan installed by seller in buyer's bowling alley under a conditional sales contract, where the buyer pleads an express warranty and evidence was addressed thereto, submission of issue of implied warranty in language inaccurate and confusing was error. Reliance v Flaherty, 211 M 237, 300 NW 603.

Implied and oral warranties and the parol evidence rule. 12 MLR 209.

Parol evidence rule and warranties of goods sold. 19 MLR 726.

Goods do not conform to contract. 21 MLR 540.

Express warranties. 23 MLR 942.

Liability of manufacturer to subpurchaser for breach of express warranty. 25 MLR 84.

Implied warranty. 27 MLR 123.

512.13 IMPLIED WARRANTIES OF TITLE.

HISTORY. 1917 c. 465 s. 13; G.S. 1923 s. 8388; M.S. 1927 s. 8388.

Implied warranties in the sale of goods. 11 MLR 486.

Parol evidence rule and warranties. 19 MLR 730.

A synthesis of the law of misreprensentation. 22 MLR 976.

512.14 IMPLIED WARRANTY IN SALE BY DESCRIPTION.

HISTORY. 1917 c. 465 s. 14; G.S. 1923 s. 8389; M.S. 1927 s. 8389.

Implied warranties in the sale of goods. 11 MLR 493.

Goods do not conform to contract. 21 MLR 540.

Contractual disclaimers of warranty. 23 MLR 790.

Implied warranties. 23 MLR 950.

Implied warranty. 27 MLR 123, 126.

512.15 IMPLIED WARRANTIES OF QUALITY AND FITNESS.

HISTORY. 1917 c. 465 s. 15; G.S. 1923 s. 8390; M.S. 1927 s. 8390.

In an action for damages for the breach of a warranty of the quality of certain building materials, the facts show an implied warranty and it does not affect the case that an express warranty also was proven. Kitowski v Thompson, 150 M 436, 185 NW 504.

Where defendant, a dealer in Duluth, ordered certain specified kinds of coffee from a broker in Philadelphia, and the broker sent coffee differing in kind and amount from the order, the action of the shipper amounted to a rejection of the defendant's offer, and the making of a new offer, and no sale was complete until the defendant in Duluth accepted the coffee. Lowry v Andresen, 153 M 498, 190 NW 985.

Defendant purchased phonographs from plaintiff giving notes. The one machine shipped did not work, and the plaintiff refused to repair it unless the defendant would pay the transportation. Held, defendant had a legal right to rescind the contract and return the machine, and there can be no recovery on the notes. Loveland v Dols, 157 M 222, 195 NW 918.

Representations made regarding a bull calf held to be "trade talk" and not a warranty. Frederickson v Hackney, 159 M 234, 198 NW 806.

Where the defendant defends on the ground that goods received were of unmerchantable quality he must bear the burden of proof. Pasch v Johnson, 162 M 355, 202 NW 820.

An advertisement for the sale of seed corn held to be an express warranty. Baumgartner v Glesener, 171 M 289, 214 NW 27.

When the seller of personal property knows the purpose for which it is to be used, and the buyer relies upon the seller's judgment that it is suitable therefor,

there is an implied warranty that it is reasonably fit for such purpose. Such implied warranty arises independently and outside of the contract and is imposed by operation of law. Bekkevold v Potts, 172 M 87, 216 NW 790.

Plaintiff sued for a balance due on a purchase of machinery for the operation of a stone quarry. The defendant counter-claimed, and the court held the goods were not as guaranteed and defendant prevailed. Harris v Heiner, 180 M 19, 230 NW 114.

Plaintiff recovered a verdict in an action to recover damages for breach of warranty in the sale of an automobile. Hoffman v Piper, 181 M 603, 233 NW 313.

Where the buyer, ignorant of his own requirements, informs the seller of his particular needs, and the seller undertakes to select and supply a suitable article and the buyer relies upon the judgment of the seller, section 512.15, subdivision 1, applies, even if the article selected is described in the contract of sale by its trade-mark. Iron Fireman v Brown, 182 M 399, 234 NW 685.

A breeder of registered cows is liable on an implied warranty and the cows are fit for the purposes intended and are not infected with the disease. Alford v Kruse, 183 M 158, 235 NW 903.

The conditional sales contract, though containing certain express warranties as to workmanship and material in the machinery sold, does not exclude implied warranty of fitness for the work the machines were sold to do. National v Moore, 189 M 632, 250 NW 677; Federal Motor v Stanus, 190 M 5, 250 NW 713.

Where a large quantity of lumber was ordered by written contract, the buyer selecting the grades and dimensions, there was no implied warranty of fitness for the intended purpose simply because the seller was familiar with the specifications which were part of the contract under which the buyer was erecting, for a third party, the building in which the lumber was to be used. Central v Reddinger, 193 M 42, 257 NW 656.

Where seed is sold to a farmer for sowing and raising a given kind of crop therefrom, and such facts are known to the seller, there is an implied warranty that the seed is reasonably fit for the purpose intended, and where the tag or label attached to bag or package of seed states the kind of seed and that it is 98 per cent pure, such statement is a warranty of the purity of the seed as so stated. Mallery v Northfield, 196 M 129, 264 NW 573.

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. That the goods are second-hand does not preclude the warranty for the purpose. Edelman v Queen, 205 M 7, 284 NW 838.

In an action based upon a breach of implied warranty of fitness for the purpose, instruction that "the question is whether or not this machine operated as such machines do and should as they are constructed, or were constructed at that time" was erroneous. Juvland v Wood, 212 M 310, 3 NW(2d) 772.

On issue of defendant's waiver of provision for three-day notice of claimed breach of implied warranty of fitness for the purpose, instruction requiring actual notice to the defendant of some defect in the machine as an element of waiver was error in that it unduly restricted the scope of that warranty. Juvland v Wood, 212 M 313, 3 NW(2d) 773.

In an action to recover damages for breach of an implied warranty of fitness for the purpose, insurance coverage of the plaintiff, under which he has been partially paid for his loss, will not relieve the defendant of liability for his wrong. Donohue v Acme, 214 M 424, 8 NW(2d) 618.

The seller is not bound by implied warranty of fitness for purposes provided for under section 512.15 (1), where provisions of the contract prepared by purchaser, indicate that purchaser does not rely upon seller's skill or judgment in connection with articles sold, but rather upon the definite specifications, requirements, and provisions set forth in said contract. Delbitt v Itasca Co. 215 M 551, 10 NW(2d) 715.

Implied warranty of fitness for use intended. 4 MLR 543.

Implied warranty of merchantability. 11 MLR 486.

Implied and oral warranties and parol evidence rule. 12 MLR 209.

Implied warranty of articles sold under trade name. 15 MLR 479.

Implied warranty of purpose in the sale of second-hand goods. 15 MLR 723.

Consequential damages for breach of merchantability. 16 MLR 219.

Claim by purchaser of liquor for breach of warranty of fitness for the purpose. 16 MLR 319.

Validity of statute prohibiting waiver of implied warranty of fitness. 17 MLR 207.

Parol evidence rule and warranties of goods sold. 19 MLR 725.

Implied warranty; liability of restauranteur. 20 MLR 527.

Liability of a supplier of goods to one other than his immediate vendee. 21 MLR 315.

Contractual disclaimer of warranty. 23 MLR 784.

Effect of buyer's inspection upon existence of an express or implied warranty in the sale of goods. 23 MLR 940.

Liability of manufacturer to subpurchaser for breach of express warranty. 25 MLR 83.

Implied warranties. 27 MLR 117, 123, 141, 154, 166.

SALE BY SAMPLE

512.16 IMPLIED WARRANTIES IN SALE BY SAMPLE.

HISTORY. 1917 c. 465 s. 16; G.S. 1923 s. 8391; M.S. 1927 s. 8391.

Where the goods shipped differed materially from the order, the action of the plaintiff operated as a rejection of the customer's order, and the shipment was a counter offer and there was no completed contract until the goods were finally accepted. Lowry v Andresen, 153 M 498, 190 NW 985.

The uniform sales act gives the purchaser the right to rescind for breach of warranty, provided he did not know of the breach when the goods were accepted, and gives notice of his election within a reasonable time. Orange v Stacy, 156 M 436, 195 NW 147.

An implied warranty is not one of the contractual elements of an agreement. It is a child of the law. It may exist in connection with an express warranty. An implied warranty is superseded by an express warranty only when the two are inconsistent. Bekkevold v Potts, 173 M 87, 216 NW 790.

Implied and oral warranties and the parol evidence rule. 12 MLR 209.

Parol evidence rule and warranties. 19 MLR 731.

Contractual disclaimer of warranties. 23 MLR 784.

Implied warranties. 23 MLR 944.

A disclaimer is a refusal of a seller to warrant. 27 MLR 157.

TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

512.17 NO PROPERTY PASSES UNTIL GOODS ARE ASCERTAINED.

HISTORY. 1917 c. 465 s. 17; G.S. 1923 s. 8392; M.S. 1927 s. 8392.

The delivery of certain cement was deemed to have been completed when it was deposited in plaintiff's warehouse, and any subsequent loss by deterioration was that of the defendants. Freeman v Morris, 185 M 503, 241 NW 677.

512.18 PROPERTY IN SPECIFIC GOODS PASSES WHEN PARTIES SO INTEND.

HISTORY. 1917 c. 465 s. 18; G.S. 1923 s. 8393; M.S. 1927 s. 8393.

Title to the threshing machine did not pass with act of leaving machine in buyer's custody, nor did it pass until the sale and purchase dealings were complete, and the purchase money lien was held superior to a lien placed on the property prior to the completion of the purchase. Schnirring v Stubbe, 177 M 440, 225 NW 389.

Question of ownership of car causing damage. Ludwig v Haugen Motor Co. 187 M 318, 245 NW 371.

Plaintiff recovered the value of his truck which he left with dealer to be applied at an agreed price upon the purchase of a car. Mishler v Nelson, 194 M 499, 260 NW 865.

Title to specific property passed at once upon execution of the written instrument. Radloff v Bragmus, 214 M 130, 7 NW(2d) 491.

Title in property is presumed to pass when the contract is made, if goods are properly identified and nothing further remains than delivery of the goods and paying the price. Albrecht v Landy, 27 F. Supp. 65.

Right of person buying drink on Sunday to recover from manufacturer for breach of implied warranty. 10 MLR 446.

The expression of the terms of transactions. 14 MLR 34.

512.19 RULES FOR ASCERTAINING INTENTION.

HISTORY. 1917 c. 465 s. 19; G.S. 1923 s. 8394; M.S. 1927 s. 8394.

When the seller of goods delivers them to a carrier for transportation to the buyer pursuant to the contract between the seller and buyer, a presumption arises that the property in the goods passes to the buyer. If the bill of lading issued to the seller provides that the goods shall be delivered to him on his order, the property in the goods is reserved to the seller, unless it would have passed to the buyer except for the form of the bill of lading, and in such case the seller retains the property in the goods only to secure the buyer's performance of the contract. Banik v Railway, 147 M 175, 179 NW 899.

In a sale of future goods by description the title passes when the goods of that description, in a deliverable state, are unconditionally appropriated to the contract by both parties or by either with the consent of the other. Cabbage loaded into a car, weighed and the weight tickets turned over to buyer's agent, would constitute an appropriation. Bundy v Meyer, 148 M 252, 181 NW 345.

An order for wine of pepsin was taken at Warren to be shipped C.O.D. by a dealer in Minneapolis. This was equivalent to furnishing liquor at Warren, and consequently no valid contract. State v Brown, 151 M 340, 186 NW 946.

It is a familiar rule that possession or control of the property is essential to the existence of a seller's lien. Such lien presupposes that title has passed to the buyer, but not possession. When possession is lost or control relinquished, the lien is gone. Hoven v Leedham, 153 M 95, 189 NW 601.

Goods were ordered to be shipped to the buyer by boat. They were shipped by rail. On May 4th they were ordered shipped at once. They were not shipped until September. Part was accepted and notice of cancelation given as to the unshipped portion. The later shipment was not accepted. Held, that as the shipment was not made in accordance with the order, the property in the goods did not pass to the buyer and delivery to the railroad company was not delivery of the goods. Ohio v Eimon, 154 M 420, 191 NW 910.

See as to procedure, Sargent v Bryan, 160 M 200, 199 NW 737; Cary v Satterlee, 166 M 507, 208 NW 408; Freeman v Morris, 185 M 503, 241 NW 677.

An accepted order for goods required the seller to ship them to the buyer. The goods were packaged and addressed to the buyer and set aside in seller's warehouse awaiting shipment. Held, this was not such an irrevocable appropriation of the goods as to complete the contract of sale, and when purchaser countermanded the order the seller cannot maintain an action for the purchase price. Westin v Berkner, 172 M 4, 214 NW 475.

Evidence did not conclusively show such legal delivery by the seller or appropriation by the buyer as to vest title as a basis of suit by the seller for the purchase price. Reese v Evans, 177 M 568, 246 NW 250.

Stolen Liberty bonds are subject to replevin from the possession of the federal reserve bank, and the owners are entitled to a directed verdict because Connolly, who presented the bonds for government redemption, was unable to show that he was holder in due course. Commercial v Connolly, 183 M 1, 235 NW 634.

Rights of an innocent purchaser of a new and unregistered automobile from a retail dealer may be subject to those of the assignee of a prior and duly record-

ed conditional sales contract. Section 512.23 should be read and construed with sections 512.25 and 513.12. Drew v Feuer, 185 M 133, 240 NW 114.

After calendars had been manufactured, printed, and set aside in plaintiff's shipping room for defendants under the contract, the latter attempted to repudiate. Held, that the property had passed and the contract was so far executed by plaintiff that defendants are liable for the purchase price. Dow v Bittner, 187 M 143, 244 NW 556.

On the record the jury was justified in finding that (1) the caskets were sold on consignment, and (2) were returned to plaintiff within a reasonable time. Meany v McCarthy, 199 M 117, 271 NW 99.

Where Madden made a cash purchase from plaintiff of a diamond and gave a forged check therefor, falsely representing himself to be the man whose name he forged, the check under the circumstances constituting a felony under the common law, title did not pass from the seller, but where the owner so clothes another with indicia of title as to deceive a bon afide purchaser, the purchaser will be protected against the true owner. The rule rests upon conduct, not actual title. Gustafson v Equitable Loan, 186 M 236, 243 NW 106.

A manufacturing company's purported sales to its wholly-owned subsidiary, of articles of fur in process of manufacture and not in a deliverable state on date of bill of sale, were not bona fide transactions. Albrecht v Landy, 27 F. Supp. 65.

Essentials of a proper return of goods to the vendor. 10 MLR 445.

Expression of the terms of transactions. 14 MLR 38.

What constitutes acceptance. 15 MLR 415.

Modified C.I.F. contracts (sale free of cost, insurance, and freight). 16 MLR 600.

Standards in the milk industry. 22 MLR 789.

512.20 RESERVATION OF RIGHT OF POSSESSION OR PROPERTY WHEN GOODS ARE SHIPPED.

HISTORY. 1917 c. 465 s. 20; G.S. 1923 s. 8395; M.S. 1927 s. 8395.

Where the seller of goods delivers them to a carrier for transportation to the buyer pursuant to the contract between the seller and the buyer, a presumption arises that the property in the goods passes to the buyer. If the bill of lading provides that the goods be delivered to the seller or his order, the property is reserved to the seller, unless it would have passed to the buyer except for the form of the bill of lading, and in such case the seller retains the property in the goods only to secure the buyer's performance of the contract. Banik v Railway, 147 M 175, 179 NW 899.

Upon a cash sale of personal property, a seller who gives the buyer possession can no longer claim a lien upon the property or the proceeds of its re-sale on the ground that a draft given in payment was dishonored after the property was received by the drawee. Hoven v Leedham, 153 M 95, 189 NW 601.

Risk of loss when seller retains bill of lading. 6 MLR 82.

Passage of title in a C.I.F. contract. 16 MLR 600.

512.21 SALE BY AUCTION.

HISTORY. 1917 c. 465 s. 21; G.S. 1923 s. 8396; M.S. 1927 s. 8396.

Where personal property has been bid in at an auction sale for more than $50.00, and it has not been actually received by the bidder, the contract of sale is not enforceable, unless there is a memorandum in writing in conformance with the statute. A memorandum made by the clerk must be regarded as if made by the auctioneer, and such memorandum is admissible in evidence. Sargent v Bryan, 153 M 198, 189 NW 935.

Distinction drawn between a chattel mortgage and a conditional sales contract. In a conditional sale the seller may have many conditions, while in the chattel mortgage the sole usual condition is payment of the purchase price. Re Halferty, 136 F(2d) 640.

Auctions "without reserve." 15 MLR 375.

512.22 RISK OF LOSS.

HISTORY. 1917 c. 465 s. 22; G.S. 1923 s. 8397; M.S. 1927 s. 8397.

TRANSFER OF TITLE

512.23 SALE BY PERSON NOT THE OWNER.

HISTORY. 1917 c. 465 s. 23; G.S. 1923 s. 8398; M.S. 1927 s. 8398.

Defense that the contract was signed and delivered upon an oral contract that it should not become operative until the happening of a future event was controlled by a finding that the person who dealt with the defendant was authorized to act for the plaintiff. National v Mitchell, 157 M 47, 195 NW 542.

Agent sold his principal's shock absorbers and agreed to accept credit therefor on his personal indebtedness to the purchaser. Evidence examined and held that purchaser had knowledge sufficient to put him upon inquiry and hence is chargeable with the knowledge that he would have obtained had he made inquiry. Defender v Schmelzel, 157 M 285, 196 NW 263.

A purchaser from a converter of personal property does not get title, in the absence of laches or waiver or estoppel or an applicable recording act and, though he purchases in good faith, if he refuses to deliver to the true owner upon demand he is liable for conversion. In this case the party making the sale of the diamonds was without authority to sell, and the purchaser was liable in conversion. Hindahl v American, 180 M 447, 231 NW 408.

Larson Bros. as permit holders cut ties on state lands. They furnished the required bond. They sold the ties to defendant and not paying the state, the bonding company did so and became subrogee, and brought action against the purchaser from Larson. Held, that defendant had full knowledge of the general conduct of the lumbering business and understood these ties were cut from state land, and that title to them remained in the state until paid for, and as between two innocent claimants the equities favor the bonding company. National v Webster, 187 M 50, 244 NW 290.

Estoppel of owner as against a bona fide purchaser; apparent authority of one who habitually deals in the goods. 15 MLR 837.

Rights of assignee of conditional sales contract against subsequent bona fide purchaser from original vendor. 16 MLR 689.

512.24 SALE BY ONE HAVING A VOIDABLE TITLE.

HISTORY. 1917 c. 465 s. 24; G.S. 1923 s. 8399; M.S. 1927 s. 8399.

A transfer of property other than an interest in land in satisfaction of or as security for a preexisting debt or other obligation is a transfer for value. Blumberg v Taggart, 213 M 48, 5 NW(2d) 388.

Vendor's right to rescind for fraud against a bona fide purchaser of a bill of lading issued and transferred before the goods are received by the carrier. 14 MLR 393.

Payment by worthless check; recovery of goods by original seller from innocent purchaser for value. 15 MLR 697.

512.25 SALE BY SELLER IN POSSESSION OF GOODS ALREADY SOLD.

HISTORY. 1917 c. 465 s. 25; G.S. 1923 s. 8400; M.S. 1927 s. 8400.

In an action involving lumber sold by the owners to plaintiff as it was in piles where manufactured, and being all the timber vendors had in that place, the evidence supports the holding that title and possession passed by the transaction, this vesting in the plaintiff clear title as against a subsequent purchaser, even though no attempt had been made to order it cut for shipment from July until the following February. Superior Box v Jakimaki & Johnson, 146 M 109, 177 NW 1022.

Rights of an innocent purchaser of a new and unregistered car from a retail dealer may be subject to those of the assignee of a prior and duly recorded conditional sales contract. Drew v Feuer, 185 M 133, 240 NW 114.

Reliance on indicia of ownership; bona fide purchase of county warrants endorsed in blank. 8 MLR 529.

Prevention of multiplicity of suits. 16 MLR 690.

Rights of bona fide purchasers. 24 MLR 828, 847.

512.26 CREDITORS' RIGHTS AGAINST SOLD GOODS IN SELLER'S POSSESSION.

HISTORY. 1917 c. 465 s. 26; G.S. 1923 s. 8401; M.S. 1927 s. 8401.

Where a carrier has delivered goods to the true owner, but has failed to take up an order bill of lading, not in the hands of an innocent holder for value, but in the hands of the shipper to whom it was issued, the holder of the bill cannot maintain an action of conversion against the carrier. Banik v Railway, 147 M 175, 179 NW 899.

Rights of bona fide purchasers. 24 MLR 899.

512.27 NEGOTIABLE DOCUMENTS OF TITLE.

HISTORY. 1917 c. 465 s. 27; G.S. 1923 s. 8401½; M.S. 1927 s. 8401½.

512.28 NEGOTIATION OF NEGOTIABLE DOCUMENTS BY DELIVERY.

HISTORY. 1917 c. 465 s. 28; G.S. 1923 s. 8402; M.S. 1927 s. 8402.

512.29 NEGOTIATION OF NEGOTIABLE DOCUMENTS BY ENDORSEMENT.

HISTORY. 1917 c. 465 s. 29; G.S. 1923 s. 8403; M.S. 1927 s. 8403.

512.30 NEGOTIABLE DOCUMENTS OF TITLE MARKED "NOT NEGOTIABLE."

HISTORY. 1917 c. 465 s. 30; G.S. 1923 s. 8404; M.S. 1927 s. 8404.

512.31 TRANSFER OF NON-NEGOTIABLE DOCUMENTS.

HISTORY. 1917 c. 465 s. 31; G.S. 1923 s. 8405; M.S. 1927 s. 8405.

512.32 WHO MAY NEGOTIATE A DOCUMENT.

HISTORY. 1917 c. 465 s. 32; G.S. 1923 s. 8406; M.S. 1927 s. 8406.

Negotiability of a bill of lading under the federal bills of lading act. 1 MLR 69.

Various grounds of defeasance of legal and equitable titles. 6 MLR 89.

Reliance on indicia of ownership. 8 MLR 528.

Factors; right to pledge; negotiable documents of title. 12 MLR 640.

512.33 RIGHTS OF PERSON TO WHOM DOCUMENT HAS BEEN NEGOTIATED.

HISTORY. 1917 c. 465 s. 33; G.S. 1923 s. 8407; M.S. 1927 s. 8407.

512.34 RIGHTS OF PERSON TO WHOM DOCUMENT HAS BEEN TRANSFERRED.

HISTORY. 1917 c. 465 s. 34; G.S. 1923 s. 8408; M.S. 1927 s. 8408.

512.35 TRANSFER OF NEGOTIABLE DOCUMENT WITHOUT ENDORSEMENT.

HISTORY. 1917 c. 465 s. 35; G.S. 1923 s. 8409; M.S. 1927 s. 8409.

512.36 WARRANTIES ON SALE OF DOCUMENT.

HISTORY. 1917 c. 465 s. 36; G.S. 1923 s. 8410; M.S. 1927 s. 8410.

A corporation issuing a certificate of stock continuously holds out to the world that the stock described is valid and genuine. Shepard v City Co. 24 F. Supp. 682.

512.37 ENDORSER NOT A GUARANTOR.

HISTORY. 1917 c. 465 s. 37; G.S. 1923 s. 8411; M.S. 1927 s. 8411.

512.38 WHEN NEGOTIATION NOT IMPAIRED BY FRAUD, MISTAKE, OR DURESS.

HISTORY. 1917 c. 465 s. 38; G.S. 1923 s. 8412; M.S. 1927 s. 8412.

512.39 ATTACHMENT OR LEVY UPON GOODS FOR WHICH A NEGOTIABLE DOCUMENT HAS BEEN ISSUED.

HISTORY. 1917 c. 465 s. 39; G.S. 1923 s. 8413; M.S. 1927 s. 8413.

512.40 CREDITORS' REMEDIES TO REACH NEGOTIABLE DOCUMENTS.

HISTORY. 1917 c. 465 s. 40; G.S. 1923 s. 8414; M.S. 1927 s. 8414.

PERFORMANCE OF THE CONTRACT

512.41 SELLER MUST DELIVER AND BUYER ACCEPT GOODS.

HISTORY. 1917 c. 465 s. 41; G.S. 1923 s. 8415; M.S. 1927 s. 8415.

The court directed a verdict for the full amount of plaintiff's claim. Held, error, since under the contract for sale of the business the fixed purchase price payable in cash was to be reduced by the amount of the liabilities which the purchaser had agreed to pay as demanded. To entitle plaintiff to a verdict in the full amount directed it was necessary to prove that it had paid or compelled to pay said liabilities, but it was necessary to prove that they were past due and unpaid after demand. Peoples v Blegen, 159 M 158, 198 NW 425.

In construing a contract between parties for the sale and purchase of condensed milk, where the agreement on the part of the vendor was to furnish a specified amount, at a specified price, to be shipped and delivered as ordered, the contract must be performed within a reasonable time, depending on the circumstances of the case. In determining such question, a general usage or custom may be considered. Toresdahl v Armour, 161 M 266, 201 NW 423.

Plaintiff manufacturer sold defendant retailer a plow with the understanding that if it could not be sold it was to be returned for credit. Being unable to sell, they notified plaintiff collector and blockman and asked that it be reshipped. Before it was removed it was destroyed by fire. Held to be a question for the jury. Northern v Torgerson, 182 M 622, 235 NW 378.

The evidence did not require a finding of a sale and delivery of merchandise by the plaintiff to the defendant, and the finding of the court in favor of defendant is affirmed. Great Lakes v Borgen, 184 M 25, 237 NW 609.

Contract and accompanying correspondence held to require judgment for the vendor for the unpaid price of player piano sold defendants under an earnings contract. Morse v Nagris, 185 M 266, 240 NW 899.

Sale contract by milking machine manufacturer held not to obligate instalation, but merely to provide free service, and where connection with motive power was improperly done by retail dealer, and cows were killed, the manufacturer is not liable. Diddams v Empire, 185 M 270, 240 NW 895.

Vendor held liable for faulty instalation of furnace. Wright v Holland, 186 M 265, 243 NW 387.

Vendor may be liable for faulty construction of washing machine. Stone v Puffer-Hubbard, 187 M 173, 244 NW 555.

Vendor may be liable for vending a dangerous tar compound without proper notice as to use. Rost v Kroke, 195 M 219, 262 NW 450.

As to mineral oil contaminated with formalin or formaldahyde in deleterious quantity. Berry v Daniels, 195 M 366, 263 NW 115.

A contract in form for future delivery of personal property not intended to represent an actual transaction, but merely to pay and receive the difference between the agreed price and the market price at a future day, is in the nature of a wager on the future price of the commodity, and is void. Downey v Peterson, 203 M 491, 281 NW 877.

A buyer has the right to chose, not only the goods he purchases, but the seller also. Jorgenson v First National, 217 M 413, 14 NW(2d) 618.

Contract between manufacturer and dealer construed as to scope of territory and as to amount of guaranty deposit. Ewing v Von Nieda, 76 F(2d) 177.

Dealer liable for injuries caused by patent and readily discoverable defect in steering mechanism of motor car. Egan v Bruner, 102 F(2d) 373.

Tort liability of manufacturers. 19 MLR 752.

Liability of restaurateur for defective food. 20 MLR 527.

Liability of supplier of goods to one other than his immediate vendee. 21 MLR 315.

Recovery for breach of implied warranty, in case of wrongful death. 23 MLR 92.

Liability of retail dealer for defective food products. 23 MLR 585.

512.42 DELIVERY AND PAYMENT ARE CONCURRENT CONDITIONS.

HISTORY. 1917 c. 465 s. 42; G.S. 1923 s. 8416; M.S. 1927 s. 8416.

Previous dealings, or a well established usage or custom of trade, cannot inject into a sales contract an obligation on the part of the seller to deliver the goods sold, upon being tendered a draft drawn by buyer's agent upon the buyer. Stein v Shapiro, 145 M 60, 176 NW 54.

Plaintiff offered no proof of delivery and his objection to the introduction of evidence to show he had retained and re-sold the property should have been overruled and the evidence admitted. Sargent v Bryan, 160 M 200, 199 NW 737.

A contract for future delivery not intended as an agreement for actual delivery, but merely operating as a wager, is void. Downey v Peterson, 203 M 491, 281 NW 877.

Since the writing referred to plaintiff's entire flock of turkeys there was an unconditional contract between the parties for the present sale of specific property, then in deliverable state, and consequently title to the property immediatly passed. Radloff v Bragmus, 214 M 130, 7 NW(2d) 491.

Effect of provision for delivery at buyer's option. 17 MLR 675.

Payment and delivery as concurrent or independent conditions. 19 MLR 816.

512.43 PLACE, TIME AND MANNER OF DELIVERY.

HISTORY. 1917 c. 465 s. 43; G.S. 1923 s. 8417; M.S. 1927 s. 8417.

Plaintiff sold a tractor to Pasch, part cash and accepted an old steam engine for the balance, defendant agreeing to take the engine at a price. Defendant gave plaintiff his check for the amount, then demanded a bill of sale of the engine, and when plaintiff refused, defendant stopped payment on the check. The old engine was tendered to defendant and plaintiff brought suit. Held, (1) one who buys personal property then on the premises of a third party takes it where it is; (2) the buyer is not entitled to a bill of sale; (3) the seller may rescind the sale by any overt act, and if he so rescinds he cannot enforce payment of the check. Case v Bargabos, 143 M 10, 172 NW 883.

Goods ordered for immediate shipment were delayed four months; to be shipped by boat, were shipped by rail. Held, not a proper compliance with the contract, and vendee may rescind as to the unaccepted part of the shipment. Ohio v Eimon, 154 M 420, 191 NW 910.

Essentials of a proper return of goods to the vendor. 10 MLR 445.

Dependent and independent covenants. 17 MLR 427.

512.44 DELIVERY OF WRONG QUANTITY.

HISTORY. 1917 c. 465 s. 44; G.S. 1923 s. 8418; M.S. 1927 s. 8418.

Seller in Philadelphia shipped coffee to vendee in Duluth, but the shipment varied in quantity and quality from the order. Held, not a compliance, but where the consignee accepted the shipment it constituted a new offer by the consignor and acceptance by the consignee and a completed contract. Lowry v Andresen, 153 M 498, 190 NW 985.

Evidence of deficient quality and failure to come up to grade justifies a refusal to accept the potatoes. Palmer v Palmer, 161 M 526, 201 NW 537.

In the absence of evidence showing that mere estimates, as distinguished from actual scales, were not dependable, such estimates made by buyer's representation, the shipper refusing to participate, should be considered final unless attacked by pleading and proof of fraud or bad faith. Hayday v Hammermill, 176 M 315, 223 NW 614.

The receipt and cashing of a check labeled "In full up to date", under the circumstances as disclosed by the evidence, was not an accord and satisfaction. Bashaw v City Market Co. 187 M 548, 246 NW 358.

Where the shortage of delivery was capable of replacement and was replaced from purchases in carload lots at wholesale price, the recovery is measured by the wholesale price and not at retail market price. Illinois Central v Crail, 281 US 65, 74 L. Ed. 703, 50 SC 180.

Effect of breach after past performance. 5 MLR 335.

Where seller delivers less than the agreed quantity. 21 MLR 560.

512.45 DELIVERY IN INSTALMENTS.

HISTORY. 1917 c. 465 s. 45; G.S. 1923 s. 8419; M.S. 1927 s. 8419.

Where the time for delivery is fixed, failure to deliver within the time is a breach of contract. If no time be fixed, failure to deliver within a reasonable time is a breach. No demand is necessary on the part of the buyer. Where the shipments are made from time to time, a request on the part of the buyer not to ship until further notice justifies the seller in suspending delivery during the period named. The buyer's failure, without excuse, to make an instalment payment when due relieves the seller from making further instalment deliveries, but where the seller has first defaulted and continues to be, and has caused the buyer substantial damage, and the buyer is ready and willing to accept deliveries and pay instalments and is solvent, the seller is not justified in holding up further deliveries. Hjorth v Albert Lea, 142 M 387, 172 NW 488.

Instalment contracts; renunciation. 1 MLR 510.

Clauses in sales contracts protecting the seller against impairment of the buyer's credit. 20 MLR 368.

When failure to pay instalments on time constitutes a material breach. 23 MLR 246.

512.46 DELIVERY TO A CARRIER ON BEHALF OF THE BUYER.

HISTORY. 1917 c. 465 s. 46; G.S. 1923 s. 8420; M.S. 1927 s. 8420.

Where goods were to be shipped by boat but were shipped by rail there was no delivery, but the shipment constituted a new offer on the part of the shipper and acceptance by the buyer made a completed contract as to those goods accepted. Ohio v Eimon, 154 M 424, 191 NW 911.

Presumption of payment upon delivery of C.O.D. shipment to purchaser. 10 MLR 548.

512.47 RIGHT TO EXAMINE THE GOODS.

HISTORY. 1917 c. 465 s. 47; G.S. 1923 s. 8421; M.S. 1927 s. 8421.

512.48 WHAT CONSTITUTES ACCEPTANCE.

HISTORY. 1917 c. 465 s. 48; G.S. 1923 s. 8422; M.S. 1927 s. 8422.

Shoes sold from samples carry an implied warranty that they are merchantable, and if not, or if they contain defects not apparent on reasonable examination of the sample, the purchaser may rescind, or if he accepts, his acceptance is governed by section 512.48. What is reasonable time within which to rescind is a question of fact. Laganas v Sharood, 173 M 535, 217 NW 941.

The receipt and cashing of a check labeled "In full to date", under the circumstances disclosed in the opinion, does not constitute accord and satisfaction. Bashaw v City Market, 187 M 548, 246 NW 358.

Sale of truck under its trade name, and the inclusion of express warranties in the conditional sales contract, did not exclude the usual rule as to implied warranties, and the time during which the seller attempted to remedy the defect, the "reasonable time" within which the buyer had to rescind, did not run. Federal v Shanus, 190 M 5, 250 NW 713.

What constitutes acceptance. 15 MLR 415.

Rescission for breach of warranty. 19 MLR 133.

512.49 ACCEPTANCE DOES NOT BAR ACTION FOR DAMAGES.

HISTORY. 1917 c. 465 s. 49; G.S. 1923 s. 8423; M.S. 1927 s. 8423.

The contract gave the buyer 30 days after receiving the goods in which to discover and report defects in quality and provided that he be estopped from claiming defects unless reported within such 30 days. Having given no notice within that time, the vendee cannot claim damages. Marshall v Hintz, 156 M 301, 194 NW 772.

Plaintiff sold two carloads of lumber to the defendant, who claims breach of warranty as to quality. Evidence sustains a finding that defendant failed to give notice to the plaintiff of its claim within a reasonable time. White Pine v Madsen, 166 M 228, 207 NW 628.

In an action on a trade acceptance, the defendant counterclaimed, claiming damage for breach of contract in that the oil would not flow at a temperature of 15 degrees below zero, and would not satisfactorily lubricate a gasoline engine as warranted. Held, to be a proper counter-claim, and that when discovery of defect was not made until January, the notice of defect was not too late. Federal v Peoples, 179 M 467, 229 NW 575.

An attempted rescission of a sale of a fur coat, seven months after the purchase and six months after discovery of the alleged breach, is not within a reasonable time as a matter of law. Stewart v Menzel, 181 M 347, 232 NW 522.

In a contract for a sale of pulpwood, the measurement and acceptance to be at Erie, there was ambiguity and the facts as to time, place, and method of inspection were for the jury. Hayday v Hammermill, 184 M 8, 237 NW 600.

The right to rescind a sale of personal property on account of breach of warranty must be exercised within a reasonable time after discovery of the facts. Whether the right is exercised within a reasonable time is generally for the jury, but conditions may exist that make it a question of law. Laundry Service v Fidelity, 187 M 180, 245 NW 36.

Certain fire-escapes found to satisfy the warranties as of the time they were installed. Potter v Bemidji, 188 M 32, 246 NW 470.

The conditional sales contract containing express warranties does not exclude implied warranty of fitness for the work the machines were sold to do, and the evidence supports the verdict of unfitness. National v Moore, 189 M 632, 250 NW 677; Federal v Shanus, 190 M 5, 250 NW 713.

A buyer is not entitled to maintain an offset for damages for defects in the lumber when he does not comply with a trade usage which entered into the contract, and related to notice of the defect and official reinspection. Central v Redlinger, 193 M 42, 257 NW 656.

The evidence does not justify the holding as a matter of law that the plaintiff was estopped from recovering damages for breach of warranty of seed purchased,

on the ground that he failed to inspect the seed before sowing same. Mallery v Northfield, 196 M 129, 264 NW 573.

Where conditional buyer of fan in bowling alley failed to notify the seller, but made substantial repairs as needed, in the vendor's action for the purchase price the vendee could not recover on a counter-claim based on a "recission", and plaintiff should not have judgment non obstante because on another action the defendant might be able to show defective workmanship and might obtain an award of damages. Reliance v Flaherty, 211 M 236, 300 NW 603.

In action by seller of oil for unpaid purchase price, buyer was not precluded from counter-claiming for breach of warranty on ground that letter to seller saying that if the oil should darken buyer would expect seller to stand behind buyer provided exclusive remedy for breach of contract. Berry v Apex, 215 M 198, 9 NW(2d) 437; DeWitt v Itasca, 215 M 551, 10 NW(2d) 715.

What constitutes sufficient notice under the sales act of a breach of warranty, 15 MLR 480.

Sufficiency of a signature to a memorandum. 16 MLR 325.

Re-sale contract of vendee as affecting measure of damages for delay in delivery. 16 MLR 592.

Failure of price-fixing method. 21 MLR 563.

Notice within a reasonable time of election to rescind. 21 MLR 614.

Inspection. 27 MLR 153.

512.50 BUYER IS NOT BOUND TO RETURN GOODS WRONGLY DELIVERED.

HISTORY. 1917 c. 465 s. 50; G.S. 1923 s. 8424; M.S. 1927 s. 8424.

512.51 BUYER'S LIABILITY FOR FAILING TO ACCEPT DELIVERY.

HISTORY. 1917 c. 465 s. 51; G.S. 1923 s. 8425; M.S. 1927 s. 8425.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

512.52 DEFINITION OF UNPAID SELLER.

HISTORY. 1917 c. 465 s. 52; G.S. 1923 s. 8426; M.S. 1927 s. 8426.

The seller of the live stock exchanged his possession of the live stock by delivering same to the carrier and took in exchange buyer's draft on the commission merchant to whom the property was consigned for sale. When the draft was dishonored he had only the rights of an unpaid seller in the property after surrendering possession to the buyer. Hoven v Leedham, 153 M 100, 189 NW 601.

If, by accepting an offer to sell, the buyer has fettered his freedom to buy from whomever he pleases, or if, by the contract of sale, the seller has restricted his freedom to sell to others, there is a sufficient consideration for the contract. Distinguishing Bailey v Austrian, 19 M 535. Defendant's refusal to perform the contract gave rise to a present cause of action, although by the terms of the contract the defendant city was given a choice between two alternatives when it issued the certificates and had not made a choice before bringing the action. Marshall v Kalman, 153 M 320, 190 NW 597.

Finding for the seller on an issue as to whether defendant purchased the tractor or merely took to sell for the plaintiff. Gibbons v Herschmann, 160 M 326, 200 NW 293.

Seller cannot declare forfeiture of sales contract during extension granted by him. McCarron v Commercial, 167 M 322, 209 NW 15.

Price to be fixed by a third party. 16 MLR 785.

512.53 REMEDIES OF AN UNPAID SELLER.

HISTORY. 1917 c. 465 s. 53; G.S. 1923 s. 8427; M.S. 1927 s. 8427.

Where on a cash sale the buyer gives his check for the purchase price, the payment is conditional only, and if the check be not paid the seller may rescind the sale and retain or retake his goods. The seller may rescind by any overt act evincing an intention to do so, and if he rescinds he cannot thereafter enforce payment of the check. Case v Bargabos, 143 M 8, 172 NW 882.

An acceptance of goods not shipped in accordance with the terms of the buyer's order waives his right to insist on the seller's compliance with such terms. Banik v Railway, 147 M 175, 179 NW 899.

Upon a cash sale of live stock, a seller who gives the buyer possession can no longer claim a lien upon the property or the proceeds of its re-sale on the ground that a draft given in payment was dishonored after the property was received by the drawee. Hoven v Leedham, 153 M 95, 189 NW 601.

Where a store was sold at a price, the buyer to pay seller's outstanding debts and deduct the amount from the agreed price, to entitle the seller to verdict for the full amount it was not necessary that it prove that it had paid the liabilities, but it was necessary to prove the debts were past due and unpaid after demand. Peoples v Blegen, 159 M 158, 198 NW 425.

A vendor in a conditional sale of law books may attempt a replevin, and while the action is pending may dismiss and sue on the notes. Thompson v Brown, 171 M 483, 214 NW 284.

A contract for a deed is a non-negotiable instrument, and an assignee takes it subject to the grantee's rights, and such grantee may assert the same rights against the assignee as were available against the grantor. Dennis v Swanson, 176 M 267, 223 NW 288.

Seller upon breach may (1) reclaim the property, (2) treat the sale as absolute and collect the debt, or (3) sue to foreclose the lien. Holmes v Schnedler, 176 M 483, 223 NW 908; Reese v Evans, 187 M 568, 246 NW 250.

Where a contract is completed, an action will lie on the common counts for the balance due. Wunderlich v Lovell, 178 M 275, 226 NW 933.

One not a party to a contract of pledge, but who possibly and at best is merely an incidental beneficiary thereof, cannot base any cause of action thereon. Lincoln v Doe, 183 M 19, 235 NW 392.

If payment is made by check it is conditional, and the delivery of the property is also conditional, and if the check is not good the seller may retake the property. Under such circumstances title does not pass. Gustafson v Equitable, 186 M 236, 243 NW 106.

Stoppage in transitu. 13 MLR 702.

Possession necessary to support seller's lien. 18 MLR 603.

Remedies of conditional seller on buyer's default. 19 MLR 714.

Prospective inability to perform. 20 MLR 388.

Seller's remedies in credit sale upon buyer's insolvency. 23 MLR 105.

UNPAID SELLER'S LIEN

512.54 WHEN RIGHT OF LIEN MAY BE EXERCISED.

HISTORY. 1917 c. 465 s. 54; G.S. 1923 s. 8428; M.S. 1927 s. 8428.

Payment by check is conditional only, and if the check is not paid the seller in a cash sale may rescind the sale and retain or retake his goods. Plaintiff's negotiations with a third party endeavoring after stoppage of payment of defendant's check may possibly be construed as rescission. Case v Bargobas, 143 M 8, 172 NW 882.

Upon breach of conditional sales contract by buyer, the seller may (1) reclaim the property, (2) treat the sale as absolute and sue for the unpaid balance, or (3) enforce his lien by sale and recover the deficiency judgment. Reese v Evans, 187 M 568, 246 NW 250.

A conditional seller has an equitable lien upon the property conditionally sold, which may be foreclosed by appropriate action, and an action in replevin to

obtain possession in order to foreclose is not deemed an election of remedies. National v Ness, 204 M 148, 282 NW 827.

Prospective inability of parties. 20 MLR 388.

Protection of seller against impairment of buyer's credit. 20 MLR 367.

Presumptions of fraud. 24 MLR 840.

512.55 LIEN AFTER PART DELIVERY.

HISTORY. 1917 c. 465 s. 55; G.S. 1923 s. 8429; M.S. 1927 s. 8429.

512.56 WHEN LIEN IS LOST.

HISTORY. 1917 c. 465 s. 56; G.S. 1923 s. 8430; M.S. 1927 s. 8430.

Seller who releases possession of cattle and accepts purchaser's draft on commission merchant loses his lien on the property. Hoven v Leedham, 153 M 8, 189 NW 601.

Plaintiff sold machinery under a contract, and later accepted a mortgage on the same and separate property. It did not exercise its right to take the machinery, but elected to foreclose its mortgage, so the right to reclaim the machinery as a chattel was lost. St. Paul Trust v U. S. Cereal, 165 M 259, 206 NW 385.

The bringing of and dismissal of a replevin action after issue joined did not constitute an election, and the seller may bring suit on the notes. Thompson v Brown, 171 M 483, 214 NW 284.

Reducing to judgment a past due instalment due under a conditional sales contract is an election to treat the sale as absolute, and defeats the right to take possession after a further default. Holmes v Schnedler, 176 M 483, 223 NW 908.

Suit by plaintiff, after defendant had refused to settle for and receive the car, did not invest defendant with the title and possession in the situation shown by the evidence. Reese v Evans, 187 M 568, 246 NW 250.

Stoppage in transitu. 13 MLR 704.

Foreclosure of lien. 17 MLR 80.

Effect of delivery as to loss of lien. 24 MLR 840.

The term "rent" includes owner's share of crops. 1934 OAG 840, Aug. 8, 1933 (412a-25).

STOPPAGE IN TRANSITU

512.57 SELLER MAY STOP GOODS ON BUYER'S INSOLVENCY.

HISTORY. 1917 c. 465 s. 57; G.S. 1923 s. 8431; M.S. 1927 s. 8431.

Stoppage in transitu. 13 MLR 702.

What constitutes a sufficient delivery to cut off the right of stoppage. 18 MLR 485.

Clauses in sales contracts protecting seller against impairment of the buyer's credit. 20 MLR 367.

512.58 WHEN GOODS ARE IN TRANSIT.

HISTORY. 1917 c. 465 s. 58; G.S. 1923 s. 8432; M.S. 1927 s. 8432.

512.59 WAYS OF EXERCISING THE RIGHT TO STOP.

HISTORY. 1917 c. 465 s. 59; G.S. 1923 s. 8433; M.S. 1927 s. 8433.

RE-SALE BY THE SELLER

512.60 WHEN AND HOW RE-SALE MAY BE MADE.

HISTORY. 1917 c. 465 s. 60; G.S. 1923 s. 8434; M.S. 1927 s. 8434.

Seller under a conditional contract brought suit for past due instalments and garnisheed his wages; thereupon the debtor sold the car and filed a petition in bankruptcy, and seller then dismissed his suit and garnisheed and instituted replevin proceedings. Held, clarifying previous decisions of this court that the bringing of suit was not such an election as would vest title in the buyer and replevin under the circumstances would lie. Midland v Osterberg, 210 M 216, 275 NW 683.

Prospective inability of buyer. 20 MLR 388.

RESCISSION BY THE SELLER

512.61 WHEN AND HOW THE SELLER MAY RESCIND THE SALE.

HISTORY. 1917 c. 465 s. 61; G.S. 1923 s. 8435; M.S. 1927 s. 8435.

Warranties and parol evidence rule. 12 MLR 222.

512.62 EFFECT OF SALE OF GOODS SUBJECT TO LIEN OR STOPPAGE IN TRANSITU.

HISTORY. 1917 c. 465 s. 62; G.S. 1923 s. 8436; M.S. 1927 s. 8436.

Types of bills of lading, stoppage in transitu. 13 MLR 704.

ACTIONS FOR BREACH OF THE CONTRACT
REMEDIES OF THE SELLER

512.63 ACTION FOR THE PRICE.

HISTORY. 1917 c. 465 s. 63; G.S. 1923 s. 8437; M.S. 1927 s. 8437.

Memorandum entered by the clerk at an auction in a sales book at the time bid was accepted may be properly admitted as evidence of the contract when suit is brought thereon, but evidence of resale by seller is admissible under a general demand. Sargent v Bryan, 153 M 202, 189 NW 937, 160 M 200, 199 NW 737.

In an action for balance due on a mixed delivery of wheat and flax, the defendant prevailed on the evidence of the elevator company and its records. Kittelson v Farmers, 166 M 478, 208 NW 190.

An accepted order for goods required the seller to ship them to the buyer. Setting the goods aside in seller's warehouse, boxed and addressed to the buyer, was not such an appropriation as to constitute delivery, and did not furnish grounds on which plaintiff can sue. Western v Berkner, 172 M 4, 214 NW 475.

Evidence sufficient to show liability of purchaser of window sash. Lawson v Walstad, 177 M 560, 225 NW 725.

Plaintiff, the payee, in certain notes and contract, applied to the defendant finance company for a loan, but after negotiations sold the notes and contract to the defendant on certain terms. Suit was brought to recover the overage after the original debtor had paid the notes. Held, parol evidence is admissible to show the contract meaning of "value received" in the contract. Adams v Reliance, 187 M 209, 244 NW 810.

Defense set out by purchaser was the representation that certain other attorneys had purchased a similar set of books, held to be immaterial. Thompson v Peterson, 190 M 566, 252 NW 438.

The seller's suit for the price, under the circumstances in this case, under a conditional contract is not inconsistent with a dismissal of the suit and an action in replevin to enforce his reserved title and right to possess on default. The action started and dismissed did not constitute an election. Midland v Osterberg, 210 M 216, 274 NW 681.

Price fixed by a third party. 16 MLR 785.

Implied conditions; dependent and independent contracts. 17 MLR 423.

Effect of provision for delivery at buyer's option. 17 MLR 675.

Prospective inability of buyer. 20 MLR 388.

Quasi-contractual recovery in law of sales. 21 MLR 529.
Refusal of buyer to accept goods. 21 MLR 723.

512.64 ACTION FOR DAMAGES FOR NON-ACCEPTANCE OF THE GOODS.

HISTORY. 1917 c. 465 s. 64; G.S. 1923 s. 8438; M.S. 1927 s. 8438.

When the purchaser repudiates his contract or manifests his inability to perform, the seller may cease performance and recover damages to include profit he would have made, the burden of proof as to breach being on the seller. McRae v Itasca, 153 M 260, 190 NW 72.

Plaintiff sold 15 carloads of potatoes to defendant at a stated price. Defendant accepted and paid for eight loads, and refused to accept the others. Plaintiff stored and later sold the potatoes at a lower price. Held, he may recover his expense and the difference in price from the defendant. Bergquist v Olsen, 165 M 406, 206 NW 931.

A farmer made a contract with a canning company to plant land to peas and sell and deliver to the canning company at a certain price. He notified the canning company to inspect and order delivery, but they delayed until the peas were too ripe for canning and told farmer to harvest and sell as seed peas. Before they could be harvested, the crop was destroyed by hail. Held, the farmer may recover. Rauhauser v Owatonna, 166 M 487, 208 NW 194.

Plaintiff bought and paid for a motor car to be delivered when he was ready for it. When it was delivered he refused it and brought suit for the price paid. There was a finding for the plaintiff. Katzenmeyer v Kuska, 168 M 93, 209 NW 867.

Plaintiff purchased a corn-picker, and after using it two weeks returned it. Held, the defendant had no right of rescission according to law, and it was for the jury to determine if there had been a rescission of consent. Schutz v Tostove, 191 M 116, 253 NW 372.

Plaintiff and defendant entered into a contract wherein defendant purchased a definite quantity of oil, the weights to be as ordered out by defendant and the weights controlling the price. Held, bad for indefiniteness. The contract possibly was severable in that it might be good as to part sufficiently definite. Willhelm v Brattrud, 197 M 626, 268 NW 634.

Open price in sales contracts. 16 MLR 737.

Seller's measure of damages on buyer's refusal to accept the goods. 21 MLR 716.

512.65 WHEN SELLER MAY RESCIND CONTRACT OR SALE.

HISTORY. 1917 c. 465 s. 65; G.S. 1923 s. 8439; M.S. 1927 s. 8439.

When purchaser manifests his inability or unwillingness to perform, the seller may rescind the entire contract and sue for damages. The burden of proof is on the seller and the repudiation or ability on the part of the purchaser must be definite. McRae v Itasca, 153 M 260, 190 NW 72,

REMEDIES OF THE BUYER

512.66 ACTION FOR CONVERTING OR DETAINING GOODS.

HISTORY. 1917 c. 465 s. 66; G.S. 1923 s. 8440; M.S. 1927 s. 8440.

Defendant repossessed an automobile, plaintiff being in default. The jury found that the defendant had made the repossession before the date stated in the extension had expired. The vendee's measure of damages is the value of the chattel at the time of the conversion, less the unpaid purchase price. Novak v Breitman, 183 M 254, 236 NW 221.

Quasi contracts in sales cases. 21 MLR 529.

512.67 ACTION FOR FAILING TO DELIVER GOODS.

HISTORY. 1917 c. 465 s. 67; G.S. 1923 s. 8441; M.S. 1927 s. 8441.

The making of a contract for furnishing brick for a city contract was established, and when the manufacturer refused to ship the contractor bought elsewhere and recovered judgment for the amount of his damage. Feyen v Reliance, 161 M 437, 201 NW 926.

Where a canning factory contracts for future deliveries and reserves the right to make proportionate deliveries among the buyers, the burden is on the factory to show cause justifying such delivery, but also to show absolute fairness among the buyers. Clay v Kenyon, 198 M 536, 270 NW 590.

Re-sale contract of vendee as affecting measure of damages. 16 MLR 591.

Open price in sales contracts. 16 MLR 733, 737.

512.68 SPECIFIC PERFORMANCE.

HISTORY. 1917 c. 465 s. 68; G.S. 1923 s. 8442; M.S. 1927 s. 8442.

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 remedies at law. Actions to enjoin breach of a contract are similar to and are governed by the same rules as actions for specific performance. Reichert v Pure Oil, 164 M 252, 204 NW 882.

512.69 REMEDIES FOR BREACH OF WARRANTY.

HISTORY. 1917 c. 465 s. 69; G.S. 1923 s. 8443; M.S. 1927 s. 8443.

1. Generally
2. Recissions
3. Damages

1. Generally

Where the seller knows the goods are to be re-sold, or are intended to be consumed as food, and the buyer will not discover the defect before they are re-sold or partially consumed, and the value is readily obtainable, the buyer may rescind, return the unused or unsold goods, and require a refund from the seller of the balance of the purchase price. The time of the return and the condition of the goods are for the jury. Clifford v Stewart, 153 M 382, 190 NW 613.

In the sale of a patent right by plaintiff to defendants it was an essential part of the contract that the plaintiff work for the defendants in the manufacture of a patented article; as the plaintiff did not work as agreed, he breached the contract and cannot recover on the note. Rentz v Hurst, 157 M 81, 195 NW 771.

Suit was brought on notes given for phonographs. Trial indicated that the one tried did not work and defendant gave notice of rescission; plaintiff offered to repair if defendant would pay the transportation charges, which the defendant refused to do. Held breach on the part of plaintiff and defendant had made a legal recission. Loveland v Dols, 157 M 222, 195 NW 918.

Where the owner of personal property brings an action in replevin against a party claiming merely a lien thereon, and obtains possession from the officer who executed the writ by reason of claimant's failure to re-bond, the plaintiff thereby acquires the right to sell and dispose of the property pendente lite and give good title to the purchaser. Thereafter the property is no longer in the custody of the law, and claimant must look to the replevin bond for protection. Republic v Brown, 158 M 396, 197 NW 756, 840.

The evidence does not show a breach of contract by the defendant, the lessor, such as to justify the plaintiff lessee in leaving the leased farm upon the theory of an eviction, and doing so he cannot recover damages for the loss of the unexpired portion of the term. Wilson v Lynard, 162 M 135, 202 NW 713.

The written statement was modified as follows: "The foregoing statements, which we believe to be correct, are taken from several reliable sources. We do not guarantee this information but it is the basis on which we ourselves acted in the purchase of this security." In a suit for rescission, based on alleged misrepresentation, it is immaterial whether plaintiff sustained damages. The only inquiry

is whether he got in substance what he was induced to believe he was getting. Saupe v St. Paul Trust, 170 M 366, 212 NW 892.

In an action for money due on sale of a tent and poles, the articles did not test up to the warranty, and defendant could counter-claim to the extent of the deterioration. Saunders v Cowl, 201 M 574, 277 NW 12

The right of the vendee to recover sums paid under a rescinded contract does not rest on the agreement. Rather it is grounded on the theory that the vendor, having obtained money under a contract made void by rescission, is unjustly enriched at the vendee's expense and, as a consequence, should be subjected to a legal duty to restore that which has been improperly gained. Kavli v Leifman, 207 M 549, 292 NW 210.

In seller's action for unpaid purchase price of carloads of oil, buyer is not precluded from asserting a counter-claim for breach of warranty by its letter to seller saying that if the buyer "should run into any trouble on this oil darkening in color in storage, we will expect" to seller "to stand behind us" for any replacement expenses, on the ground that the letter provided an exclusive remedy for breach of warranty. Berry v Apex, 215 M 198, 9 NW(2d) 437.

Breach of warranty. 21 MLR 535.

Effect on creditor's rights. 25 MLR 79.

2. Recissions

One of the buyers remedies for breach of contract is rescission. There may not be a partial rescission of an entire contract, but that rule may be modified if the buyer is unable to return all he received from the seller. Fiterman v Johnson, 156 M 201, 194 NW 399.

The notes sued upon were negotiable and in the hands of an innocent holder, but in any event there had been no rescission of the contract, and buyer cannot defend against suit on the notes. Goedhard v Folstad, 156 M 454, 195 NW 281.

The contract gave the buyer 30 days after receiving the goods in which to discover and report defects in quality and provided that he be estopped from claiming defects unless reported within such 30 days. Having given no notice, he cannot maintain damages. Marshall v Hintz, 156 M 301, 194 NW 772.

As an inducement to persuade buyer to purchase a typewriting machine, plaintiff guaranteed to keep the machine in repair for a definite time, title in the machine remaining in plaintiff until all the "rent" payments were met; defendant could rescind if the plaintiff failed to make repairs after being given a reasonable time in which to do so. Friedland v Hacking, 158 M 389, 197 NW 751.

The recission of a contract because of fraud inducing it prevents the defrauded party from recovering damages for the fraud. His only right if to be placed in statu quo. Sheer v Harbaugh, 165 M 54, 205 NW 626.

An attempted rescission of a sale of a fur coat seven months after the purchase, and six months after the discovery of the alleged breach, is not within a reasonable time as a matter of law. Stewart v Menzel, 181 M 347, 232 NW 522.

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. A request for fulfillment nullifies a previous attempt to rescind. Holcomb v Osterberg, 181 M 547, 233 NW 302.

The 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 giving rise to such right, and the question as to the reasonableness of the time is usually for the jury, but conditions may exist which would make it a question of law. Laundry v Fidelity, 187 M 180, 245 NW 36.

The evidence justified the jury in finding that after repeated efforts at repair, the brakes did not operate, and there was a breach of warranty of fitness. Purchaser was not guilty of laches because the time did not run while the seller was endeavoring to put the brakes in proper shape. Federal v Shanus, 190 M 5, 250 NW 713.

Representation by the agent, that certain other attorneys had purchased a similar set of books, was untrue, but not of sufficient materiality to warrant rescission. Thompson v Peterson, 190 M 566, 252 NW 438.

A rescission did not appear as a matter of law. The evidence sustains a finding that the defendant returned the property in rescission of the sale and that the plaintiff accepted it and there was a recission by mutual consent. Schutz v Tostove, 191 M 116, 253 NW 372.

Buyer's failure to exercise right of rescission for eight months after breach of warranty, if any, must have been known to him, is unreasonable as a matter of law and a bar to rescission as against the seller of an air-conditioning unit. Heibel v U. S. Air Conditioning Corp., 206 M 288, 288 NW 393.

But see, Reliance v Flaherty, 211 M 133, 300 NW 603.

Right of purchaser in case of rescission to lien for payments made. 7 MLR 235.

Use of property after notice of rescission. 15 MLR 604.

Remedies of buyer in case of rescission for breach of warranty. 19 MLR 132, 21 MLR 112.

When rescinding buyer need not return the goods. 21 MLR 547.

Recoupment by buyer. 21 MLR 562.

Notice within reasonable time. 21 MLR 614.

Contractual disclaimers of warranties. 23 MLR 794.

3. 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. Bank v Randby, 158 M 309, 197 NW 265.

Offer to eliminate blemished and decayed potatoes would still leave the delivery beyond the extent permitted by recognized "tolerance", and plaintiff was within his rights to reject the potatoes, rescind the contract, and sue for return of the purchase price. Palmer v Palmer, 161 M 527, 201 NW 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 the damages awarded. Wilson v Lynard, 162 M 135, 202 NW 713.

In sale of pulpwood warranted to be sound, when it is impaired in quality by rot and wormholes to an extent of 30 per cent of its value, the measure of the purchaser's damage is the difference between the market value of the pulpwood if it had answered to the warranty, and its market value as it actually was. McGrath v Cunningham, 163 M 416, 204 NW 322.

What the buyers necessarily did and amount expended to put machinery in workable condition was properly considered in establishing damages from breach of warranty. Harris v Heiner, 180 M 19, 230 NW 214.

Loss of good-will as element of damages in suit for breach of implied warranty. 15 MLR 721.

Consequential damages for breach of warranty of merchantability. 16 MLR 219.

512.70 INTEREST AND SPECIAL DAMAGES.

HISTORY. 1917 c. 465 s. 70; G.S. 1923 s. 8444; M.S. 1927 s. 8444.

Generally a vendee of corporation stock who has rescinded for good cause may recover of the vendor, in an action for money had and received, the purchase price with interest from time of its payment. Dohs v Kerfoot, 183 M 379, 236 NW 620.

Consequential damages for breach. 16 MLR 220.

Remedies of buyer after rescission. 21 MLR 113.

INTERPRETATION

512.71 VARIATION BY EXPRESS AGREEMENT.

HISTORY. 1917 c. 465 s. 71; G.S. 1923 s. 8445; M.S. 1927 s. 8445.

Previous dealings, or a well established usage or custom of a trade, cannot inject into a sales contract an obligation on the part of the seller to deliver the goods sold, upon being tendered a draft drawn by buyer's agent upon the buyer. Stein v Shapiro, 145 M 60, 176 NW 54.

Where a written contract is made in part performance of an oral agreement, it is only the matters not covered by the written contract that may be proved by parol testimony. Marshall v Hintz, 156 M 301, 194 NW 772.

See Mammen v Rowitzer, 183 M 175, 235 NW 878.

Parties dealing with particular warranty contractually. 12 MLR 214.

Payment and delivery as concurrent or independent conditions. 19 MLR 816.

Contractural disclaimers of warranty. 23 MLR 785.

Warranty of merchantable quality; disclaimers. 27 MLR 157.

512.72 RIGHTS MAY BE ENFORCED BY ACTION.

HISTORY. 1917 c. 465 s. 72; G.S. 1923 s. 8446; M.S. 1927 s. 8446.

512.73 RULE FOR CASES NOT PROVIDED FOR BY THIS CHAPTER.

HISTORY. 1917 c. 465 s. 73; G.S. 1923 s. 8447; M.S. 1927 s. 8447.

512.74 UNIFORMITY.

HISTORY. 1917 c. 465 s. 74; G.S. 1923 s. 8448; M.S. 1927 s. 8448.

512.75 PROVISIONS NOT APPLICABLE TO MORTGAGES.

HISTORY. 1917 c. 465 s. 75; G.S. 1923 s. 8449; M.S. 1927 s. 8449.

512.76 DEFINITIONS.

HISTORY. 1917 c. 465 s. 76; G.S. 1923 s. 8450; M.S. 1927 s. 8450.

"Goods" defined. Griffin v Minnesota Sugar, 162 M 240, 202 NW 445; 13 MLR 394.

"Future goods" defined. Clay v Kenyon, 198 M 533, 270 NW 590.

"In good condition" defined. Saunders v Cowl, 201 M 574, 277 NW 12.

A transfer of property other than an interest in lands in satisfaction of or as security for a preexisting debt or other obligation is a transfer for value. "Value" under the uniform sales act is any consideration sufficient to support a simple contract. Blumberg v Taggart, 213 M 39, 5 NW(2d) 388.

512.77 NOT RETROACTIVE.

HISTORY. 1917 c. 465 s. 76a; G.S. 1923 s. 8451; M.S. 1927 s. 8451.

512.78 WAREHOUSE RECEIPTS AND BILLS OF LADING ACT NOT AFFECTED.

HISTORY. 1917 c. 465 s. 76b; G.S. 1923 s. 8452; M.S. 1927 s. 8452.

512.79 CITATION.

HISTORY. 1917 c. 465 s. 79; G.S. 1923 s. 8455; M.S. 1927 s. 8455.